

NON-SHAREHOLDER WATER SUPPLY AGREEMENT

DATED this day of 2019

BETWEEN **MAUNGATAPERE WATER COMPANY LIMITED** having its registered office at 5 Hunt Street Whangarei and having a postal address of P O Box 609, Whangarei (called the Company)

A N D (called "the Water User")

BACKGROUND TO THIS AGREEMENT

- A. The Company is the owner of the Maungatapere Irrigation Scheme ("the Scheme").
- B. The Water User owns and/or occupies the land described in the Schedule ("the land").
- C. The Water User wishes to take a supply of water from the Scheme for rural irrigation, agricultural and general farming purposes.
- D. The Company requires any person wishing to obtain a supply of water from the Scheme for rural irrigation, agricultural and general farming purposes to enter into an agreement with the Company as to the terms upon which such water will be supplied.
- E. The Water User enters into this Agreement on the basis that the water supply is non potable and is for rural irrigation, agricultural and general farming purposes only and is unfit for human consumption.
- F. The Company and Water User wish to enter into this Agreement for the supply of water to the land.

TERMS OF THIS AGREEMENT

1. INTERPRETATION

- 1.1 The reference to the "Company" shall include its agents, employees and contractors.

2. USE OF WATER

- 2.1 The Water User shall use all water taken in an efficient manner without undue waste.

- 2.2 The Water User accepts that the Company gives no undertaking as to the condition or quality of the water supplied and the Water User acknowledges that use of the water is at the Water User's own risk.
- 2.3 The Water User shall be solely liable for, and shall indemnify the Company against, any actions, claims, damages and proceedings whatsoever arising out of the Water User's use of water supplied by the Company.
- 2.4 The Water User acknowledges that the water supply is not a potable supply.
- 2.5 The Water User covenants with the Company that:
- (i) water supplied by the Scheme will be solely used for rural irrigation, agricultural and general farming purposes; and
 - (ii) the water user has a reasonably available and affordable source of water suitable for drinking and other forms of domestic use and food preparation available to the land.

3. DURATION OF AGREEMENT AND IRRIGATION SEASON

- 3.1 This Agreement terminates on the date set out in the Schedule to this agreement or such earlier date as is mutually agreed.
- 3.2 Subject to the terms of this Agreement, water from the Scheme shall be supplied by the Company to the land for 12 months of the year.
- 3.3 The annual capacity fee, as detailed in the Schedule, covers the period from 1 July in any year to 30 June in the following year ("the accounting year").
- 3.4 The official irrigation season shall run from 1 October in any year to 30 April in the following year (called "the Season").
- 3.5 The company reserves the right to shut down the Scheme for routine inspection and maintenance outside the Season.

4. SUPPLY OF WATER

- 4.1 Subject to the terms of this Agreement, the Company shall supply water to the Water User in the amount described in the Schedule (the "Water Allocation").
- 4.2
- (a) At times of peak demand the company shall if necessary, in its absolute discretion, determine the time of supply of water to the Water User for any 24 hour period or such longer period as the Company deems necessary.
 - (b) In the event of a rotation of supply being necessary, the Company shall provide the Water User with a roster for the water. The Company shall however have the power, at its sole discretion, to change the roster.
 - (c) The Water User may only take the water in accordance with any such roster.
- 4.3 The Company shall supply the water to the boundary of the land or at such more distant point as the Company's distribution system and rights of access shall extend.

- 4.4 Water shall be supplied through a measuring device ("the Water Meter") to be provided and maintained by the Company at the cost of the Water User.
- 4.5 The Water User shall not;
- (a) alter or interfere with, or allow any person to alter or interfere with, the Water Meter.
 - (b) take or attempt to take, or allow any person under his control to take or attempt to take, any water from the Scheme otherwise than through the Water Meter in accordance with the terms of this agreement.
 - (c) Supply or sell water supplied through the Water Meter to any other party or to land other than the land described in this agreement.
- 4.6 The Water User shall be responsible for maintaining the area around the Water Meter so as to ensure the Company or its agent have clear unimpeded access to read the Water Meter at all times during the duration of this contract.
- 4.7 The Company by its Agents, contractors or employees shall operate the supply of water through the Water Meter.
- 4.8 The Water User shall be responsible for the distribution of water onto the land from the Water Meter and takes all liability with respect to the use of the water from that point.
- 4.9 The Company, in order to protect the Scheme against any possibility of damage or accident arising from cross connection or back flow from a supply of water to the land pursuant to this agreement, may at any time and from time to time at its discretion, make that supply of water conditional upon the Water User:
- (a) reconfiguring the irrigation system installed within the land of the Water User so as to provide for the distribution of water to the land in such manner as the Company shall require; and/or
 - (a) installing such equipment and water flow control mechanisms as the Company shall require.

