

SunWater Limited

Customer

## River Supply Contract



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## River Supply Contract

Date: The date you are deemed to have accepted SunWater's offer as provided for under this **Agreement**

### Parties

- 1 **SunWater Limited** (ACN 131 034 985) of Level 10, 179 Turbot Street, Brisbane QLD 4000 (**SunWater**).
- 2 **Customer** (the **Customer**).

### AGREEMENT

- 1 This **Agreement** consists of:
  - (a) the Special Conditions set out in Part C;
  - (b) the Standard Terms set out in Part B;
  - (c) the **Customer Details** and Service Details set out in Part A;
  - (d) the Application Form attached to this physical document or to the electronic mail message under which SunWater forwarded this document to you (**Application Form**) (only to the extent it is specifically referred to elsewhere in this **Agreement**); and
  - (e) the Title Search or Interim Water Allocation attached to this physical document or to the electronic mail message under which SunWater forwarded this document to you, if any (**Title Document**) (only to the extent it is specifically referred to elsewhere in this **Agreement**).

To the extent of any inconsistencies between them, the above documents will be given precedence in the order listed.

- 2 This **Agreement**:
  - (a) represents the entire agreement between you and SunWater; and
  - (b) supersedes any prior agreement or discussions between you and SunWater.
- 3 By providing a copy of this **Agreement** to you electronically or in hard copy form, SunWater offers to enter into this **Agreement** with you. That offer remains open until it is revoked by SunWater in writing.
- 4 You will be deemed to have accepted SunWater's offer (and this **Agreement** will be deemed to be in force) if:
  - (a) you commence taking water pursuant to the **Customer's Allocation**; or
  - (b) you provide to the Registrar of Titles any consent or notification which SunWater has provided to you in relation of the transfer or lease of the **Customer's Allocation** to you; or
  - (c) you confirm your acceptance to SunWater by email or otherwise in writing.
- 5 If there is an existing contract between you and SunWater in relation to the supply of water in relation to the **Customer's Allocation**, that contract is terminated on and from commencement of this **Agreement**.

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**Part A – Customer Details and Service Details**

## Customer Details

This version of the Customer Details applies if the 'Purchase / Transfer' box is ticked at the top of the Application Form, Customer Contract Information Form or the Application Form is entitled 'Subdivision or Change of Water Allocation'.

### 1 Customer's Personal Details

Customer	The Transferee / Purchaser / Customer set out in Part B of the Application Form.
ABN / ACN	The ABN or ACN set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The mobile and landline numbers set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.
<b>Water Entitlement</b>	The water entitlement described on the Title Document.

### 2 Details of Customer's Acquisition

<b>Current Holder</b>	The customer (if any) described in Part A of the Application Form.
Type of <b>Customer's Allocation</b>	The type of <b>Customer's Allocation</b> described on the Title Document.
Extent of interest to be acquired	Transfer
Portion of interest to be acquired	Full volume of the <b>Customer's Allocation</b> .
Completion Date	The date that settlement of the transfer of the <b>Water Entitlement</b> to the <b>Customer</b> occurs.
Nature of Acquisition Dealing	Acquisition

### 3 Customer Allocation Particulars

<b>Customer's Allocation</b> Identifier	The Water Entitlement allocation described on the Title Document.
Customer's Interest	The full <b>Water Entitlement</b> owned by the <b>Current Holder</b> as described on the Title Document.
Amount of Allocation	The volume described in Part D of the Application Form.

**4 Customer's Nominated Works**

<b>Customer's Nominated Works</b>	As described in Part C of the Application Form.
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**5 Service Details**

<b>Fixed Charges</b> (current to next 30 June)	Where there is a <b>Regulated Charge</b> , the <b>Regulated Charge</b> .  Otherwise, the applicable access and fixed or allocation charges described in the fees and charges schedule published on SunWater's website for the <b>Regulated Area</b> immediately prior to entry into this Contract.
<b>Consumption Charges</b> (current to next 30 June)	Where there is a <b>Regulated Charge</b> , the <b>Regulated Charge</b> .  Otherwise, the consumption or 'allocation water' charges described on the fees and charge schedule published on SunWater's website for the <b>Regulated Area</b> immediately prior to entry into this Contract.
<b>Billing Interval</b>	3 monthly
Security	YES for an amount of \$[insert]  or  NO

Other charges may be levied from time to time at rates set in accordance with clause 8.7.



