

DATED this

day of

2018

PARTIES

1. **Marlborough District Council**
- Council -

2. **The Landowner whose name, particulars and relevant land holdings are referred to in Schedule 1**
- the Landowner -

HEADS OF AGREEMENT

4. The Scheme will be funded and constructed by Council and Council will own the Scheme. Council will recover the costs of funding and construction by way of rates over a 30 year term, with the rating obligation being deferred to and commencing from three years from the year in which the Scheme becomes operative. The operating costs will be recovered by way of a charge which will be levied on participating landowners from the date the Scheme becomes operative. There will also be a consumption charge.
5. It is necessary for Council to know at this stage which landowners will commit to the Scheme and the extent of their commitments.
6. These commitments need to be known for reasons which include Council's need to have confidence that the Scheme will be viable and to establish rating commitments on landowners for recovery of costs.
7. This Agreement is for these purposes.

AGREEMENT

STATUS OF AGREEMENT

1. This Agreement is a binding commitment on the part of the Landowner to participate in the Scheme and to meet the costs of the Scheme via rates on the land if it proceeds and to meet the cost of works to date via rates on land if it does not proceed.

STATEMENTS OF COMMITMENT

2. The Landowner gives the following statements of commitment and acceptance to Council.
 - (a) That, in principle, the Landowner supports the Scheme and will participate in the Scheme.
 - (b) The Landowner will commit the area of land described in Schedule 1 to the Scheme and will take irrigation water from the Scheme for such land in terms of the particulars identified in Schedule 2.
 - (c) The Landowner acknowledges and accepts the financing proposals and ongoing cost commitments set out in Schedule 2.

- (d) The Landowner agrees to comply with the Standard Terms and Conditions for the Supply of Water outlined in Schedule 3.
 - (e) The Landowner will grant Council easements for the Scheme pipeline without financial consideration with all costs of establishment of easements to rest with Council (on the terms set out in the draft Easement Instrument attached hereto in Schedule 4).
 - (f) The Landowner acknowledges and accepts that it is fully aware that all costs incurred by Council in relation to the Scheme will be recovered by way of rates and charges as outlined in Schedule 2 and that Council will own and operate the Scheme.
3. The Landowner acknowledges that, after the Scheme becomes operational, additional capacity within the Scheme may be taken up by parties who did not contribute to the initial capital costs. Council will ensure that the rights of the Initial Parties will be given priority over any later persons who seek to take water from the Scheme. Furthermore, Council will ensure that any rates and charges for the initial capital costs will be recovered from those who seek to join later on a fair and proportionate basis (consistent with Council's rights, powers and obligations under the Local Government (Rating) Act 2002 and any other relevant legislation).

EXECUTION

THE COMMON SEAL of)
MARLBOROUGH DISTRICT)
COUNCIL was hereunto)
affixed in the presence of:)

SIGNED by)
))
as Landowner in the presence of:)

SCHEDULE 1

Name of Landowner

Address of Landowner

Description of Landowner's Land to be included in the Scheme

Council Property Number _____

Map of Landowner's Land to be included in the Scheme

Attached

Volume of Water required by Landowner

Number of hectares committed to Scheme _____ for summer irrigation [____]

SCHEDULE 2

The Scheme will provide irrigation in the summer period (as defined in the Standard Terms and Conditions) and on the following bases:

- Provision of water IS 2,250 m³ per hectare for the season at a rate of 0.208 litres per second;
- Maximum take of 18m³ per day per hectare;
- Maximum annual take 2,250 m³;
- Delivered at a pressure of 2 – 6 bars at the farm gate.

Proposed Arrangements for Funding Capital Cost

The capital cost of the Scheme is proposed to be financed by Council as owner operator and recovered by way of a targeted rate over land as an annual rate per hectare (as defined in Schedule 1) of land area committed to the Scheme for summer irrigation. The rates will recover interest and principal over a 30 year term and the commencement of the rating obligation will be deferred for three years from the commencement of the Scheme. The funding of the capital costs will be on a per hectare rate. The indicative initial annual ratings value will likely be in the range of \$900-1,000 per hectare per annum plus GST.

