

AGREEMENT dated

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PARTIES

MILFORD POWER HOLDINGS LIMITED (“Supplier”)

MILFORD SOUND INFRASTRUCTURE LIMITED (“Distributor”)

[] (“Customer”)

INTRODUCTION

- A. The Supplier and Distributor have agreed to supply electricity to the Customer on the terms and conditions set out in this agreement.

AGREEMENT

1. INTERPRETATIONS AND DEFINITIONS

Definitions

- 1.1 In this agreement unless the context otherwise requires:

“**Generating Stations**” means the Supplier’s Chinese and Gilk hydroelectric generators at Milford Sound together with standby diesel generators at Milford Sound;

“**Customer**” means any consumer of electrical energy produced by the Generating Stations;

“**Distribution Network**” means the electrical distribution network at Milford Sound owned by the Distributor used for conveying electricity from the Generating Stations to the Customer Points of Supply;

“**Force Majeure Event**” means:

- (a) War;
- (b) Earthquake, damage caused by an aircraft crash or debris falling from an aircraft, fire, cyclones, or other similar acts of God;
- (c) Strikes, industrial problems or lock outs concerning the Supplier's provision of electricity provided they are not isolated to the Supplier's provision of electricity;
- (d) Civil disturbance, civil strife, change of Government or administration other than by orderly or constitutional means;
- (e) Extreme drought such that there is insufficient water to operate the hydro generation plant for a period of 5 days or longer; or an
- (f) Extreme flood or landslide such that the intake structures are damaged to the extent that water cannot be supplied to the hydro plant for a period of five days or longer.

Provided that the event or the effects of the event have a substantial, material and demonstrable detrimental effect on the Supplier's ability to generate and supply electricity.

"Line Charge" means the price, excluding GST, charged by the Distributor for the supply of electricity to the Customers Points of Supply as set out in schedule 3.

"Nominal Rate" means the price per unit (kWh), excluding GST, charged by the Supplier for production and delivery of electricity to the Customer's Points of Supply. The Nominal Rate shall be 25c/kWh at the time of the signing of this agreement and any change in the nominal price shall be notified three months in advance of the change coming into effect. The Supplier shall substantiate the basis for the change in Nominal Rate.

"Peak Power Supply" means the peak supply of power to the Customer, measured in kilowatts. Such amount shall be determined within the first 12 months of the Term and shall be the amount of the greatest draw of power by the Customer on the Power System as measured by the Supplier in respect of the Customer's Points of

Supply existing at the date of this agreement, in any 24 hour period plus 10%. The determination of the peak power supply shall be subject to appropriate and reasonable temperature adjustments if the temperatures for the 12-month period in which such amount is determined are materially different to previous years.

“Point(s) of Supply” means the point that demarcates ownership between the Distribution Network and the Customer’s own electrical network;

“Power System” means the Supplier’s Generating Stations and the Distributor’s Distribution Network for the supply of electricity to Customers at Milford Sound;

“Standby Rate” means the price per unit (kWh), excluding GST, charged by the Supplier for production and delivery of electricity from standby diesel generating sources to Customer Point of Supply at times other than when the hydroelectric generating sources are operating. The Standby Rate shall be 40c/kWh at the time of the signing of this agreement and any change in the Standby Rate shall be notified three months in advance of the change coming into effect. The Supplier shall substantiate the basis for the change in the Standby Rate; and

“Term” means the term of this agreement as determined pursuant to clause 5.

Interpretation

1.2 In this agreement, unless a contrary intention appears:

- (a) references to any legislation or to any provision of any legislation shall include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) a reference to this agreement includes any variation or modification thereof;
- (c) headings of clauses have been inserted for the sake of convenience only and shall not be taken to form any part of the context which will assist in the interpretation of the clauses.

2. ELECTRICITY AGREEMENT

Supply of Electricity

- 2.1 With effect from the date of this agreement, the Supplier shall supply electricity to all of the Customer's Points of Supply, as listed in Schedule 2, to fulfil all of the electricity requirements of the Customer at Milford Sound from time-to-time up to a maximum of the Peak Power Supply ("**the Customer's Supply Requirements**").
- 2.2 The electricity supplied shall have the characteristics referred to in Schedule 1.
- 2.3 The Supplier shall at all times provide standby diesel-powered generation of sufficient capacity to meet the Customers Supply Requirements at Milford Sound whenever there is any interruption to or reduction in the supply of electricity by the primary hydroelectric generating plant. For the avoidance of doubt, unless otherwise specifically stated in this agreement the Customer will not be charged the Standby Rate for power unless all of the hydroelectric generating plant is non serviceable for a period of more than two days and in this circumstance the Customer will be advised and given the option of whether to take supply at the Standby Rate.
- 2.4 The Supplier shall use reasonable endeavours to supply power required in excess of the Peak Power Supply provided it has surplus hydroelectric generating capacity available. In the event that hydroelectric generating capacity is not available to meet any excess demand, the Supplier will endeavour to supply from standby diesel sources at the Standby Rate. The Customer is not obliged to take supply at the Standby Rate and will be given the choice.