5. PAYMENT OF WATER CHARGES

- 5.1 (a) The Water User shall pay to the Company the charges for water contracted to be taken under this Agreement ("the Water Charges") at the rates detailed in the Schedule plus GST which rates are subject to review from time to time by the Company in accordance with this Agreement.
- (b) The Water Charges shall be paid by the Water User by the specified dates in the Schedule ("the due dates for payment").
- 5.2 If the Water Charges are not paid within 28 days of the due dates for payment (time being of the essence) then, without prejudice to the Company's other rights, the Water Charges shall be increased by 10% and if the default continues then the amount owing, (including the 10% penalty increase), shall be increased by a further 1.5% per month (from the said period of 28 days) compounding every month thereafter until all of the money owing is paid. The

10% and 1.5% per month increases shall then be deemed to be part of the Water Charges and the total of which shall be recoverable by the Company as a debt due.

- 5.3 The Water Charges shall be payable by the Water User to the Company whether or not the Water User takes the water throughout the term of this Agreement, (whether due to the Company's inability to supply the water or the Water User's election not to take the water), and notwithstanding that the water supply may be cut off from the land pursuant to Clause 8.1.

6. FAILURE OF SUPPLY AND WATER SHORTAGE

- 6.1 (a) If for any reason including the fault of the Company the water supply to the Water User is diminished or shall fail then the Water User shall by reason of such diminished supply or failure, have no claim or right of action against the Company.
- (b) If the water supply to the Water User is diminished or shall fail temporarily for reasons including the fault of the company the Water User shall not be entitled to a proportionate reduction in, or a refund of, the Water Charges paid or required to be paid with respect to the water not supplied.
- 6.2 If the water supply to the Water User is permanently discontinued, other than due to the default of the Water User, then the Water User shall not be liable for any further payment for Water Charges apart from all money due up to the time of the permanent discontinuation of supply.
- 6.3 The Company may at any time discontinue a supply of water to the Water User where the quality of water available for supply is such that to pump such water could possibly cause damage to the Company's irrigation pumps, pipes and other infrastructure and in such circumstances no claim for any loss may be made by the Water User against the Company.
- 6.4 The Water User acknowledges that the supply by the Company of water is controlled by resource consents issued by the Northland Regional Council and that no liability shall attach to the Company in the event that water cannot be supplied due to the requirements of the Company to comply with the terms and conditions of such resource consents.

7. RIGHT OF ACCESS

- 7.1 (a) The Company shall have the right at any time with necessary vehicles, implements and machinery, and without payment of compensation, to enter onto the land and thereon to repair, or re-construct, all pipes and other irrigation works which the Company deems necessary or desirable for the supply of water to the land, or to determine the quantity of water used by the Water User and to view the condition of all irrigation works on the land PROVIDED HOWEVER that the Company shall not, if constructing new works (other than re-construction), unduly interfere with the Water User's economic use of the land or such aesthetics of the land which are important to the Water User without the consent of the Water User (which consent shall not be unreasonably withheld).

- 7.2 (a) Where, pursuant to clause 7.1 entry is required for major repair works, the Company shall where practicable, give reasonable notice of 24 hours by such means as it considers appropriate, including use of electronic technology and the internet as well as traditional means of giving of notice, such as by letter, facsimile or telephone, prior to such work being undertaken.
- (b) If the occupier has received such notice and in turn notifies the Company, prior to such work being undertaken, of the presence of pipes or other underground facilities and these are damaged in the course of the construction, or repair, the Company will compensate the occupier for such damage.
- 7.3 (a) The Water User shall not obstruct access by the Company to any irrigation works on or off the land and shall not plant trees or construct works which would obstruct such access or interfere with the irrigation works and shall ensure that such access to the land is always kept available to the Company.
- (b) The Water User shall ensure that, unless consent is obtained in writing from the Company, that no trees are planted, posts driven, roots ripped or excavations made within three metres of any works forming part of the Scheme's irrigation network infrastructure.

8. WATER USER'S DEFAULT

- 8.1 (a) In the event of the Water User being in breach of any of the terms of this Agreement and such breach continues for a period of not less than 21 days after notice by the Company to the Water User of the default, the Company may, without payment of any compensation to the Water User or any other person, and without prejudice to its other rights and remedies, give notice terminating this agreement and upon giving such notice cut off the water supply to the land and remove the Water Meter and thereafter no person shall be entitled to be supplied with any further water to the land from the Scheme until the default has been made good and a new Water Supply Agreement signed.
- (b) Notwithstanding sub-clause 8.1(a) above, the Company may terminate the water supply without notice if the circumstances of the Water User's default renders this action necessary, considering the Scheme's operation as a whole and the Water User shall be immediately notified accordingly.
- 8.2 All reasonable costs, (including legal costs on a Solicitor client basis), incurred by the Company pursuant to clause 8.1. above, and in re-instating the water supply and Water Meter and in seeking to recover money due and unpaid and interest thereon, from the Water User, shall be added to the debt owing by the Water User to the Company and shall be paid by the Water User.

