

**MILFORD SOUND INFRASTRUCTURE LIMITED**

**Supplier**

**[ ]**

**Customer**

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**WATER SUPPLY AGREEMENT**

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## PARTIES

**MILFORD SOUND INFRASTRUCTURE LIMITED (“Supplier”)**

[ ] (“Customer”)

## INTRODUCTION

- A. The Supplier owns the water supply system at Milford Sound and has agreed to supply water to the Customer on the terms and conditions set out in this agreement.
- B. The supply of water is dependent upon the water supply to the hydro powerhouse from the Bowen River intake.

## AGREEMENT

### 1. INTERPRETATIONS AND DEFINITIONS

#### **Definitions**

- 1.1 In this agreement unless the context otherwise requires:

**“Connection Charge”** means the standing charge per connection to the Supplier’s water Supply System. The Connection Charge shall be as per Schedule 1 per month per Point of Supply at the time of the signing of this agreement and any change in the Connection Charge shall be notified three months in advance of the change coming into effect. The Supplier shall substantiate the basis for the change in Connection Charge. The Connection Charge covers the cost of metering and maintaining supply to the Customers Points of Supply;

**“Customer”** means any consumer of water supplied by the Supplier;

**“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 water provided they are not isolated to the Supplier's provision of water;
- (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; 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.

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

**“Nominal Rate”** means the price per unit (cubic metre), excluding GST, charged by the Supplier for production and delivery of Water to the Customer's Points of Supply. The Nominal Rate shall be 75c per m<sup>3</sup> 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. The Nominal Rate covers the cost of operating, maintaining, meter reading and managing the Customers account in relation to the Customers Points of Supply.

**“Point(s) of Supply”** means the point that demarcates ownership between the water Supply System and the Customer's own water supply network and is defined in Schedule 1;

**“Water Supply System”** means the Supplier's infrastructure for abstracting and filtering water and conveying it to the Customer's Points of Supply;

“**Term**” means the term of this agreement as determined pursuant to clause 7;

“**Water**” means the potable water supplied to the Customer under the terms of this agreement and that water is abstracted from the Bowen River via the hydro penstock and receives basic filtering and is supplied untreated and from time-to-time the water supplied will contain relatively high sediment concentrations consequential to freshes passing down the river; and

“**Unmetered Charge**” means the standing charge for supply of Water to the Customers Points of Supply when there is no metering of a particular Point of Supply. The Unmetered Charge shall be as per Schedule 1 per month per Point of Supply at the time of the signing of this agreement and any change in the Unmetered Charge shall be notified three months in advance of the change coming into effect. The Supplier shall substantiate the basis for the change in the Unmetered Charge. The Unmetered Charge covers the cost of operating and managing the Customers account in relation to the Customers Points of Supply.

### **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. WATER SUPPLY AGREEMENT**

### **Supply of Water**

- 2.1 With effect from the date of this agreement, the Supplier shall supply water to all of the Customer's Points of Supply, as listed in Schedule 1, to fulfil all of the water requirements of the Customer at Milford Sound from time-to-time.
- 2.2 The Supplier shall at all times provide for a standby source of water of sufficient capacity to meet the Customers supply requirements at Milford Sound for a limited duration whenever there is any interruption to or reduction in the supply of water from the primary source (Bowen River). The Supplier cannot guarantee supply in a Force Majeure Event.

### **New points of Supply**

- 2.3 In the event that the Customer wishes to have water 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 the Customer shall agree the terms for the provision of that supply before supply commences. The Customer may be required to contribute to the capital development, as distinct from the Connection Charge, of new Points of Supply but any such contribution shall be agreed between the parties before installation of a New Point of Supply commences.

### **Not to Supply Other Parties**

- 2.4 The water supply to Customer's Points of Supply is made on an exclusive basis and the Customer shall not supply other parties without the written permission of the Supplier.

### **Metering**

- 2.5 The Supplier owns all the water meters associated with the Water Supply System. Where possible, meter readings will be used to determine the consumption of Water by the Customer on a monthly basis however if metering is not installed a fixed monthly fee shall apply according to schedule 1.

- 2.6 In some instances Customers will share a meter and in such circumstances the Water consumed by each Customer shall be apportioned between the Customers sharing the meter.
- 2.7 Where a point of supply is not metered either party can require a meter be installed within two months to accurately record the Customers Water consumption at that Point of Supply. The Customer shall pay for the water meter and the cost of its installation but ownership and ongoing maintenance shall reside with the Supplier.

### **3. PAYMENTS FOR WATER**

- 3.1 The Supplier shall render monthly accounts for water consumed by the Customer in accordance with the remaining provisions of this clause 3. The Customer shall pay each such account no later than the 20<sup>th</sup> day of the month following the month in which the account is rendered.
- 3.2 The Customer shall pay the Supplier, for all water supplied by the Supplier 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 clause 2.3 of this agreement at the Nominal Rate or at the specified Unmetered Charge.
- 3.3 The Customer shall pay the Supplier, for the availability of Water supplied by the Supplier to the Customer's Points of Supply, whether any water is consumed or not, at Milford Sound existing at the date of this agreement and any additional Points of Supply pursuant to clause 2.3 of this agreement at the monthly Connection Charge.
- 3.4 The amounts referred to in clause 3.2 and 3.3 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.
- 3.5 In respect of any water 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 2.3, 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 2.3.