Proposed Arrangements for Cost of Water Taken

A consumption rate will be charged and will comprise a fixed and variable charge based on consumption. This obligation will arise from the time the Scheme commences and water is taken and used.

It is likely that the operating costs will be recovered by a combined fixed and variable charge to be determined on an annual basis via Council's Annual Plan once the Scheme is operational.

Proposed Arrangements for Meeting Continuing Investigative Costs

The cost of investigation, consenting and tendering will be approximately \$1,250,000. Parties who sign this Heads of Agreement (and those who have previously made commitments but have later withdrawn) agree, unconditionally, to accept responsibility for these costs on a pro rata basis and by a targeted rate over a five year period in the event the Scheme does not proceed.

In the event the Scheme proceeds, these costs will be capitalised into the overall Scheme costs and recovered, through the proposed rating mechanism for the Scheme (and on the basis that any parties who later join will share in the initial capital costs on the basis of the arrangements contained in Clause 3 of the Heads of Agreement).

SCHEDULE 3**Standard Terms and Conditions for Supply of Water from the Flaxbourne 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 Flaxbourne Irrigation Scheme and a Customer of the Council.

1. DEFINITIONS

1.1 In these terms and conditions:

"**Allowable Take**" means allowable take as defined by clause 4.3;

"**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 Act 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.

"**Summer Irrigation Season**" means a continuous period of approximately 120 days, the commencement and end to be determined by Council at its discretion, but within the period between 1 November and 31 March, both inclusive.

"**Irrigation System**" means all the pipes, valves, hydrants, pumps, tanks, ponds, reservoirs, sprinklers, emitters and the like which is installed for the purpose of storage, distribution and application of irrigation water to the Customer's land (and which will be owned and maintained by Council).

"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 the Irrigation System connects to the Scheme, as determined in accordance with clause 5.

"Scheme Area" means the Flaxbourne Irrigation Scheme as constituted by Council.

"Shoulder Season" means the spring season and the autumn season preceding and following the Summer Irrigation Season.

"Scheme" means the Flaxbourne Irrigation Scheme being the points at which water is taken and all means by which it is held, conveyed and stored including pumps, valves, controls, pipelines and any storage facilities 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.

- 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.
- 1.5 Referring to anything after the word "including" does not limit what else might be included (and expressions similar to "including" shall be construed accordingly).
- 1.6 Where more than one person is a Customer in respect of the same property, any provision in these terms and conditions to be performed by the Customer will bind those persons jointly and severally.
2. **WHO IS A CUSTOMER?**
 - 2.1 A Person is a Customer of the Council when that Person, is a ratepayer for the purposes of the Scheme for a property within the Scheme Area:
 - (a) Enters into an agreement with Council agreeing to be bound by these terms and conditions;
 - (b) Contacts the Council and the Council agrees to supply that Person with irrigation water on these terms and conditions;

- (c) Continues to take, use or store irrigation water, where that property is connected to the Scheme, after the Council has notified that Person of these terms and conditions; or
- (d) 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 together with any agreement entered into between the Council and the Customer in accordance with clause 2.1(a) 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 Water will be supplied to those parties who have elected to take and pay for water during the Summer Irrigation Season on the basis that Council will, where reasonably practicable and subject to any Resource Consent or other authority, supply water during the Summer Irrigation Season on a continuous basis at the rate of 0.208 litres per second (l/s) per rated irrigable hectare (being a maximum daily volume of 18m³ per hectare):
 - (a) At the Point of Supply; or
 - (b) Where the Council has approved a remote Point of Supply, at the point the Customer Connection Point joins the Scheme.
- 4.2 The Allowable Take during the Summer Irrigation Season 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 during the Summer Irrigation Season, flow must be taken at a uniform rate over the full 24 hour day period. The Customer acknowledges that the Council is not able to guarantee the Allowable Take. Reasons why supply to a Customer may be interrupted or reduced include but are not limited to:
 - (a) If demand for water exceeds supply (for example, if river flows fall below trigger flows allowed for by any consent to take water or in the event of interruption to supply of water);
 - (b) In order for the Council to inspect, test, maintain, alter, or repair machinery, equipment or other apparatus;
 - (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;
 - (d) In the case of an event or emergency which the Council considers threatens life, property or the safety of any person or property;
 - (e) If required under any consent or direction or order of any competent authority such as a Court or Tribunal;
 - (f) Force Majeure; and

