

DEED OF LICENCE

BETWEEN

SELWYN DISTRICT COUNCIL
Licensor

and

?????
Licensee

DRAFT

DATED

2021

PARTIES

(1) **SELWYN DISTRICT COUNCIL** ("the Licensor")

(2) ? ("the Licensee")

- A. Pursuant to Section 74 of the Reserves Act 1977, the Licensor grants to the Licensee and the Licensee accepts a licence of the Land described in the First Schedule together with the right to use the Licensor's improvements on the Land (if any) for the Term in consideration of payment of the Annual Licence Fee by the Licensee.
- B. The Licensor and the Licensee covenant as set out in the Second Schedule.

THE COMMON SEAL of
SELWYN DISTRICT COUNCIL was
hereto affixed in the presence of:

.....Mayor

.....Chief Executive

SIGNED by
XXXXXXXX

.....

in the presence of

Witness signature

Full Name

Address

Occupation

FIRST SCHEDULE

LAND:	Valuation Reference: LOT 2 DP 48466 BLK XII KOWAI SD Lot 2 DP 48466 situated on corner of Pocock and West Coast Roads, Springfield comprising an area of approximately 3.4455 hectares shown highlighted orange on the plan attached as Appendix A.
TERM:	4 Years and 2 Months
COMMENCEMENT DATE:	1 st May 2021
EXPIRY DATE:	30 th June 2025
RENEWAL DATE:	Not Applicable
REVIEW DATE:	Not Applicable
ANNUAL LICENCE FEE:	\$ + GST
USE:	Pastoral or arable/grazing activities
DEFAULT INTEREST RATE:	A rate of interest equal to the Bank of New Zealand base rate at the date of default plus 8%.
WIDTH OF ACCESS STRIP:	Not Applicable

SECOND SCHEDULE

1. LICENCE FEE

- 1.1 The Licensee will pay the Annual Licence Fee in advance on the 20th day following receipt of an invoice from the Licensor. The Annual Licence Fee will be paid without any deductions or set off by direct payment to the Licensor or as the Licensor may direct.

2. LICENCE FEE REVIEW

- 2.1 Where a Licence Fee Review Date is specified in the First Schedule, the Licensor may review the Annual Licence Fee by giving written notice to the Licensee of the reviewed Licence Fee and the reviewed Annual Licence Fee will be payable from the next Licence Fee Payment Date following issue of the notice.
- 2.2 If the Licensee objects to the reviewed Annual Licence Fee the parties will negotiate in good faith to reach agreement. If it is agreed that if the reviewed Annual Licence Fee is reduced, an adjustment will be made in respect of any payments already made. If the parties cannot agree the reviewed Annual Licence Fee, the Licensee may cancel this Licence at any time thereafter upon giving not less than three months' notice in writing.

3. OUTGOINGS

- 3.1 The Licensee will be liable for rates and other outgoings in respect of the Land.
- 3.2 In any case where the charges and outgoings referred to in clause 3.1 are not separately assessed to the Land, the Licensee will pay on demand a fair and reasonable proportion of those charges and outgoings apportioned on an area basis.
- 3.3 An appropriate adjustment will be made in respect of charges and outgoings for periods current at the Commencement Date, at the Expiry Date or upon the earlier determination for any reason.

4. INTEREST ON UNPAID MONEY

- 4.1 If the Licensee defaults in payment of the Licence Fee or any other monies payable under this Licence upon the due date for payment, then the Licensee will pay interest on the amounts unpaid at the Default Interest Rate from the due date for payment down to actual date of payment.

5. COSTS

- 5.1 The Licensee will pay the Licensor's solicitor's costs (as between solicitor and client) and administrative costs and disbursements of and incidental to:

- (a) The preparation of the Licence and any variation, renewal or any deed recording a Licence Fee Review; and
- (b) The enforcement or attempted enforcement of the Licensor's rights, remedies and powers under this Licence.