9. SUBDIVISION AND ASSIGNMENT

- 9.1 In the event of the Water User subdividing the land:
- (a) With the prior written consent of the Company, (which consent shall not be unreasonably withheld), the Water User shall have the power to

determine the division of the water allocation between the subdivided lots and shall advise the Company of this apportionment;

- (b) Unless otherwise agreed to by the Company, the following terms shall apply to the water supply to the land which is subdivided:
- (i) The Company shall only have an obligation to supply water to the point where the Company was contracted to deliver water under the contracted supply prior to the subdivision;
 - (ii) The water to be supplied shall be all of the contracted water relating to the land which was subdivided;
 - (iii) The landowner carrying out the subdivision ("the subdivider") shall be responsible, at the subdivider's cost for the installation of water reticulation works from the point of the Company supply prior to the subdivision which reticulation works shall be to the specifications reasonably required by the Company;
 - (iv) The Company shall at the cost of the subdivider, (or at the cost of the purchaser of the subdivided land if that is the arrangement between the subdivider and purchaser), supply and install the water meter assembly with box and meter at each lot created by the subdivision which is to be supplied with water from the Company;
 - (v) The subdivider shall at the subdivider's cost register over the land which is being subdivided an easement in gross to the Company providing the Company with access to all required water meters for reading, maintenance and replacement;
 - (vi) A new water supply agreement shall be entered into with respect to each lot created by the subdivision and transferred by the subdivider; and
 - (vii) The subdivider shall pay the Company's reasonable costs incurred with respect to its approval, preparation and signing of documents relating to the procedures detailed in this clause.

9.2 The Water User may transfer to a transferee all of their water allocation under this agreement subject to the following terms and procedures being complied with:

- (a) The Company's consent to the transfer must be obtained, which consent shall not be unreasonably withheld with respect to a responsible and solvent transferee;
- (b) There must be no subsisting breach of the Water User's obligations under this Agreement and all money payable by the Water User to the Company, whether under the terms of this Agreement or otherwise, must be paid. (The Water User and transferee between themselves shall resolve any apportionments of water charges);

- (c) The transferee must sign and return to the Company a new water supply agreement prepared by the Company if the transfer is for the existing water allocation.
 - (d) The Water User shall pay the Company's reasonable costs incurred with respect to its approval, preparation and signing of documents relating to the procedures detailed in this clause;
- 9.3 A reference to the "transferee" is a reference to the party receiving a transfer of all of the Water User's land and to whom the Water User's water allocation transferred pursuant to this clause relates.
- 9.4 In the case of a transfer to a Company, the Maungatapere Water Company Limited may require the principal shareholders and directors of that transferee company to sign a personal guarantee as covenantors of the transferee's company's obligations under the new water supply agreement.

10. INDEMNITY

- 10.1 The Water User acknowledges that the Water User has been informed of the possibility of serious damage or accident arising to the Scheme in the event of any cross connection of a supply of water to the land of the Water User from different reservoirs which have been established by the Company as part of the Scheme.
- 10.2 The Water User hereby indemnifies the Company against all or any costs, damages, expenses, losses or claims of any nature and of any damage to the Scheme arising from:
- (a) any cross connection from a supply of water to the land from the reservoirs currently supplying water to the land where such arises from the manner in which the Water User has laid out and/or installed the irrigation system to service the land with water from the Scheme; and/or
 - (a) any failure on the part of the Water User to install and/or maintain such equipment and water flow control mechanisms as either have been or would have been required to ensure that there was no cross connection of a supply of water to the land from the reservoirs owned and maintained by the company pursuant to the Scheme.

11. GUARANTOR

- 11.1 If the Water User is a Company then, in consideration of the Water User entering into this Agreement at the request of the Guarantors described in the Schedule, the Guarantors jointly and severally guarantee that:
- (a) They shall pay all money owing by the Water User under this Agreement and shall perform all of the Water User's obligations contained or implied under this Agreement; and
 - (b) As between the Guarantors and the Company, the Guarantors shall be deemed principal debtors and liable as if they themselves were the Water User.

12. REVIEW OF WATER CHARGES

12.1 The Company shall have the right at any time and at all times to vary the water charges payable for water supplied by the Company to the Water User pursuant to the Scheme.

SIGNED by **MAUNGATAPERE**)
WATER COMPANY LIMITED)
in the presence of :)

D B Quinn

Witness
Signature

.....
Full Name Karen Hunt

.....
Occupation Senior Administrator

.....
Address P O Box 609, Whangarei
.....

SIGNED by the Water User or)
by his duly authorised Agent)
in the presence of :)

Witness
Signature

.....
Full Name

.....
Occupation

.....
Address
.....

SCHEDULE

WATER USER:

Name

Physical address

Postal address

Phone

Cell

Email

GUARANTORS:

.....
.....

THE LAND: (Full legal description)

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WATER ALLOCATION: 1.04m³ water per hour

WATER CHARGES: the water user during the accounting year Water charges shall be made up of an annual capacity fee of \$935 plus GST. The annual capacity fee charge shall cover the cost of the first 390m³ of water allocation entitlement used by the water user during the accounting year. The water charge after the utilisation of the amount covered by the capacity fee shall be at \$2.40m³ plus GST for the water used by.

DUE DATE FOR PAYMENT: The 20th day of the month following the month of invoice

TERMINATION: This Agreement shall terminate on the 30th of June 2044 or such other date as shall coincide with the expiry date of the resource consents held by the Company authorising the extraction of water at Poroti, whichever is the later subject always to the right of the Company to terminate the Agreement for breach.