

Standard Terms and Conditions for Supply of Water from the Southern Valleys' Irrigation Scheme

This document is the standard terms and conditions that apply between the Marlborough District Council as the supplier of irrigation water from the Southern Valleys' Irrigation Scheme to you as a Customer of the Council.

1. Definitions

1.1 In these terms and conditions

Allowable Take means allowable take as defined by clause 4.2.

Business Day means any day of the week other than:

- (a) A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Marlborough Anniversary Day and Labour Day; and
- (b) A day in the period commencing with 24 December in a year and ending with 5 January in the following year.

Council means the Marlborough District Council.

Customer means a Customer as defined in clause 2.

Customer Connection Pipe means the pipelines, valves and fittings installed to connect the Scheme at a remote Point of Supply for which the Council has given approval under clause 5.3.

Force Majeure means any event or circumstances beyond the control of either party, and includes any action of God, force of nature (including weather events), act of war, terrorism or sabotage, earthquake, fire, lightning or other natural catastrophe, strikes, lockouts, civil disturbances, a partial or entire failure in the Scheme system, a change in the legislative or regulatory environment including any direction given by government or a regulator, explosion, breakage or accident to any equipment or a facility owned by either party (being equipment or a facility necessary to supply, deliver or take water under these terms and conditions).

Irrigation Designer means a suitably qualified and experienced person who designs new, or modifies existing Irrigation Systems to operate with the Scheme. The Irrigation Designer is engaged by and at the expense of the Customer.

Irrigation Season means the period from 1 November to 31 March, both inclusive.

Irrigation System means all the pipes, valves, hydrants, pumps, tanks, ponds, reservoirs, sprinklers, emitters and the like that the Customer installs and maintains for the purpose of storage, distribution and application of irrigation water to the Customer's land.

Irrigation Technician means a suitably qualified and experienced person who oversees installation of the Irrigation System on a Customer's property to the requirements, drawings and

specifications of the Irrigation Designer. The Irrigation Technician is engaged by and at the expense of the Customer.

Off-Take means the pipework, valves, coarse filter where fitted to some smaller diameter water meters, water meters, check (non return) valves, backflow prevention valves, pressure sustaining valves and flow control valves installed together at the Point of Supply.

Person includes a corporation sole and also a body of persons whether corporate or unincorporated.

Point of Supply means the point at which a Customer's Irrigation System connects to the Scheme, as determined in accordance with Clause 5.

Scheme Water Race Area means the Southern Valleys' Irrigation Scheme water race area as constituted by a Special Order of the Marlborough District Council on 7 February 2003.

Shoulder Season means the spring Shoulder Season and the autumn Shoulder Season as defined in clause 4.13.

Scheme means the Southern Valleys' Irrigation Scheme being the constructed open channels, pumps, valves, controls and pipelines to the Point of Supply at each Off-Take and includes the Customer Connection Pipe where the Council has given specific approval for a remote Point of Supply under clause 5.3.

Winter Period means the winter period as defined in clause 4.13.

- 1.2 A reference to any statute or regulations includes a reference to that statute or regulations as amended, modified or replaced and, in the case of a statute, includes all orders, ordinances, regulations and bylaws made under or pursuant to that statute.
- 1.3 Unless the context requires otherwise, words denoting the singular include the plural and vice versa.
- 1.4 The headings used in these terms and conditions are for ease of reference only and are not to be used in interpreting these terms and conditions.

2. Who is a Customer?

A Person is a Customer of the Council when that Person, who is a ratepayer for a property within the Scheme Water Race Area:

- (i) Contacts the Council and the Council agrees to supply that Person with irrigation water on these terms and conditions; or
- (ii) Continues to take or use irrigation water, where that property is connected to the Scheme, after the Council has notified that Person of these terms and conditions; or
- (iii) Is a new ratepayer for that property and that property is connected to the Scheme and no other Person is already the Customer for that property.

3. When do These Terms and Conditions Come into Force?

- 3.1 These terms and conditions come into force when a Person becomes a Customer of the Council.
- 3.2 These terms and conditions continue until terminated under Clause 17.

- 3.3 These terms and conditions constitute the entire agreement between Council and the Customer and supersede all previous written agreements and communications, whether oral or written between the Council and the Customer.

4. Supply of Irrigation Water

- 4.1 Wherever reasonably practicable, the Council will supply irrigation water on a continuous basis throughout the irrigation season at the rate of 0.208 litres per second (l/s) per rated irrigable hectare maintaining a minimum of 30 metres (m) head of water at

- (a) The Point of Supply; or
- (b) Where the Council has approved a remote Point of Supply, at the point the Customer Connection Pipe joins the Scheme.

A continuous flow of 0.208 l/s equates to 18 m³ over 24 hours ie; 18 m³/ha/d.

- 4.2 Subject to clause 4.3, each Customer has an Allowable Take of irrigation water from the Scheme. The Allowable Take for each property in the Scheme Water Race Area is the rateable irrigable land area in hectares or part hectares multiplied by 18 to give cubic metres per 24 hour day. To achieve the Allowable Take, flow must be taken at a uniform rate over the full 24 hour day.

- 4.3 The Customer acknowledges that the Council is not able to guarantee the Allowable Take.

- 4.4 Supply to a Customer may be interrupted or reduced:

- (a) In the event that demand for water exceeds supply (for example, in the event that river flows fall below trigger flows allowed for by any consent to take water or in the event of interruption to supply of water); or
- (b) In order for the Council to inspect, test, maintain, alter, or repair machinery, equipment or other apparatus; or
- (c) If the Council considers that it is appropriate to avoid any damage to, interference with, or to ensure the integrity, efficiency, security or safety of the supply of irrigation water or to avoid interference with the supply of irrigation water to any other Person; or
- (d) In the case of an event or emergency which the Council considers threatens life, property or the safety of any person or property; or
- (e) If required under any consent or direction or order of any competent authority such as a Court or Tribunal; or
- (f) For reasons of Force Majeure.

- 4.5 Wherever reasonably practicable, planned maintenance will be carried out in the Winter Period and the Council will notify Customers of such maintenance.