- (g) For any other reasonably justifiable reason.
- 4.3 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 notice by such means as it fairly determines at its discretion. Such notice options include notice by email where a customer has given Council an email address, notice by telephone call, notice by word of mouth or notice by such other means recognising limitations in the area on postage deliveries and radio reception.
 - (b) For planned interruptions to supply expected to last between 30 minutes and four hours – the Council will give such notice as is reasonable in the circumstances including by text, email or Antenno 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.
 - (d) Council will maintain on its website a section dealing with the Scheme and Council will notify planned interruptions in categories (a) and (b) on such website or by Antenno and customers are expected to engage with the website in order to be aware of likely interruptions.
- 4.4 Irrigation water supplied under these terms and conditions is intended for use for irrigation purposes. The Customer acknowledges that the economic arrangements as between Council and the Customer are on the basis of this exclusion of any potential Council liability.
- 4.5 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 human drinking purposes.
- 4.6 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. No treatment or filtering for the purpose of making the water suitable for household or human drinking water is permitted.
- 4.7 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.
- 4.8 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.
- 4.9 The prohibitions contained in section 228 (offences relating to water races) of the Local Government Act 2002 are incorporated in and form part of these terms and conditions to the intent that the Customer shall not do or omit to do anything constituting an offence under that section in respect of the Scheme.

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 the relevant component of Scheme infrastructure 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 relevant component of Scheme infrastructure, the Customer may seek the written approval of the Council for a Point of Supply to be remote from the relevant component of Scheme infrastructure 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;
 - (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 there must also be, if Council so requires at any stage, an easement allowing for such vehicle access as is reasonable;
 - (c) Once the Customer Connection Pipe has been installed to the Council's satisfaction, the Customer Connection Pipe vests in the Council;
 - (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;
 - (e) The Customer agrees to take good care of and not do or allow anything to be done to damage the Customer Connection Pipe; and
 - (f) The Customer will remain responsible for all the costs associated with the maintenance or any necessary replacement of the Customer Connection Pipe.
- 5.5 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.
- 5.6 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.
- 5.7 These terms and conditions do not permit the taking and use of during the winter for irrigation or storage purposes. There may, in the future, be capacity for such taking and use during the winter but the terms and conditions of such taking and use will be the subject of a separate agreement and will be on different terms and conditions.

6. METERING

- 6.1 The quantity of water conveyed to the Customer at the Point of Supply will be measured by meter. The Customer must not interfere with the meter and must procure that none of the Customer's agents, contractors or employees interfere with the meter other than for maintenance and repair purposes.

- 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 Notwithstanding the foregoing, Council may at any time, at its discretion, require any Customer to install a remote meter reading device of a kind which will transmit data to Council in a form able to be received and read by Council. Any charging or other decision made by Council on the basis of any such data shall be deemed to be correct and accurate unless proven by the Customer otherwise.
- 6.7 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.
- 6.8 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.
- 6.9 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 at the Customer's own expense but will be owned and maintained by Council.

8. **BACKFLOW PREVENTION**

8.1 Council will 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. Council will own and maintain the backflow preventer.

8.2 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.

8.3 As an alternative to backflow preventers, air gap separation as defined in Acceptable Solutions for the purposes of clause 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 at the Customer's own expense but will be owned and maintained by Council.

10. **PRESSURE SUSTAINING VALVE**

10.1 For all Off-Takes 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 by the Customer but will be owned and maintained by Council.