## Customer Details

This version of the Customer Details applies if the 'Lease or Sublease' box is ticked at the top of the Application Form.

### 1 Customer's Personal Details

Customer	The Lessee set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The telephone number set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.

### 2 Details of Customer's Acquisition

<b>Current Holder</b>	The customer described in Part A of the Application Form.
Type of <b>Customer's Allocation</b>	The type of <b>Customer's Allocation</b> described on the Title Document.
Extent of interest to be acquired	Lease
Portion of interest to be acquired	Full volume of the <b>Customer's Allocation</b> .
Completion Date	The date that the lease or sublease between the customer described in section 1 and the <b>Current Holder</b> commences.
Nature of Acquisition Dealing	Lease or Sublease

### 3 Customer Allocation Particulars

<b>Customer's Allocation</b> Identifier	The <b>Customer's Allocation</b> described on the Title Document.
Customer's Interest	The whole of the <b>Customer's Allocation</b> (or, in the case of a sublease, lease of the <b>Customer's Allocation</b> ) owned by the <b>Current Holder</b> as described on the Title Document.
Amount of Allocation	The volume described in Part D of the Application Form.

### 4 Customer's Nominated Works

<b>Customer's Nominated Works</b>	As described in Part C of the Application Form.
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**5 Service Details**

<p><b>Fixed Charges</b> (current to next 30 June)</p>	<p>Where there is a <b>Regulated Charge</b>, the <b>Regulated Charge</b>.</p> <p>Otherwise, the applicable access and fixed or allocation charges described in the fees and charges schedule published on SunWater's website for the <b>Regulated Area</b> immediately prior to entry into this Contract.</p>
<p><b>Consumption Charges</b> (current to next 30 June)</p>	<p>Where there is a <b>Regulated Charge</b>, the <b>Regulated Charge</b>.</p> <p>Otherwise, the consumption or 'allocation water' charges described on the fees and charge schedule published on SunWater's website for the <b>Regulated Area</b> immediately prior to entry into this Contract.</p>
<p><b>Billing Interval</b></p>	<p>3 monthly</p>
<p>Security</p>	<p>YES for an amount of \$[insert]</p> <p>or</p> <p>NO</p>

Other charges may be levied from time to time at rates set in accordance with clause 8.7.

## Customer Details

This version of the Customer Details applies if the 'Zero Allocation Contract' box is ticked at the top of the Application Form.

### 1 Customer's Personal Details

Customer	The Transferee / Purchaser set out in Part B of the Application Form.
ABN / ACN	The ABN or ACN set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The mobile and landline numbers set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.
<b>Water Entitlement</b>	Not applicable

2 Not applicable

3 Not applicable

### 4 Customer's Nominated Works

<b>Customer's Nominated Works</b>	As described in Part C of the Application Form.
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### 5 Service Details

<b>Fixed Charges</b> (current to next 30 June)	Not applicable
<b>Consumption Charges</b> (current to next 30 June)	Where there is a <b>Regulated Charge</b> , the <b>Regulated Charge</b> . Otherwise, the consumption or 'allocation water' charges described on the fees and charge schedule published on SunWater's website for the <b>Regulated Area</b> immediately prior to entry into this Contract.
<b>Billing Interval</b>	3 monthly
Security	NO

Other charges may be levied from time to time at rates set in accordance with clause 8.7.

## Part B – Standard Terms

### 1 Introduction

#### 1.1 SunWater and this Agreement

SunWater manages bulk water infrastructure in Queensland.

In connection with those activities SunWater holds a **Resource Operations Licence** for water infrastructure in the **Regulated Area**, which authorises it to provide the **Water Supply Services**.

You are responsible for obtaining the water to be transported and either:

- (a) hold a **Customer's Allocation** for the taking of water from the **Regulated Area**;
- (b) propose to acquire an interest in a **Customer's Allocation** for the taking of water from the **Regulated Area**; or
- (c) have a contract for the supply of water under Part 4 of the **Act**.

This **Agreement** sets out:

- (a) the terms on which SunWater will provide the **Water Supply Services** and **Related Services**; and
- (b) your rights and obligations in connection with those services.