- 4.6 If planned maintenance is to be carried out during the Irrigation Season or a Shoulder Season, wherever reasonably practicable the Council will notify Customers as follows:

- (a) For planned interruptions to supply expected to exceed four hours – the Council will give written notice to Customers at least 3 Business Days before the interruption. If it is not possible to give such written notice the Council will give verbal notice on the local radio identifying the area affected and the anticipated duration of the interruption.

- (b) For planned interruptions to supply expected to last between 30 minutes and four hours – the Council will give verbal notice on the local radio identifying the area affected and the anticipated duration of the interruption.
 - (c) For planned interruptions to supply expected to be less than 30 minute duration – no notification.
- 4.7 Irrigation water is not available from the Scheme during the Winter Period unless the Customer has obtained written approval from the Council for a winter supply. If the Council grants approval, the Council may determine that (except for clause 14.3) different terms and conditions to the terms and conditions set out in this document will apply for a winter supply
- 4.8 Irrigation water supplied under these terms and conditions is intended for use for irrigation purposes. However the Council gives no representation or warranty as to the suitability of the irrigation water for that or any other purpose and the Customer takes the irrigation water at the Customer's sole risk.
- 4.9 Irrigation water supplied under these terms and conditions will not meet the requirements of the Drinking Water Standards for New Zealand and will not be regularly monitored or tested. The Council will not treat the irrigation water. The Customer agrees that the irrigation water supplied under these terms and conditions will not be used for household or drinking water supplies.
- 4.10 The Customer is responsible for determining what treatment and filtering are required for the effective operation of any control valves, backflow prevention valves and the Customer's own irrigation requirements.
- 4.11 During operation of the Scheme the pressure in the pipelines and at the Points of Supply will depend upon the location and the demand at the time. The Council will make available to Irrigation Designers typical maximum pressures.

Water hammer is likely to occur in the Scheme particularly when power is lost to a pump station(s). High pressure and low pressure near full vacuum are likely. The Customer is responsible for controlling pressures from the Scheme so as not to cause damage to their Irrigation System.

- 4.12 The provisions of section 228 (offences relating to water races) and 242(1) (penalties for offences) of the Local Government Act 2002 are incorporated in and form part of these terms and conditions.
- 4.13 The Council may determine, at its sole discretion and at any time, for each calendar year what constitutes the Winter Period, the Spring Shoulder Season, and the Autumn Shoulder Season. Once the Council has made a determination under this clause, the Council will give written notice to the Customer of the defined term. By way of example only and without limiting the Council's discretion, the Winter Period will usually be from 1 May to 30 September.

5. Point of Supply and Title

- 5.1 The supply of irrigation water will be given and taken at the Point of Supply.
- 5.2 The Point of Supply wherever practicable is to be on the Customer's property adjacent to the formed legal road and the Council will decide where each Point of Supply is to be located.
- 5.3 Where the Customer believes that it is clearly impracticable for the Point of Supply to be adjacent to the formed legal road, the Customer may seek the written approval of the Council for a Point of Supply to be remote from the formed legal road in a readily accessible location on the Customer's property. The Council will only consider such applications in exceptional cases. Every application must be made in the form set out in Appendix E to these terms and conditions.

- 5.4 If a remote Point of Supply is approved,
- (a) The Customer Connection Pipe linking the Scheme to the remote Off-Take must be installed to the Council's specifications and at the Customer's cost; and
 - (b) The Customer Connection Pipe must be protected by a registered easement to Council's requirements for its full length at the cost of the Customer; and
 - (c) Once the Customer Connection Pipe has been installed to the Council's satisfaction, the Customer Connection Pipe vests in the Council; and
 - (d) Once the Customer Connection Pipe vests in the Council, the point of connection with the Off-Take(s) must be treated as the Point of Supply; and
 - (e) The Customer agrees to take good care of and not do or allow anything to be done to damage the Customer Connection Pipe.
- 5.1 Each property is entitled to one only Point of Supply unless the Customer obtains the written approval of the Council for any additional Points of Supply.
- 5.2 The title to, risk and ownership of irrigation water supplied and delivered under these terms and conditions will become the Customer's at the Point of Supply.

6. Metering

- 6.1 The quantity of water conveyed to the Customer at the Point of Supply will be measured by the meter provided, installed, owned, maintained and operated by Council. The meter must be located at the Point of Supply. The Customer and the Customer's agent must not interfere with the meter.
- 6.2 Wherever reasonably practicable, the Council will read the meter at not less than six (6) month intervals. If for any reason a meter is not read at the proper time, the Council may estimate how much water the Customer has used and invoice it according to that estimate.
- 6.3 The meter will be deemed to be accurate and all measurements taken from the meter will be binding on the Customer and Council unless either the Customer or Council dispute the accuracy of the meter. In that event, Council will arrange for the meter to be tested. If the Customer has disputed the accuracy of the meter and the test reveals that it is accurate, then the Customer will be responsible for the costs of the tests.
- 6.4 If the test reveals that the meter is not accurate then, as soon as reasonably practicable after that determination is made, the Council will issue a correcting notice on the basis of the correct data, which will be taken into account in the next rates invoice issued (or such future rates invoices as may be reasonably practicable). The Council agrees to fix or replace the meter as appropriate.
- 6.5 If a meter is out of repair or ceases to register, or is removed, the Council will estimate the consumption for the period since the previous reading of that meter. The estimate will be based on the average of the previous four rates invoices sent to the Customer and the Customer will be liable in accordance with the estimate. However, if by reason of a large variation in consumption due to seasonal or other causes, the average of the previous four rates invoices would be an unreasonable estimate of consumption, the Council may take into account other evidence for the purpose of arriving at a reasonable estimate and the Customer will be liable in accordance with that estimate.
- 6.6 If the seal or dial of a meter is broken, the Council may declare the reading void and estimate consumption as provided in Clause 6.5.

- 6.7 If a situation occurs other than provided for in Clause 6.5 where recorded consumption does not accurately represent the actual consumption on a property, then the account may be adjusted using the best information available to the Council. For example, types of errors could include misreading of the meter, errors in data processing, meters assigned to the wrong account, and unauthorised supplies.
- 6.8 Where an adjustment is required under this clause in favour of the Council or the Customer, the adjustment must not be backdated more than 12 months from the date the error was detected.