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 (see clause 13).

12. **CUSTOMER RESPONSIBILITY TO PROTECT**

12.1 The Customer has the following responsibilities:

(a) The Customer is responsible (at the Customer's own expense) for:

- (i) Safety;
- (ii) Security;
- (iii) Protection from all weather including frost (for example by installing in an enclosure and lagging or otherwise insulating); and
- (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 (at the Customer's own expense) 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 installation of any storage facilities and 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 (at the Customer's own expense) for:

- (a) The protection 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 Solutions for the purposes of clause 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 clauses 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 The Customer shall pay for the supply of irrigation water and related services in accordance with the rates and charges set and assessed from time to time by the Council under the Local Government (Rating) Act 2002 and/or the Local Government Act 2002.
- 14.2 If a property which is connected to the Scheme changes ownership, the outgoing Customer must, at least five Business Days before settlement of the sale and purchase for the property, give the Council written notice to arrange for a final reading.

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. No notice is required in relation to meter reading or routine inspections.
- 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;
- (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;
- (c) Any failure to convey irrigation water caused by no, or reduced, injection or supply of water into the Scheme;
- (d) Any failure to convey irrigation water caused by any defect or abnormal conditions on the Customer's land;
- (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;
- (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;
 - (ii) To enable Council to inspect, effect alterations, maintain, repair or add to any of the Scheme;
 - (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;
 - (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;
- (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;
- (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; and

- (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 Subject to clause 16.7, 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:
- (a) For the payment of rates and charges as contemplated by clause 14; and
 - (b) Under clause 4.5, 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 1993 applies, then the parties agree to contract out of the provisions of that Act to the maximum extent permissible.

17. TERMINATION AND SUSPENSION

- 17.1 If the Customer fails to perform any of the terms and conditions contained in this document, the Council may at its option:
- (a) Immediately suspend the supply of irrigation water to that Customer; or
 - (b) Terminate these terms and conditions by serving on the Customer in default a written notice stating specifically the cause for terminating these terms and conditions and its intention to do so.
- 17.2 The Customer 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 Customer in default removes or remedies the cause and fully indemnifies the Council 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 Customer in default does not remedy and remove the cause or does not indemnify the Council for any and all consequences of the breach within the 10 Business Day period, the Council 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 suspend the supply of irrigation water to a Customer or 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;

- (b) Passes a resolution, or any proceedings are commenced, for its liquidation;
- (c) Makes an assignment for the benefit of, or enters into or makes any agreement or composition with its creditors;
- (d) Proposes a re-organisation, amalgamation, moratorium or other form of administration in relation to its creditors or any debts or obligations;
- (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 required under clause 14 in accordance with the Local Government (Rating) Act 2002 and/or the Local Government 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; and
- (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 suspend the supply of irrigation water or terminate these terms and conditions and the any right to take offence proceedings under 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.

17.8 Any suspension of the supply of irrigation water is without prejudice to the Council's right to continue to collect rates or charges that would have otherwise been payable had supply continued during the period of such suspension.

17.9 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.

17.10 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 clauses 4.5 or 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;
- (b) Delivering the notice to the property supplied with irrigation water; or
- (c) Sending the notice to the Customer's last email address.

19.3 Notices are deemed to have been received:

- (a) If personally delivered, on delivery;
- (b) If posted, on the fifth day after posting; or
- (c) If sent by email, when actually received in readable form by the recipient, or, if sent after 5pm, on the next Business Day after successful receipt.

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 written notice 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; or
- (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) The dispute shall be referred to a mediator agreed upon by the parties, or in default of agreement, appointed by the New Zealand Law Society.
 - (c) If the parties are unable to resolve the dispute by mediation within two 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 if they cannot agree the dispute shall be referred to an arbitrator appointed by the New Zealand Law Society. Any such reference must be a submission to arbitration within the meaning of the Arbitration Act 1996 and its amendments.
 - (d) 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;
 - (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;
 - (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;

- (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;
- (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 re-designing.