6. USE OF LAND

- 6.1 The Licensee will use the Land only for the use set out in the First Schedule.
- 6.2 If at any time the Licensor is of the opinion that the Land is not being used, or is not being sufficiently used, for that purpose, or if the Licensor considers that the continued or uninterrupted use of the Land is detrimental to the purposes for which the Land is vested in or administered by the Licensor, then the Licensor may either:
- (a) Terminate this Licence on such terms as the Licensor thinks fit; or
 - (a) Require the Licensee to remove all of the Licensee's stock from the Land for such period or the periods as the Licensor thinks fit. If any such period exceeds one month the Licence Fee will abate pro-rata.
- 6.3 The keeping of pigs on the Land is prohibited.

7. MAINTENANCE AND CARE OF LAND AND BUILDINGS

- 7.1 The Licensee will, at the Licensee's expense, at all times during the Term:
- (a) Use and manage the Land in a good and husband like manner and will not impoverish or waste the soil;
 - (b) Not break up, plough, or crop any part of the Land, nor cut down any trees or bush, nor take or remove any plant, without the prior written consent of the Licensor, with the exception being the maintenance of trees, hedges/shelter belts in accordance with clause 7.1(g). If the Licensee breaks up or crops any part of the Land, the Licensee will reinstate the Land in grass pasture prior to the end of the Term;
 - (c) Take all proper steps to keep the Land (and any roadside verge adjacent to the Land) properly mown and free of rabbits and other noxious vermin and gorse, broom, thistles and all other noxious plants and will do all things necessary to comply with the provisions of the Biosecurity Act 1993 or any re-enactment of the Act as it affects the Land;
 - (d) Keep all buildings, erections, gates and other improvements on the Land in good order and condition;

- (e) Keep and maintain any water or drainage systems in good operational repair and keep properly clean, open and clear from weeds all creeks, drains, ditches and watercourses ensuring that the Land is adequately drained at all times;
- (f) Make good any damage to the Land caused by animals or by improper careless or abnormal use by the Licensee or those for whom the Licensee is responsible;
- (g) Trim and maintain all shelter belts, hedges and trees;
- (h) Promptly remove any dead stock from the land as well as all rubbish, fallen trees, tree trimmings including those created during maintenance pursuant to clause 7.1(g);
- (i) Not light any fire or burn any material or object on the land except in accordance with clause 8 of the Licence;
- (j) Ensure that all and proper precautions are taken to safeguard the Land against fire;
- (k) Not damage or destroy any actual, scenic, historical, cultural, archaeological, biological, geological or other scientific features or indigenous flora and fauna on the Land; and
- (l) Not claim ownership to, or remove, work or use, any mineral on or under the Land.

7.2 Where the Licensor has approved the grazing of horses on the Land, the Licensee will at the Licensee's cost:

- (a) Provide suitable electrified wires to all fences;
- (b) Provide notices on all electrified fences in accordance with the Fencing Act 1978;
- (c) Remove all horse manure from and harrow the Land at least once every year; and
- (d) Remove (a) and (b) forthwith on the Expiry Date or earlier termination of the Term.

8. CONTROLLED FIRE AND BURNING ON THE LAND

8.1 Subject to clause 8.2, the Licensee shall not light any fire or burn any material or object on the land without the prior written consent of the Licensor. Requests for consent must be directed to the Licensor, in writing, no later than three (3) business days prior to the day of the intended burning. In the event that weather conditions vary, both parties acknowledge that the day of the intended burning may change and agree to negotiate in good faith with safety considered paramount. The Licensor reserves the right to cancel consent at its discretion.

8.2 Consent to the Licensee will only be considered by the Licensor during the open fire season as prescribed by Fire and Emergency New Zealand and on terms satisfactory

to the Licensor. The Licensor reserves all rights as landowner to decline consent to the Licensee's request to light a fire or burn material regardless of fire season guidelines. In the event that the Licensor does grant consent, the Licensee shall ensure that a water source is readily available. Any consent granted under this clause is specific to the date specified in the consent. Should the Licensee require additional burning days then further consents must be obtained from the Licensor.