7. Check (Non-Return) Valves

- 7.1 As a minimum requirement to avoid draining water from Irrigation Systems back into the Scheme, the Customer must install a check valve in an easily accessible location within 3 metres downstream of the Point of Supply. On 20 and 25 mm nominal bore Off-Takes the check valve must be positively closed with a spring or weight.
- 7.2 Check valves must be installed and maintained at the Customer's own expense.

8. Backflow Prevention

- 8.1 The Customer must install a testable double check valve backflow preventer of a type and manufacture approved by the Council in an easily accessible location above ground within 3 m downstream of the Point of Supply in the following circumstances:
- (a) The Customer adds fertiliser to the Irrigation System; or
 - (b) The Customer stores the irrigation water (unless the irrigation water is stored in a storage vessel that is closed and sealed except for a protected vent); or
 - (c) The Customer has an alternative source of water connected to the Irrigation System and that Irrigation System is connected or will be connected to the Scheme whether permanently or temporarily.
- 8.2 Where a well is connected to an Irrigation System and the Irrigation System is also connected to the Scheme, the Customer must fit a testable double check valve backflow preventer at the wellhead
- 8.3 Backflow preventers must be installed and maintained at the Customer's own expense.
- 8.4 The Customer must not add any additives other than fertilisers to the Irrigation System that could introduce contaminants into the Scheme without the prior written approval of the Council. The Customer must apply to the Council in the form set out in Appendix D to these terms and conditions.
- 8.5 As an alternative to backflow preventers, air gap separation as defined in Acceptable Solutions G12 of the Building Code is permitted.

9. Flow Control Valve

- 9.1 For all Off-Takes greater than 25 nominal bore and any new Off-Take created as a result of subdivision no matter what the nominal bore, the Customer must install in an easily accessible location above ground and within 3 m of the Point of Supply, a flow control valve that limits the flow to the Allowable Take. The valve must be capable of fully closing at flows greater than the

Allowable Take to prevent excess flows being taken from the Scheme. The valve must have an accuracy of $\pm 5\%$ of actual flow at the Allowable Take.

- 9.2 If a Customer has obtained written approval from the Council to have more than one Off-Take, the Customer must install a flow control valve to each Off-Take which limits the total flow to the Customer's property to the Allowable Take.
- 9.3 The valve control point setting (flow for the flow control valve or upstream pressure for the pressure sustaining valve) must be set by the valve manufacturer/agent or on site by a suitably qualified Irrigation Technician. The flow control valve must then be wired and sealed ready for resealing by Council.
- 9.4 Flow control valves must be installed and maintained at the Customer's own expense.

10. Pressure Sustaining Valve

- 10.1 For all Off-Takes greater than 25 mm nominal bore and any new Off-Take created as a result of subdivision no matter what the nominal bore, the Customer must install in an easily accessible location above ground and within 3 m of the Point of Supply, a pressure sustaining valve that only opens to allow water to pass to the Customer's Irrigation System if the upstream pressure in the Scheme is greater than the sustaining pressure specified for that Off-Take. The valve must have an accuracy of $\pm 5\%$ of the actual head of water at the preset upstream pressure.
- 10.2 If a Customer has obtained written approval from the Council to have more than one Off-Take, the Customer must install a pressure sustaining valve to each Off-Take.
- 10.3 The valve control point setting (flow for the flow control valve or upstream pressure for the pressure sustaining valve) must be set by the valve manufacturer/agent or on site by a suitably qualified Irrigation Technician. The pressure sustaining valve must then be wired and sealed ready for re-sealing by Council.
- 10.4 Pressure sustaining valves must be installed and maintained at the Customer's own expense.

11. Combining Control Valve Functions

- 11.1 The Customer may comply with any of clauses 7, 8, 9, and 10 by installing a single valve at each Off-Take provided
 - (a) The valve manufacturer and supplier advises each function as required by clause 7, 8, 9, and 10, as the case may be, can be achieved independently of the other without affecting the performance or accuracy of the other; and
 - (b) Each control function can be separately set and the pressure sustaining and flow control settings can be wired and sealed by Council in such a way that the settings cannot be changed without the seal being broken.
- 11.2 Control valves with combined functions must be installed and maintained at the Customer's own expense.
- 11.3 Combining the pressure sustaining function with flow control may mean higher rates of flow cannot be taken in the Shoulder Season. Refer to section 13.

12. Customer Responsibility to Protect

12.1 The Customer has the following responsibilities:

- (a) The Customer is responsible for:
 - (i) Safety;
 - (ii) Security;
 - (iii) Protection from all weather including frost (for example by installing in an enclosure and lagging or otherwise insulating);
 - (iv) Protection from damage, malfunction or inaccuracy by filtration or other means from the effects of sand, silt and the like in the irrigation water supplied;

of any equipment required by the Council for the supply of irrigation water to the Customer's property whether located on the Customer's property or not including but not limited to; backflow preventer, pressure sustaining valve, flow controlling valve and any of their installations;

- (b) The Customer is responsible for;

- (i) safety;
- (ii) security;
- (iii) protection from damage;

of the meter and any of its installations for metering the supply of irrigation water to the Customer's property whether located on the Customer's property or not.

- (c) The Customer will at all times comply with its obligations under any statute or regulation in respect of the operation of the meter and backflow preventer and any of its installations;
- (d) The Customer will do nothing to interfere with the meter or any installation that could affect the accuracy of the meter.

12.2 The Customer is also responsible for:

- (a) The protection (at the Customer's own expense) of any pipelines or valves where located on the Customer's land up to the Point of Supply, whether or not it is a Customer Connection Pipe and whether or not it is solely for the supply of irrigation water to the Customer, against interference and damage; and
- (b) Any damage caused to the Council's equipment or any meter or backflow preventer or pipeline unless the Customer can establish that the damage was not caused by its negligence, wilful act or omission or through failure by it to provide the protection required by this clause 12; and
- (c) Installing and maintaining permanent signs at all outlets on the Customer's land or otherwise under the control of the Customer advising that the supply is not suitable for drinking water. The signs shall be as prescribed for this purpose in Acceptable Solution G12 of the Building Code.