- 3.6 If the Customer fails to pay the amounts specified in the accounts pursuant to clause 3.1 by the due date, the Supplier shall have the right to disconnect the Customer's Points of Supply from the Water Supply System or otherwise discontinue supply of water to the Customer. Disconnection shall not relieve the Customer from paying in full any outstanding amounts for water supplied prior to the time of disconnection.

#### **4. WATER QUALITY**

- 4.1 The Supplier currently supplies Water with minimal filtering and is untreated, in accepting supply from the Supplier, the Customer shall at all times indemnify the Supplier, its shareholders, directors, contractors or agents in respect of any sickness, loss, damage, cost or expense suffered or incurred by the Customer as a result of consumption of Water at any of the Customers Points of Supply.
- 4.2 The Customer acknowledges that if at any time in the future the Supplier is required to comply with the New Zealand Drinking Water Standards and this requires that a treatment plant is established for that purpose, and the Customer still wishes to take supply from the Supplier, the Nominal Rate and/or Connection Charge may increase.

#### **5. MAINTENANCE**

- 5.1 The Supplier shall, at its own cost in all respects and in accordance with good industry practice, maintain the Water Supply System used for the supply of Water to the Customer's Points of Supply.
- 5.2 The Supplier shall endeavour to give at least two days notice of any planned disruption to the water supply service and shall minimise the duration of any such disruptions.
- 5.3 On occasions the water supply service may be interrupted without prior notice due to mechanical failure or unacceptable water quality. In such circumstances the supply

will be restored as soon as practicable and the Supplier shall minimise the duration of any such disruption.

5.4 If necessary, and subject to clause 5.5 the Supplier 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 Water Supply System or related equipment as provided in clause 5.1.

5.5 In exercising the rights set out in clause 5.4 the Supplier 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 Supplier of this clause 5.5.

## **6. FAULTS**

6.1 In the event of a fault in the supply of Water to the Customer's Point(s) of Supply, the Customer should contact the Suppliers on-site maintenance team at Milford Sound. Operations and maintenance services in relation to the Water supply are provided by **Red Boats, Telephone (03) 249 7937**.

## **7. TERM**

7.1 This agreement shall continue for a period of 10 years from the date of this agreement and thereafter the Customer shall have 2 ten-year right of renewal periods. The Customer shall advise the Supplier in writing of the Customer's intention to renew the agreement for a further Term not less than 6 months before the end of the then current Term.

7.2 Notwithstanding clause 7.1, the Customer shall have the right to terminate this agreement by the giving of three months notice in writing to the Supplier at any time during the Term.



## **8. DEFAULT**

- 8.1 **Termination:** If either 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 the other party specifying the failure, referring to this clause, and requiring remedy then the other party may (without prejudice to its other rights and remedies) by notice to the Defaulting Party terminate this agreement.

## **9. DISPUTE**

- 9.1 If the parties fail to resolve any dispute, either Party can elect to have an independent arbitrator appointed by the Consumer’s Institute hear the case. Notice should be given within 5 working days of the dispute not being resolved by prior means.
- 9.2 The independent arbitrator will be appointed within 5 working days and the arbitrator will hear the case within 20 working days.
- 9.3 The arbitrator will make a decision within 5 working days after hearing the case and the arbitrator’s decision will be final.

## **10. ASSIGNMENT**

- 10.1 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 party, such consent not to be unreasonably withheld.
- 10.2 The non-assigning party 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 party, the assigning party shall be released from all obligations under this agreement in respect of the period after the date of such Deed.

## 11. MISCELLANEOUS

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

11.2 **Notices:** If either party wishes to give to the other party 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 Sound Infrastructure Limited, PO Box 109628, Newmarket,  
Auckland. Telephone (021) 934 901.

Attention: John McCutcheon

Customer:

Attention:

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

11.4 **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 SOUND**

**INFRASTRUCTURE LIMITED** by:

\_\_\_\_\_  
Signature of Authorised signatory

\_\_\_\_\_  
Name of Authorised signatory

**SCHEDULE 1**

**Customers Points of Supply**

**Customer Number:**

<b>MSI Supply Number</b>	<b>Location</b>	<b>Demarcation Point</b>	<b>Meter Number</b>	<b>Nominal Rate Cents/m<sup>3</sup></b>	<b>Connection Charge \$/Month</b>	<b>Unmetered Usage Charge \$/Month</b>	<b>Notes</b>

Note 1: The Nominal Rate indicated will apply when there is fully functioning metering at the particular Point of Supply