New points of Supply

- 2.5 Subject to clause 3.6, in the event that the Customer wishes to have electricity supplied to a Point of Supply not in existence or to a Point of Supply which while existing at the commencement date of this agreement, is required to sustain a new business venture accredited by the Customer, the Supplier and Distributor and the Customer shall sign a Works Agreement for the provision of that supply before supply commences.

Interruptions

- 2.6 The Supplier and the Distributor will use reasonable endeavours to ensure continuity and security of supply to the Customer's Points of Supply but cannot guarantee a fault free and uninterrupted electricity supply. The Supplier and the Distributor are entitled to interrupt or disconnect the supply to The Customer's points of Supply to effect repairs or make to changes to the Power System and where practicable will liaise with the Customer to ensure that such interruption will cause a little inconvenience as possible.

Sensitive Equipment

- 2.7 From time to time the Power System may experience voltage fluctuations which may damage sensitive electrical appliances. The Customer is responsible for arranging insurance in respect of damage from power fluctuations or installing back-up devices such as an uninterruptible power supply (UPS) or making other arrangements to protect equipment.

Condition

- 2.8 The supply of electricity is also conditional upon the Distributor being reimbursed for any capital costs associated with establishing the connection to the Customers Points of Supply. For the avoidance of doubt, this clause applies to new Points of Supply where the Customer has requested a new connection.

3. PAYMENTS FOR ELECTRICITY

- 3.1 The Supplier shall render monthly accounts for electricity consumed by the Customer and for the Line Charges associated with the distribution of electricity by the Distributor to the Customer's Points of Supply in accordance with the remaining provisions of this clause 3. The Supplier is acting as an agent for the Distributor in respect of the collection of Line Charges from the Customer. The Customer shall pay each such account no later than the 20th day of the month following the month in which the account is rendered.
- 3.2 The Customer shall pay the Supplier, for all electricity generated and consumed by the Customer to the Customer's Points of Supply at Milford Sound existing at the date of this agreement and any additional amounts due to the Supplier as a result of

additional supplies pursuant to clauses 2.4 and 2.5 of this agreement at the Nominal Rate. In the event of a Force Majeure Event prevailing such that generation from hydro sources is not possible, the Customer shall pay for electricity consumed at the Standby Rate. The customer is not obliged to take supply at the Standby Rate and will be given the choice. The amount payable, subject to the Customer receiving an invoice for the same, shall be payable in arrears and shall be inclusive of the Customers portion of Power System network losses.

- 3.3 The Customer shall pay the Distributor for all Line Charges. The Distributor's Line Charge shall be separately itemised on the Suppliers invoice. The amount payable, subject to the Customer receiving an invoice for the same, shall be payable in arrears.
- 3.4 Any electricity consumption by the Customer in excess of the Peak Power Supply, subject to its availability, shall be payable by the Customer as follows:
- (a) if the generation is being supplied from hydroelectric sources (or by diesel generating sources that are generating during routine hydro maintenance activities), then such consumption shall be payable by the Customer at the Nominal Rate;
 - (b) if the generation is by diesel resources and the generation is above the objectively assessed capacity of the hydroelectric sources at the relevant time, then such consumption shall be payable by the Customer at the Standby Rate.
- 3.5 The amounts referred to in clauses 3.2, 3.3 and 3.4 shall be exclusive of all goods and services tax which shall be payable in addition to those amounts and at the same time as the account to which it relates.
- 3.6 In respect of any electricity supplied to a Point of Supply not in existence at the commencement date of this agreement or to a Point of Supply which while existing at the commencement date of this agreement, it is required to sustain a new business venture undertaken by the Customer pursuant to clause 2.5, the accounts rendered shall be based on readings of the relevant Meters and calculated at the then Nominal Rate or as otherwise agreed pursuant to clause 2.5.

- 3.7 If the Customer fails to pay the amounts specified in the accounts pursuant to clause 3.1 by the due date, the Supplier and or the Distributor, as the case may be, shall have the right to disconnect the Customer's Points of Supply from the Distribution Network or otherwise discontinue supply of electricity to the Customer. Disconnection shall not relieve the Customer from paying in full any outstanding amounts for electricity supplied prior to the time of disconnection.

4. MAINTENANCE

- 4.1 The Supplier and Distributor shall, at their respective cost and in accordance with good industry practice, maintain the Power System used for the supply of power to the Customer's Points of Supply.
- 4.2 If necessary, and subject to clause 4.3 the Distributor shall have the right, liberty and privilege for itself, its servants, agents and workmen with any tools, implements, machinery, vehicles and equipment necessary for the purpose to enter upon the Customer's land from time to time for the purpose of maintaining, repairing or renewing the Distribution Network or related equipment as provided in clause 4.1.
- 4.3 In exercising the rights set out in clause 4.2 the Distributor shall, and shall ensure that its servants, agree to, and workmen shall take all reasonable care, shall have due regard to the commercial operations of the Customer, shall reinstate all damage caused to the Customer's land and shall indemnify the Customer in respect of any liabilities costs, claims and expenses suffered by the Customer as a result of any breach by the Distributor of this clause 4.3.