13. Drawing Additional Irrigation Flows

- 13.1 A Customer may apply in writing to the Council between 15 June and 15 July each year to draw irrigation water from the Scheme up to a maximum of double the Allowable Take during the spring Shoulder Season in that year. Wherever reasonably practicable, the Council will process any such applications and respond in writing by 30 August advising the Customer whether or not the application has been approved or whether some lesser rate than applied for is available.
- 13.2 A Customer may apply in writing to the Council between 15 January and 20 February each year to draw irrigation water from the Scheme up to a maximum of double the Allowable Take during the autumn Shoulder Season in that year. Wherever reasonably practicable, the Council will process any applications and respond in writing by 20 March advising the Customer whether or not the application has been approved or whether some lesser rate than applied for is available.
- 13.3 An application under clause 13.1 or 13.2 must clearly set out how the Customer proposes to deal with flow control valves (clause 9) and any combined control valves (clause 11).
- 13.4 The Council may, from time to time after an application under this clause is granted, require the Customer to reduce the maximum draw off to:
- (a) some lesser draw off than originally approved under this clause; or
 - (b) the Allowable Take,
- The Customer must reduce to the newly prescribed maximum draw off within 48 hours of being asked to do so by Council.
- 13.5 Wherever reasonably practicable, the Council will supply irrigation water up to the maximum draw off authorised under this clause. However, the Council does not guarantee the supply of irrigation water under this clause

14. Charges and Payments

- 14.1 Except as provided in clause 14.3, the Customer is liable to pay for the supply of irrigation water and related services in accordance with the rates and charges set and assessed by the Council under the Local Government (Rating) Act 2002.
- 14.2 If a property which is connected to the Scheme changes ownership, the outgoing Customer must, at least 48 hours before settlement of the sale and purchase for the property, give the Council written notice to arrange for a final reading.
- 14.3 If the Council grants approval for the supply of irrigation water during the winter period under clause 4.7, the Council will determine the charges payable for the supply of that water.

15. Access

- 15.1 The Customer will give the Council or its agents, sub-contractors and invitees (“authorised personnel”) safe and unobstructed access to the meter, backflow preventer, valving, pipework, pipeline and any equipment belonging to the Council for the purpose of reading, installing, testing, inspecting, maintaining, repairing, replacing, operating or removing the meter or the equipment or for any other purpose related to these terms and conditions.
- 15.2 Wherever practicable, the Council or its authorised personnel will give reasonable notice of the exercise of rights of access, and will advise the purpose of the business. The Council or its

authorised personnel will cause as little inconvenience to the Customer as is practicable in carrying out any work.

- 15.3 The rights of access set out in this clause are in addition to any rights of access which the Council or its authorised personnel may have under any statute or regulation or any other agreement with the Customer.
- 15.4 If the Customer fails to grant the Council access in accordance with these terms and conditions, its supply of irrigation water may be disconnected immediately. The Council will not be liable for any damage incurred by the Customer or any third party as a result of any such disconnection. The Customer must reimburse Council all costs of disconnection and any reconnection.
- 15.5 On the termination of these terms and conditions, the Council or its authorised representatives may enter the Customer's premises to remove any equipment belonging to the Council or its authorised personnel.

16. Liability

- 16.1 Subject to clauses 16.2 – 16.7 (both inclusive) neither party is liable to the other for any loss, injury or damage resulting from:
- (a) Any failure to supply, or defect in the supply of, irrigation water; or
 - (b) Breach of these terms and conditions,
- unless such failure, defect or breach arose from the negligence or intentional action or inaction of that party.
- 16.2 The Council and its officers, employees and agents are not in any circumstances liable to the Customer for:
- (a) Fluctuations in the volume or pressure of water conveyed; or
 - (b) Any failure to convey irrigation water caused by the Customer's or any other Person's failure to observe or comply with these terms and conditions; or
 - (c) Any failure to convey irrigation water caused by no, or reduced, injection or supply of water into the Scheme; or
 - (d) Any failure to convey irrigation water caused by any defect or abnormal conditions on the Customer's land; or
 - (e) Any delays, faults or other problems whatsoever in relation to the supply of irrigation water to the Customer resulting from any incorrect or inadequate information provided to Council by the Customer; or
 - (f) Any failure to supply irrigation water where it is reasonably necessary to interrupt the supply of irrigation water to any Point of Supply for any of the following reasons:
 - (i) As part of a programme of planned interruption of the Scheme; or
 - (ii) To enable Council to inspect, effect alterations, maintain, repair or add to any of the Scheme; or

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- (iii) To avoid danger to persons or damage to property or to avoid interference with the regularity or efficiency of the conveyance of irrigation water through the Scheme; or
 - (iv) In case of emergency, to preserve and protect the proper working of the Scheme or any other system through which the Council directly or indirectly takes the supply of irrigation water; or
 - (v) As a consequence of any action taken by Council in the course of operating the Scheme; or
 - (g) Any failure to convey water arising from the acts or omissions of a third party; or
 - (h) Any loss resulting from the liability of the Customer to any other Person.
- 16.3 Neither the Council, nor any of its officers, employees or agents, are in any circumstances liable to the Customer for:
- (a) Any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill of any Person; or
 - (b) Any indirect or consequential loss; or
 - (c) Any loss resulting from loss or damage to stock, crops or equipment.
- 16.4 All other liability of the Council including any liability in tort or under statute is excluded to the maximum extent permitted by law.
- 16.5 The Customer will indemnify the Council against:
- (a) Any costs, liability, loss or damage suffered by the Council as a result of the Customer's disconnection from the Scheme as a result of its breach of these terms and conditions;
 - (b) Any damage to any of the Council's or any other third party's equipment caused by the Customer's negligence, wilful act or omission.
- 16.6 The maximum liability that either party may have to the other for loss or damage arising under these terms and conditions is, for any single event, no more than the greater of:
- (a) \$10,000; or
 - (b) 5% of the annual charges payable for irrigation water supplied to the Customer and for all events occurring in any 12 month period, no more than the greater of:
 - (c) \$10,000; or
 - (d) 20% of the annual charges payable for irrigation water supplied to the Customer.
- 16.7 The limitation in clause 16.6 does not apply to liability of the Customer under clause 4.9 or clause 16.5(b) or clause 17.7.
- 16.8 These terms and conditions apply on the basis that the Consumer Guarantees Act 1993 does not apply to the supply of irrigation water to the Customer. If the Consumer Guarantees Act applies, then the parties agree to contract out of the provisions of that Act to the maximum extent permissible.