8.3 In the event that the Licensor grants consent to the Licensee pursuant to clause 8.2, the Licensee will indemnify and keep indemnified the Licensor against all costs, damages and liability arising in respect of an act or omission on the part of the Licensee.

8.4 The Licensee will comply with all relevant statutes, ordinances, regulations and by-laws so far as they relate to, and all notices or orders which may be given by any competent authority in respect of the lighting of fires and burning of materials on the Land, and will keep the Licensor indemnified in respect of all such matters. Such authorities include but are not limited to Fire and Emergency New Zealand and Environment Canterbury.

9. PUBLIC ACCESS

9.1 The Licensee will permit the public to have access on foot to a strip of the Land of a width listed in the First Schedule along each bank of any stream or river adjoining the Land.

9.2 The public may be excluded from the access strip with the prior written consent of the Licensor where the presence of the public may be detrimental to the Licensee's use of the Land.

10. FENCES

10.1 Subject to clause 14.1, the Licensee will at its own expense erect, repair and maintain in a good condition all fences and gates necessary upon the Land for the proper and safe conduct of the Use. The Licensee will use its best endeavours to prevent stock straying from the Land and will make good at its own cost any damage caused to other land or property by straying stock.

10.2 The Licensee will not call upon the Licensor at any time to contribute to the costs of maintaining or erecting any fencing on the Land nor maintaining or erecting any boundary fence between the Land and any adjoining Land owned or farmed by the Licensee.

11. LIABILITY FOR STOCK

11.1 The Licensor does not accept any liability to the Licensee for the health, safety or wellbeing of any stock on the Land. The Licensee accepts a licence of the Land for the Use in reliance upon the Licensee's own judgment in respect of stock.

12. INDEMNITY

- 12.1 The Licensee will indemnify and keep indemnified the Licenser against all costs, damages and liability arising in respect of an act or omission on the part of the Licensee or the Licensee's agents, employees, contractors, clients, or any act of the Licensee's stock. This will include all costs, damages and liability arising either directly or indirectly as a result of the use of all or any irrigation infrastructure on the Land.

13. COMPLIANCE WITH STATUTES AND REGULATIONS

- 13.1 The Licensee will comply with all statutes, ordinances, regulations and by-laws so far as they relate to, and all notices or orders which may be given by any competent authority in respect of, the Land or its use by the Licensee and will keep the Licenser indemnified in respect of all such matters.
- 13.2 The Licensee will have particular regard for health and safety and any applicable provisions of the Health and Safety at Work Act 2015. Where appropriate, the Licensee shall provide the Licenser with a site specific Health and Safety Plan for the Licenser's records.
- 13.3 Where the Licensee is required to obtain third party consent to carry out the Permitted Use, then the Licensee shall be solely responsible for preparing all required documentation and any associated costs therein. The Licensee will provide the Licenser with copies of all consents issued in relation to the same and will keep the Licenser fully indemnified against any breach of arrangements with third parties.

14. IMPROVEMENTS BY LICENSEE

- 14.1 The Licensee will not erect any building or other improvements (including but not limited to any fence, pivot irrigator or related infrastructure, ditch, drain or watercourse) upon the Land without first submitting the plans and specifications to the Licenser and obtaining the written consent of the Licenser. The Licenser when giving its consent may stipulate that the Licensee will not be entitled to any compensation for those improvements, but the Licensee will in such case have the right to remove those buildings or improvements from the Land at the expiry of the Term subject to the Licensee making good any damage to the Land caused by the removal in accordance with clause 15.