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 five 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.

23.11 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 Area has a fixed supply of land that is rated for the supply of irrigation water;
- (b) The irrigable volume cannot be greater than the total supply of the property; and
- (c) There must be one Point of Supply for each rateable property serviced by the Scheme.

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;
- (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;
- (c) There can be no increase or decrease in the total amount of irrigation water currently allocated from the Scheme;
- (d) No proposed new property can receive an allocation of irrigation water for more irrigable volume than the area of the proposed new property;
- (e) Any reallocation must not adversely affect the ability of the existing infrastructure to continue to deliver water in terms of the Scheme's existing commitments; and
- (f) There must be one Point of Supply for each rateable property serviced by the Scheme.

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;
- (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;

- (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;
- (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;
- (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 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.

24.8 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.

24.9 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.

25. **MULTIPLE OFF-TAKES**

25.1 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; or
- (b) A Customer's property consists of two or more certificates of title 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.

25.2 Where clause 25.1(a) applies:

- (a) Disposal of any rating unit or certificate of title 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.

26. ASSIGNMENT OF RIGHTS

- 26.1 Except as provided in clauses 24 and 25, 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.
- 26.2 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 have accepted the obligations of the assignor in terms of all aspects of the Scheme's operation, including the payment and rating obligations in force from time to time and all existing contractual arrangements to which the assignor is a party and which relate to the Scheme.
 - (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.
- 26.3 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.
- 26.4 The Customer (being the assignor) must notify any subsequent purchasers or lessees of the Customer's property of an assignment under this clause.
- 26.5 The Council may at any time assign, licence, novate or otherwise transfer the whole or any part of its rights or interest in this agreement without the consent of the Customer. The Customer agrees to promptly do or execute anything reasonably required by the Council to effect any such assignment, licence, novation or transfer.

**APPENDIX A
DESIGN STATEMENT**

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 Flaxbourne Irrigation Scheme) 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

Tick appropriate box

- .7 Form of Irrigation Planned (for information purposes):
 - .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
- .11 Proposed to connect Irrigation System to community supply Yes No

- .12 Existing well connected to Irrigation System Yes No
- .13 New well proposed to be connected to Irrigation System Yes No
- .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 No
- .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 No
- .16 Existing capability to dose fertiliser Yes No
- .17 Proposed capability to dose fertiliser Yes No
- .18 Existing capability to dose substances other than fertiliser. Specify:
.....
.....
- .19 Proposed capability to dose substances other than fertiliser. Specify:
.....
.....
- .20 Appendix E request for a remote Point of Supply and Customer Connection Pipe has been completed and signed and is attached. Yes No
- .21 Check valve to be fitted at Off-Take
 - .1 Manufacturer
 - .2 New Zealand Agent
 - .3 Model
 - .4 Type
 - .5 Nominal bore

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 \pm m head of water

.8 The manufacturer is setting the valve Yes No

.9 If not the manufacturer who is setting the valve

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

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

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

.12 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 \pm l/s

.8 The manufacturer is setting valve Yes No

.9 If not the manufacturer who is setting the 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:

- .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 Flaxbourne Irrigation Scheme) 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/are 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 (number) separate Off-Takes that would be connected to the Customer Connection Pipe to service (number) separate properties under this proposal. The location 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)

.....
.....

SCHEDULE 4

Form of Easement

Form B

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

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

Grantor

[name of landowner]

Grantee

MARLBOROUGH DISTRICT COUNCIL

Grant of Easement or *Profit à prendre* or Creation of Covenant

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

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown reference (plan)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to convey water			in gross

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

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

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

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

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

~~[the provisions set out in Annexure Schedule]~~

Covenant provisions

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

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

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

~~[Annexure Schedule]~~

Insert instrument type

Easement Instrument

Continue in additional Annexure Schedule, if required

Continuation of "Estate or Interest or Easement to be Created"

(Right to Convey Water)