17. Termination

- 17.1 If either party fails to perform any of the terms and conditions contained in this document, the party not in default may at its option terminate these terms and conditions by serving on the party in default a written notice stating specifically the cause for terminating these terms and conditions and its intention to do so.
- 17.2 The party in default has 10 Business Days after the service of the notice in which to remedy or remove the cause stated in the notice for terminating these terms and conditions.
- 17.3 If within that 10 Business Day period the party in default removes or remedies the cause and fully indemnifies the party not in default for any and all consequences of the breach, the notice of default is deemed to be withdrawn and these terms and conditions continue in full force and effect.
- 17.4 If the party in default does not remedy and remove the cause or does not indemnify the party giving the notice for any and all consequences of the breach within the 10 Business Day period, the party not in default may give 24 hours notice of termination and disconnection to the defaulting party and these terms and conditions terminate on the day of expiry of the notice.
- 17.5 The Council may also terminate these terms and conditions immediately by notice in writing to the Customer if the Customer:
- (a) Has a receiver, manager (including statutory manager) or similar Person appointed in respect of the whole or any substantial part of its property or assets or security or security over any of its assets is exercised or becomes exercisable; or
 - (b) Passes a resolution, or any proceedings are commenced, for its liquidation; or
 - (c) Makes an assignment for the benefit of, or enters into or makes any agreement or composition with its creditors; or
 - (d) Proposes a re-organisation, amalgamation, moratorium or other form of administration in relation to its creditors or any debts or obligations; or
 - (e) Being a company, is removed from the Register of Companies otherwise than as a consequence of an amalgamation under Part XIII of the Companies Act 1993; or
 - (f) Breaches an essential term.
- 17.6 Any breach by the Customer of the following terms will be a breach of an essential term:
- (a) Failure to pay the rates and charges as set out in clause 14 in accordance with the Local Government (Rating) Act 2002;
 - (b) Tampering with a meter;
 - (c) Interference with any part of the Scheme ;
 - (d) Failure to grant the Council access in accordance with clause 15 of these terms and conditions;
 - (e) Any act or omission of the Customer which has the effect of placing the Council in breach of any consent or other authority necessary to operate the Scheme;
 - (f) Failure to comply with clause 24 of these terms and conditions.

- 17.7 In addition to any other right or remedy of the Council, including the right to terminate these terms and conditions and the right to take offence proceedings under section 229 of the Local Government Act 2002, the Customer must compensate the Council for any breach of an essential term and the Council is entitled to seek damages. The limitation in clause 16.6 does not apply to any claim under this clause.
- 17.8 Any termination of these terms and conditions is without prejudice to the Council's right to collect any amounts due for irrigation water supplied prior to the time of termination and, where clause 16 applies, without waiver of any remedy to which the party not in default may be entitled for breach.
- 17.9 On the termination of these terms and conditions, the Council may enter the Customer's property and disconnect the Point of Supply.

18. Force Majeure

- 18.1 Subject to clause 18.2 neither the Council nor the Customer is liable to the other for any act, omission or circumstance occasioned by or in consequence of any Force Majeure event.
- 18.2 Any Force Majeure event affecting performance by either the Customer or the Council under these terms and conditions does not relieve the affected party of liability:
- (a) In the event of its negligence or in the event of its failure to use all reasonable endeavours to remedy the situation; or
 - (b) To make payments for amounts then due to the Council.
- 18.3 If a Force Majeure event occurs, each party will do everything reasonably practicable to return the Customer's irrigation water supply to normal as soon as reasonably practicable in the circumstances.

19. Notices

- 19.1 The Council may notify the Customer of any matter in accordance with any express provision of these terms and conditions.
- 19.2 Without limiting clause 14.1 the Council will send any written notice to the Customer by:
- (a) Posting the notice to the Customer's last postal address given; or
 - (b) Delivering the notice to the property supplied with irrigation water; or
 - (c) Sending the notice to the Customer's last facsimile number or email address.
- 19.3 Notices are deemed to have been received
- (a) If personally delivered, on delivery; or
 - (b) If posted, on the third day after posting; or
 - (c) If sent by facsimile, on successful transmission, or, if sent after 5pm, on the next business day after transmission.

20. Changes to These Terms and Conditions

- 20.1 Subject to clause 20.2, the Council may change these standard terms and conditions at any time by giving the Customer at least 30 days' prior notice.
- 20.2 Without limiting the decision-making process of the Council, the Council will, in the course of its decision-making process in relation to any change to these standard terms and conditions, give consideration to the views and preferences of the persons likely to be affected by, or to have an interest in, the changes.
- 20.3 The Council will give notice of these changes to the Customer by letter or by including the notice in the Customer's rates assessment or rates invoice or by advertising in local media.
- 20.4 The Council reserves the right, at its sole discretion, to:
- (a) Waive strict compliance with these terms and conditions in any particular case and by any particular Customer:
 - (b) Negotiate or enter into an arrangement with a Customer which varies or departs in any respect from these standard terms and conditions.
- 20.5 No exercise by the Council of the rights reserved by clause 20.4 shall release or affect the liability or obligations of any other Customer under these terms and conditions.

21. Miscellaneous

- 21.1 No waiver of any breach, or failure to enforce any provision of these terms and conditions, by either party affects, limits, or waives that party's right to enforce and compel strict compliance with these terms and conditions.
- 21.2 Each provision in these terms and conditions survives the termination of these terms and conditions to the extent unfilled, and remains enforceable and does not merge on performance of another term.
- 21.3 If any regulatory body, agency or court of law determines that these terms and conditions, their operation or effect is unjust, unreasonable, unlawful or not in the public interest, each party is relieved of its respective obligations only to the extent necessary to eliminate that determination. The parties will then attempt promptly to renegotiate the relevant terms and conditions so as to restore the original balance of benefits and burdens.