5. TERM

- 5.1 This agreement shall continue for a period of 10 years from [] and thereafter shall continue by written agreement between the Customer, Distributor and the Supplier. The Customer, Distributor and the Supplier shall meet and review the ongoing supply not less than 6 months before the end of the then current Term.

5.2 Notwithstanding clause 5.1, the Customer shall have the right to terminate this agreement by the giving of three months notice in writing to the Supplier and distributor any time during the Term.

6. DEFAULT

6.1 **Termination:** If any party (the “**Defaulting Party**”) fails to perform any of its material obligations under this agreement and fails to remedy that failure within 14 days (in the case of a failure to pay money) or 30 days (in all other cases) after notice from another party specifying the failure, referring to this clause, and requiring remedy then the other party (or parties) may (without prejudice to its other rights and remedies) by notice to the Defaulting Party terminate this agreement.

7. ASSIGNMENT

7.1 The parties shall not be entitled to directly or indirectly assign, transfer or otherwise dispose of (including by way of subcontract) any of their rights or interest in, or any of their obligations or liabilities under, or in connection with or arising out of this agreement without the prior written consent of the other parties, such consent not to be unreasonably withheld.

7.2 The non-assigning parties may insist that the assigning party delivers to them a deed of assignment (in a form acceptable to the non-assigning party) executed by the party to whom the rights and/or obligations are to be assigned. Upon the delivery of such executed Deed by the assigning party to the non-assigning parties, the assigning party shall be released from all obligations under this agreement in respect of the period after the date of such Deed.

8. MISCELLANEOUS

8.1 **Entire agreement:** This agreement records the entire agreement between the parties relating to the supply of electricity in Milford Sound.

8.2 **Notices:** If a party wishes to give to the other parties any notice, claim, demand or other communication (“**Notice**”) under or in connection with this agreement, the

Notice is sufficiently given or served (but without prejudice to any other mode of service) if addressed to that party and delivered to the address of that party stated below (or to any other address notified by that party for the purposes of receiving Notices).

Supplier: Milford Power Holdings Limited, C/- Power Business, PO Box 109628, Newmarket, Auckland. Telephone (021) 934 901.

Attention: John McCutcheon

Distributor: Milford Sound Infrastructure Limited, C/- Power Business, PO Box 109628, Newmarket, Auckland. Telephone (021) 934 901.

Attention: John McCutcheon

Customer: []

Telephone: []

Attention: []

8.3 **Counterpart execution:** This agreement may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that the parties are not signatories to the original or same counterpart.

8.4 **Facsimile Signature:** The parties may sign a counterpart copy of this agreement by photocopying a facsimile of this Agreement and signing that photocopy. The transmission by facsimile by a party to the other parties of a counterpart copy of this agreement signed by that party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.

EXECUTION

[] by:

Signature of {Director}{Authorised signatory}

Name of {Director} {Authorised signatory}

**MILFORD POWER HOLDINGS
LIMITED** by:

Signature of Authorised signatory

Name of Authorised signatory

**MILFORD SOUND
INFRASTRUCTURE LIMITED** by:

Signature of Authorised signatory

Name of Authorised signatory

SCHEDULE 1

1. The frequency at the Customer's Points of Supply shall be maintained, except for momentary fluctuations, within 4% above or below the standard frequency, and the Customer acknowledges and agrees that such specification exceeds the limits prescribed by the Electricity Regulations 1997.
2. The voltage at the Customer's Points of Supply shall be maintained, except for momentary fluctuations, and fluctuations during any change-over between hydro-powered generation and standby diesel powered generation of the electricity supplied under this agreement, within 5% above or below the standard voltage and if variations (recorded by means of a recording volt-meter) are caused within and by the Supplier's supply system the Supplier shall forthwith take all necessary steps to bring the voltage to within the prescribed limits. In the event that the Customer considers that the voltage is varying outside these prescribed limits then it may require the Supplier to undertake a voltage check. The costs of and incidental to a voltage check shall be borne in the first instance by the Supplier provided that the Supplier may charge the Customer for the reasonable actual costs of the voltage check if the voltage is subsequently determined to be within the prescribed limits.
3. The electricity shall otherwise be supplied in accordance with the Electricity Regulations 1997.

SCHEDULE 2
Customers Points of Supply
Customer Number:

| MP Supply Number | Location | Supply Voltage | Peak Load (kW) | Meter number or basis of billing |
|-------------------------|-----------------|-----------------------|-----------------------|---|
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SCHEDULE 3
Line Charges
Customer Number:

| MP Supply Number | Location | Line Charge (\$/month) |
|-------------------------|-----------------|-------------------------------|
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