The Grantee shall have the right to convey water forever under and along that part of the land comprised in CFR (the land) marked on Deposited Plan (the Easement Line) together with the additional rights and powers incidental thereto set out in the following clauses:

1. **Rights and Powers**

1.1 The Grantee shall have the full free uninterrupted and unrestricted right, liberty and licence from time to time and at all times to:

- (a) Convey in pipes and conduits along the Easement Line, water in any quantities;
- (b) Place on or in the Easement Line such other associated structure or equipment as may be necessary or appropriate for the conveyance of water

(together the Grantee's Infrastructure)

1.2 The rights created by this grant of easement apply to the Grantee's Infrastructure which is presently in place or which is to be put in place in the future;

and for the purposes of this Easement;

1.3 To enter upon the land by means of its employees surveyors workmen contractors and other persons with or without motor vehicles, machinery, materials and tools and make inspections or undertake works of such kind as may be necessary or appropriate (including maintenance and replacement as required) subject always to the minimum reasonable disturbance being created and subject always to the Grantor's land being made good after and subject to such works.

Insert instrument type

Easement Instrument

Continue in additional Annexure Schedule, if required

2. **Grantor's Obligations**

2.1 The Grantor will not do or permit or suffer to be done anything which may interfere or obstruct the Grantee's full enjoyment of the rights hereby granted or injure or damage any of the Grantee's Infrastructure.

2.2 If the Grantor does or knowingly allows to be done anything which shall injure or damage or has the potential to injure or damage any of the Grantee's Infrastructure on the Easement Line or shall interfere with the free flow of water through or by means of the Grantee's Infrastructure the Grantor shall immediately notify the Grantee. The Grantee on becoming aware of the injury or damage or potential injury or damage whether notified by the Grantor or not will assess the situation and at its sole discretion:

- (a) Use its own employees, contractors or other persons with or without vehicles, machinery, materials and tools; or
- (b) Instruct the Grantor; or
- (c) A combination of (a) and (b) above;

to forthwith and at the cost and expense of the Grantor properly and substantially repair and make good all such injury or damage or remove the potential to injure or damage and restore the free flow and passage of water and do all things necessary and expedient to give effect to the Easement hereby created.

2.3 The Grantor will not do or permit or suffer any act where the rights liberties and easements of the Grantee shall or may be impeded or limited.

2.4 The Grantor will not plant trees or vines on the Easement Line nor shall the Grantor erect vine supports or other structures on the Easement Line.

2.5 The Grantor will not plant trees or vines or erect structures in such a position in relation to the Easement Line so that access to the Easement Line is prevented or impeded it being recognised by the Grantor that emergency or short notice access may be required given the nature of the Easement.

Insert instrument type

Easement Instrument

Continue in additional Annexure Schedule, if required

3. **General**

- 3.1 For the purposes of this Easement the expressions *Grantor* and *Grantee* shall include in the case of the Grantor the successors in title of the Grantor and in the case of the Grantee any future body which may take over the rights and responsibilities of the Grantee in respect of this Easement.
- 3.2 The pipes, conduits, associated structures and equipment are part of the Flaxbourne Irrigation Scheme ("the Scheme"). The Scheme supplies irrigation water to land owners in the Scheme area. The terms of supply of irrigation water from the Scheme are contained in separate terms and conditions for supply of water from the Scheme.
- 3.3 The liability of each of the Grantor and the Grantee to the other shall be limited to situations where there has been knowing and wilful damage to the property of the Grantor or the Grantee as the case may be.
- 3.4 All rights and powers set out in the Fourth Schedule of the Land Transfer Act Regulations 2002 shall be implied except so far as the same are hereby varied.
- 3.5 Multiple pipes and conduits shall be permitted in the Easement Line.
- 3.6 If any dispute arises between the parties relating to this Easement then such dispute shall be determined by a single arbitrator should the parties agree upon one or failing agreement by a single arbitrator to be appointed by the New Zealand Law Society in accordance with the Arbitration Act 1996 or any statutory modification or replacement thereof.

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