22. Complaints and Dispute Resolution

- 22.1 Any disagreement between the parties must be resolved according to the dispute resolution procedure set out below:
- (a) The Council and the Customer will attempt to resolve all disputes amicably. If either of the Council or the Customer claim a dispute has arisen, written notice of the same must be given to the other party.
 - (b) Both the Council and the Customer will mediate any dispute in terms of the LEADR (New Zealand) Incorporated standard Mediation Agreement in force at the time the dispute is notified in accordance with clause 22.1(a).
 - (c) The mediation will be conducted by a mediator and at a fee to be agreed by both the Council and the Customer. Failing agreement, the mediator must be selected and its fee determined by the chair of LEADR (New Zealand) Incorporated.

- (d) If the parties are unable to resolve the dispute by mediation within three months of the written notice given under clause 22.1(a), the matter must be referred to the arbitration of a single arbitrator if the parties can both agree on one, or otherwise by two arbitrators, one to be appointed by each of the Council and the Customer and an umpire to be appointed by the two arbitrators before they enter into consideration of the matter. Any such reference must be a submission to arbitration within the meaning of the Arbitration Act 1996 and its amendments.
- (e) Pending resolution of any dispute, both the Council and the Customer will continue to perform their respective obligations pursuant to these terms and conditions.

23. Process for Connecting to the Scheme

- 23.1 The Customer must follow the process set out in this clause for the purpose of connecting the Customer's property to the Scheme.
- 23.2 The Customer will engage an Irrigation Designer to design and specify the Irrigation System including the valving and other components required by the Council under these terms and conditions. However, the Customer is not required to engage an Irrigation Designer if the Customer:
- (a) has only one Off-Take for the Customer's property and the Off-Take is no greater than 25mm nominal bore: and
 - (b) completes, signs, and returns to the Council Parts B1, B4 and B5 of the Design Summary in Appendix B to these terms and conditions and the Customer Declaration in Appendix D to these terms and conditions; and
 - (c) answers "no" to questions B1.10 to B1.20 inclusive in Part B1 of the Design Summary in Appendix B to these terms and conditions; and
 - (d) answers "no" to questions B5.1, B5.5, B5.8 and B5.10 in Part B5 of the Design Summary in Appendix B to these terms and conditions; and
 - (e) does not require irrigation water in excess of the Allowable Take as set out in clause 13; and
 - (f) in the Customer Declaration in Appendix D to these terms and conditions, answers "no" to the questions in D1, acknowledges D2, answers "yes" to question D3, and acknowledges D4.

If the Council is satisfied that the Customer has complied with all of the terms of this clause, then no further information is required of the Customer. The Council will advise the Customer when final connection to the Point of Supply can be made.

- 23.3 The Irrigation Designer will forward to the Council
- (a) the completed and signed Design Statement as set out in Appendix A to these terms and conditions; and
 - (b) key aspects of the design as set out in the Design Summary in Appendix B to these terms and conditions.
- 23.4 Wherever reasonably practicable, the Council will review the Design Statement and the Design Summary within 10 Business Days of receipt and will advise the Irrigation Designer whether it is approved and, if not approved, what aspects require redesigning.

- 23.5 If the design is not approved the Irrigation Designer must redesign and submit a revised Design Statement and Design Summary.
- 23.6 Once the Council has approved the Design Summary, the Customer may install the Irrigation System under the supervision of the Irrigation Technician and in accordance with the approved design. The Customer acknowledges that any approval given under clause 23.4 does not relieve the Irrigation Designer, Irrigation Technician and the Customer from their responsibilities for ensuring the Irrigation System functions as designed and to the requirements of the Council.
- 23.7 The Irrigation Technician must give the Council at least two Business Days notice of intention to fit any valve (other than a single check valve) as required by the Council under these terms and conditions.
- 23.8 During the course of the installation of the Irrigation System, if the Irrigation Technician proposes changes or is otherwise aware of any changes being made that could be of significance to the design, the Irrigation Technician must immediately notify and seek approval of the Irrigation Designer.
- 23.9 The Irrigation Technician must advise the Council when the Irrigation System is ready to connect to the Scheme by providing the Council with an Installation Completion Statement as set out in Appendix C to these terms and conditions. The Customer must also return to the Council the completed and signed Customer Declaration in Appendix D to these terms and conditions.
- 23.10 If clause 5.3 applies, the Customer must return to the Council the completed and signed application for remote Off-Take in Appendix E to these terms and conditions. The Council will review the application and will advise the Customer whether it is accepted and, if not accepted, what options for connection and location for the Point of Supply would be considered to be acceptable to the Council. If the application is not accepted, the Customer may submit a revised application for a remote Off-Take.

When the process for application is completed to the Council's satisfaction, the Council will advise when final connection to the Point of Supply can be made.

24. Subdivision of Customer's Property

- 24.1 This clause applies if, after these terms and conditions come into force, the Customer proposes to subdivide his or her property.
- 24.2 The Customer acknowledges that
- (a) Each property within the Scheme has a fixed area of land that is rated for the supply of irrigation water; and
 - (b) The irrigable area cannot be greater than the area of the property.
- 24.3 The following principles apply to the reallocation of irrigation water from the Scheme:
- (a) The allocation of irrigation water for the original property must be distributed equitably to the proposed new properties; and
 - (b) The redistribution of the allocation of irrigation water may take account of areas of land that by their nature are not suited to irrigation; and
 - (c) There can be no increase or decrease in the total amount of irrigation water currently allocated from the Scheme; and