15. REMOVAL OF LICENSEE'S IMPROVEMENTS

- 15.1 At the Expiry Date or sooner determination of this Licence, the Licensee may within such reasonable time as the Licenser determines, remove any of the Licensee's improvements and make good any resulting damage to the Land. If the improvements are not removed within such reasonable time as specified by the Licenser, the ownership of the improvements shall vest in the Licenser without right of payment or compensation

to the Licensee by the Licensor. The Licensor may recover all costs and expenses incurred by the Licensor in making good any resulting damage to the Land as a debt from the Licensee.

15.2 For the avoidance of doubt, the requirements of clause 15.1 apply to any and all infrastructure associated with the use of pivot irrigators regardless of whether that infrastructure runs above or below the land.

15.3 At the Expiry Date or sooner determination of this Licence, the Licensee must remove all of the Licensee's chattels. If any of the Licensee's chattels remain on the Land following expiry or earlier determination of this Licence, the Licensor may dispose of the chattels and recover all costs and expenses incurred by the Licensor in doing so as a debt from the Licensee.

16. ASSIGNMENT/SUBLICENSING

16.1 The Licensee will not assign, sub-licence or otherwise part with possession of the Land or any part of the Land.

17. RIGHTS RESERVED BY THE LICENSOR

17.1 The Licensor and its agents and servants may enter upon the Land at all reasonable times on giving at least 24 hours' notice in writing to the Licensee to inspect the Land and carry out repairs and other works to the Land. In exercising such rights, the Licensor will use its best endeavours to minimise any disturbance caused to the Licensee in its occupation and use of the Land.

17.2 The Licensor may give the Licensee one month's notice to repair at the Licensee's cost any improvements, including but not limited to fences, drains, ditches or watercourses. If the Licensee does not comply with the notice, the Licensor may enter the Land, without notice, to remedy the default by the Licensee. All costs incurred by the Licensor in remedying such defaults will be paid by the Licensee on demand.

18. EARLY TERMINATION

18.1 The Licensor may terminate this Licence on one (1) month's written notice if:

- (a) the Licensee has not complied with the Licensee's obligations in this Licence; or
- (b) a Council resolution is passed requiring the whole or any part of the Land for the purposes of carrying out any works or functions of the Licensor in its capacity as territorial authority, or requiring the Land to be sold.

18.2 Upon termination, the Licensee's rights will cease immediately, but the Licensee will still be liable for any money due under this Licence up to termination or for damages for any breach committed prior to termination.

18.3 In the event that the Licensee does not comply with the obligations of clause 8 of this Licence, then notwithstanding the written notice requirements of clause 18.1, the Licensors may terminate this Licence immediately by providing notice in writing.

18.4 If a Licence is cancelled in accordance with clause 18.1(b) but is only applicable to part of the Land, the Licence Fee will be reduced on an area basis.

19. HOLDING OVER

19.1 If the Licensors permits the Licensee to occupy the Land beyond the Expiry Date the Licensee shall do so on a monthly basis, only at a rental calculated daily but payable monthly in advance, determinable at any time by either party by one (1) month's written notice.

20. DISPUTES

20.1 The parties agree to use reasonable endeavours to resolve any dispute arising out of or in connection to this Licence in the spirit of good faith and on a commercially realistic basis by negotiation. Failing resolution by negotiation, the parties may agree to mediation before an independent mediator. Nothing in this clause will prevent either party from taking immediate steps to seek relief in an appropriate Court.

21. GENERAL

21.1 This Licence is intended to take effect as a licence pursuant to section 74 of the Reserves Act 1977, and the provision of that Act and of the regulations made thereunder applicable to such a licence shall, except as modified by the provisions of this Licence, be binding in all respects upon the parties hereto and the same manner as if such provisions had been fully set out herein.

21.2 Nothing contained or implied in this Licence will be construed as conferring or be deemed to confer upon the Licensee any estate or interest in land.

21.3 No waiver or failure to act by the Licensors in respect of any breach by the Licensee will operate as a waiver of another breach.

Appendix A – Aerial Plan