- (d) No proposed new property can receive an allocation of irrigation water for more irrigable area than the area of the proposed new property.
- 24.4 The Customer or the Customer's agent must apply in writing to the Council for prior approval to connect each of the proposed new properties to the Scheme. The Council will only grant approval in exceptional cases. The Council, in consultation with the Customer and applying the principles in clause 24.3 of these terms and conditions, will determine the allocation of irrigation water from the Scheme to the proposed new properties.
- 24.5 If the Council approves the connection of any new properties under this clause, these terms and conditions apply to those properties, in addition to the following terms and conditions:
- (a) A new Off-Take for a proposed new property must be connected on the downstream (Irrigation System) side of the isolation valve so that the Scheme is not affected by the work when installing the new Off-Take; and
 - (b) A new Off-Take must be located adjacent to the existing Off-Take unless specifically approved otherwise by Council. The Council will only consider permitting new Off-Takes remote from the original property Off-Take in exceptional circumstances; and
 - (c) In all circumstances where pipelines or Off-Takes are situated on property other than the property being served by the pipeline or Off-Take, the pipelines or Off-Takes must be to Council's specification and protected by registered easements to Council's requirements obtained at the cost of the Customer; and
 - (d) A new Off-Take must be fitted with flow control and pressure sustaining valves no matter what the nominal bore of the Off-Take; and
 - (e) All pipes connecting to the Scheme must have an isolation valve fitted close to the Scheme pipeline in a readily accessible position for the Council to isolate the Off-Take as may be necessary from time to time; and
 - (f) The Irrigation Designer must consider the headloss due to friction loss and static head from the Scheme pipeline to each new proposed property and advise what minimum pressure head will be achieved at each.
- 24.6 There will be no connections between Irrigation Systems on any new properties (including any property retained by the Customer) following subdivision.
- 24.7 If the Council approves a new connection to the Scheme under this clause, the work in making the connection must be carried out in the Winter Period unless the Council has given approval for the work to be carried at another time.
- 24.8 The Customer is responsible for all costs (including any costs in obtaining the necessary easements to Council requirements) incurred by the Customer and the Council in relation to any new connections to the Scheme for the proposed new properties.
- 24.9 An application under this clause may be attached to an application for the subdivision resource consent for the proposed new properties but the applications under this clause will be dealt with separately.
- 24.10 If the Council has given approval under this clause to allocate irrigation water from the Scheme to the proposed new properties, clause 25 does not apply.

24A Multiple Off-Takes

24A.1 This clause applies where –

- (a) A Customer's property consists of two or more rating units but for the purposes of the Local Government (Rating) Act 2002, is treated as one rating unit and there is one Point of Supply to the property; or

24A.2 Where clause 24A.1(a) applies –

- (a) Disposal of a rating unit comprised in the property is deemed to be a subdivision for the purposes of these terms and conditions; and
- (b) A proposal to seek a separate rating assessment for a rating unit comprised in the property is deemed to be a subdivision for the purposes of these terms and conditions–

and clause 24 applies with any necessary modifications.

25. Assignment of Rights

25.1 Except as provided in clauses 24 and 24A, the Customer may not assign, sublet, otherwise deal with any of the rights under these terms and conditions without the prior written approval of the Council.

25.2 Without limiting the grounds on which the Council may withhold approval, the Council may, as a condition of approval, require compliance with the following conditions:

- (a) The assignee must already be a Customer as defined in these terms and conditions:
- (b) The deed of assignment or other similar document between the assignor and the assignee must provide that the Council may review and cancel its approval under this clause if the assignor ceases to be entitled to an Allowable Take whether by reason of sale of its property or ceasing to be a Customer under these terms and conditions or for any other reason.

25.3 The Customer (being the assignor) must pay the reasonable costs of the Council in relation to any approval, including legal costs on a solicitor and own client basis.

25.4 The Customer (being the assignor) must notify any subsequent purchasers or lessees of the Customer's property of an assignment under this clause.

.1 .2 .3 .4 .5 .1 .2 .6 .1
.2 .3 .7 .1 .2 .3 .4 .8
.9

Appendix A

Design Statement

I have made myself fully conversant with the requirements of Council in this document (Standard Terms and Conditions for Supply of Water from the Scheme-Version A) and further instructions from Council as listed:

.....

.....

and confirm that the valves and other components required by Council will perform and function as intended by Council and that the design is in accordance with the appropriate standards and best industry practice.

Signed by:

..... (Irrigation Designer)

..... (Company)

Appendix B

Design Summary (one property per summary)

B1 General

- .1 Off-Take Number(s):
- .2 Nominal bore of off-take(s) mm:
- .3 Irrigable land area (as rated): ha
- .4 Allowable flow: m³/d l/s
- .5 Customer:
- .1 Legal Description of Land:
- .2 Postal Address of Customer:
- .6 Irrigation Designer:
- .1 Person:
- .2 Company:
- .3 Contact: Phone
- Fax
- Email
- .7 Form of Irrigation Planned (for information purposes):
- Tick appropriate box
- .1 Dripper
- .2 Fixed Sprinkler
- .3 Travelling irrigator
- .4 Other (specify)
- .8 Predominant crop(s) grown
- .9 Irrigation System existing Yes No
- .10 Irrigation System connected to community supply. Yes No

Standard Terms & Conditions for Supply of Water from the SVIS

- | | | | |
|-----|---|------------------------------|-----------------------------|
| .11 | Proposed to connect Irrigation System to community supply. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .12 | Existing well connected to Irrigation System | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .13 | New well proposed to be connected to Irrigation System | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .14 | Storage (unless the storage vessel is closed and sealed except for a protected vent) or surface water source is connected to the Irrigation System | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .15 | Storage (unless the storage vessel is closed and sealed except for a protected vent) or surface water source is proposed to be connected to the Irrigation System | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .16 | Existing capability to dose fertiliser | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .17 | Proposed capability to dose fertiliser | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .18 | Existing capability to dose substances other than fertiliser. Specify: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .19 | Proposed capability to dose substances other than fertiliser. Specify: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .20 | Appendix E request for a remote Point of Supply and Customer Connection Pipe has been completed and signed and is attached. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| .21 | Check valve to be fitted at Off-Take | | |
| .1 | Manufacturer | | |
| .2 | New Zealand Agent | | |
| .3 | Model | | |
| .4 | Type | | |
| .5 | Nominal bore | mm | |

Scaled dimensioned drawing of Off-Take in plan and elevation showing all valves, filters and components is to be attached. Include location drawing.

B2 Pressure Sustaining Valve

- .1 Manufacturer:
- .2 New Zealand Agent:
- .3 Model:
- .4 Nominal bore:

Tick appropriate box

- .5 Installation:
 - .1 Horizontal
 - .2 Vertical flow up
 - .3 Vertical flow down
 - .4 Above ground
 - .5 Frost protection required
 - .6 Valve housed in a box
 - .7 Valve setting wired for sealing

.6 Upstream pressure setting m head of water

.7 Accuracy of actual pressure setting ±..... m head of water

.8 The manufacturer is setting the valve Yes No

.9 If not the manufacturer who is setting valve?

.10 Is the valve combined with other functions? Yes No

.11 If yes, what functions?

.12 Attach manufacturer's data sheet specific to this valve. Data not relevant to the valve to be supplied must be deleted.

.13 Attach a schematic showing the valve and controls with a detailed description of how the valve works.

B3 Flow Control Valve

- .1 Manufacturer:
- .2 New Zealand Agent:
- .3 Model:
- .4 Nominal bore:

Tick appropriate box

- .5 Installation:
 - .1 Horizontal
 - .2 Vertical flow up
 - .3 Vertical flow down
 - .4 Above ground
 - .5 Frost protection required
 - .6 Valve housed in a box
 - .7 Valve setting wired for sealing

.6 Maximum flow set for l/s

.7 Accuracy of actual maximum flow setting ±..... l/s

.8 The manufacturer is setting the valve Yes No

.9 If not the manufacturer who is setting valve?

.10 Is the valve combined with other functions? Yes No

.11 If yes, what functions?
.....
.....
.....

.12 Attach manufacturer's data sheet specific to this valve. Data not relevant to the valve to be supplied must be deleted.

.13 Attach a schematic showing the valve controls with a detailed description of how the valve works.

B4 Increased Water Take

It is important to note that Council can make no guarantee to Customers as to the availability of water over and above the Allowable Take. This is because of limitations in the capacities of the reticulation and pump stations, the effect of resource consent conditions, the availability and cost of power and other matters.

The Irrigation Designer will need to make provision for taking water over and above the Allowable Take in the Shoulder Season if the Customer wishes to retain this option.

- .1 The Irrigation System will be designed to take more than the Allowable Take Yes No

(If the answer to the above question is no then move on to the next section of the Design Summary,B5)

- .2 The maximum rate the Off-Take will be designed for is:l/s

- .3 The method of providing the flow greater than the Allowable Take is:

Tick appropriate box

- .1 Bypass the flow control valve OR

- .2 Adjusting flow control valve setting

- .4 If a bypass pipe is used the pressure sustaining function will remain operational while bypassing the flow control valve. Yes No

- .5 If a bypass pipe is used the bypass valve will be able to be padlocked fully closed by Council. Yes No

- .6 If the flow control valve setting is to be adjustable to achieve the different flow rates how will the valve be set to the higher flow and reset to the Allowable Rate?
.....
.....

B5 Backflow Prevention

- .1 A well is or will in the future be connected to the Irrigation System. Yes No
- .2 A testable double check valve will be installed at the wellhead prior to connection of the Irrigation System to the Scheme. Yes No
- .3 A scale plan is attached showing the location of the well on the property and access to it. Yes No
- .4 The testable double check valve to be installed at the wellhead:
 - .1 Has a nominal bore of mm
 - .2 Is manufactured by:
 - .3 Model is:
 - .4 New Zealand agent is:
- .5 Water from the Scheme is or will be, put into storage unless the storage vessel is closed and sealed except for a protected vent. Yes No
- .6 Air gap separation is used to storage OR Yes No
- .7 A testable double check valve will be installed at the Off-Take. Yes No
- .8 An alternative water source is, or will in the future be connected to the Irrigation System. Yes No
- .9 A testable double check valve will be installed at the Off-Take. Yes No
- .10 Fertiliser is, or will in the future be added to the Irrigation System. Yes No
- .11 A testable double check valve will be installed at the Off-Take. Yes No
- .12 The testable double check valve to be installed at the Off-Take:
 - .1 Has a nominal bore of mm
 - .2 Is manufactured by:
 - .3 Model is:
 - .4 New Zealand agent is:

Appendix C

Installation Completion Statement

I have made myself fully conversant with the design of the Irrigation System for this property by the Irrigation Designer and have overseen the installation of all the valves and other components required by Council including any Customer Connection Pipe(s). Any changes to the design, insofar as it affects the aforementioned work, that I have authorised during construction or have otherwise become aware of, have been approved by the Irrigation Designer.

I confirm that to the best of my knowledge those valves and other components of the Irrigation System required by Council in this document (Standard Terms and Conditions for Supply of Water from the Scheme Version A) and further instructions as listed:

Have been installed in accordance with the design and best industry practice.

Signed by: _____ Irrigation Technician
_____ Company

NOTE: This form must be completed and signed by the Irrigation Technician and Approved by Council before connection can be made to the Scheme.

Appendix D

Customer Declaration

Declaration on Adding Substances to the Irrigation System

I/We
(Customer)

am aware of the rules and requirements of backflow prevention and advise that:

- .1 I/we wish to add a substance other than fertiliser to the Irrigation System that is to be connected to the Scheme. Yes No

If answered yes the substances to be added are: _____

- .2 I/we am aware that if further substances are to be added the prior Approval of Council must be obtained. Acknowledge by ticking box

- .3 I/we am making application to connect to the Scheme without engaging an Irrigation Designer as per clause 23.1 Yes No

- .4 If D.3 is answered "Yes" I/we further advise that I/we will not be adding nor making provision to add fertiliser or any other substance to any Irrigation System that is to be connected to the Scheme Acknowledge by ticking box

Signed by the Customer(s)

.....
.....

Appendix E

Customer Connection Pipe

Application for Remote Off-Take

I/we believe it is impracticable to install the Off-Take to service the property at a road boundary serviced with a Scheme pipeline for the following reasons:

and request a Customer Connection Pipe and Off-Take(s) in the position shown on the attached drawing.

There are separate Off-Takes that would be connected to the Customer
(number)

Connection Pipe to service separate properties under this proposal. The location
(number)

of each proposed Off-Take and property is shown on the attached drawing.

If there is more than one owner of the properties to be connected to the Customer Connection Pipe have all the owners been consulted and give their support to this application?

Yes No

If Council accepts this application I/we understand that the Customer Connection Pipe must be installed to Council's specification and tested in accordance with AS/NZS 2566.2 2002.

Yes No

Signed by the Customer(s)

.....
.....