For more information about SunWater and the services we provide, visit [www.sunwater.com.au](http://www.sunwater.com.au)

#### 1.2 Defined terms and interpretation

Words that are bold and italicised in this **Agreement** have a defined meaning as set out in clause 23.1.

To assist with understanding and interpreting this **Agreement**, a number of principles of interpretation are set out in clause 23.2.

#### 1.3 Consultation with you

This **Agreement** requires SunWater to consult with you (or entities representing customers within the **Regulated Area**) prior to taking some actions (as set out in this **Agreement**). In undertaking any such consultation, SunWater will be fair and reasonable and allow you a reasonable opportunity to participate.

## 2 What is a River Supply Contract

### 2.1 What this Agreement is

This **Agreement** is between us, SunWater and you, the Customer.

The **Agreement** provides the terms on which SunWater releases water and provides **Water Supply Services** and **Related Services** to you. It supersedes the standard supply contract under section 1116 of the **Act** for the **Customer's Allocation** (to the extent that standard supply contract would otherwise be applicable).

It is a legally enforceable document and sets out terms on which it has been agreed SunWater will provide those services and you have accepted the provision of those services.

### 2.2 What is not covered by this Agreement

This **Agreement** does not entitle you to take water. You must acquire that entitlement separately through a **Customer's Allocation** in respect of the **Regulated Area**, or through a contract for the supply of water from SunWater or someone else who has such a **Customer's Allocation**.

This **Agreement** does not authorise the development or installation of the **Customer's Nominated Works**. You must acquire all relevant permits and approvals for such works.

Accordingly, during the term of this **Agreement** you must procure and maintain in full force and effect and comply with the terms of:

- (a) the **Customer's Allocation**; and
- (b) the **Customer's Approvals**.

### 2.3 How does this relate to other Agreements you have with SunWater?

Where you have another agreement with SunWater (whether entered before or after this **Agreement**) which relates to water in the **Regulated Area** then:

- (a) default by you under any such agreement constitutes default by you under each such agreement;
- (b) amounts owing by you to SunWater under one agreement may be set off against amounts owing by you under every other agreement;
- (c) any security provided by you in connection with an agreement may be used by SunWater as if given as security for obligations under all agreements and for all debts due by you to SunWater;
- (d) a failure to pay any debt due by you to SunWater when due, is a default under each such agreement; and
- (e) if SunWater issues a single invoice to you for amounts payable under more than one agreement, non-payment or underpayment by you of that invoice will be considered to be a non-payment or underpayment equally under each agreement. For example, if SunWater issues a single invoice for \$300 in relation to three agreements, and you pay \$150 of that invoice, you will be deemed to have failed to pay \$50 under each of the three agreements.

### 2.4 How this Agreement impacts on other customers

The water infrastructure utilised to provide you with services is also used to provide services to other customers. Many of the terms in this **Agreement** have been included to protect other customers within the **Regulated Area** and a breach of your obligations under this **Agreement** may adversely affect the interests of such customers.

You agree, for the benefit of such customers (in addition to being for the benefit of SunWater), to comply with your obligations under this **Agreement**.

## 3 How the terms of this Agreement might change

### 3.1 Review Date

- (a) Subject to paragraph (b), a **Review Date** will occur on:
  - (i) 30 June 2022; and
  - (ii) each 5 year anniversary of that date until this **Agreement** expires or is terminated.
- (b) SunWater may, by written notice to you, extend a **Review Date** to a later date nominated by SunWater. If SunWater does so, subsequent **Review Dates** will occur on each 5 year anniversary of the extended **Review Date**, subject to SunWater's right to grant further extensions under this clause.

### 3.2 SunWater may suggest changes

Some provisions of this **Agreement** may be rendered inappropriate over time.

Where SunWater considers that has occurred it will initiate consultation with you or any group representing customers within the **Regulated Area** (if such group exists) with a view to establishing new terms and conditions.

Where, after such consultation, SunWater has determined new terms and conditions which should apply to the **Water Supply Services** or **Related Services**, SunWater may by written notice given to you 3 months prior to a **Review Date**, notify you of the new terms and conditions.

If, on or prior to the relevant **Review Date** you:

- (a) accept in writing the new terms and conditions, then as and from the relevant **Review Date** this **Agreement** shall terminate (without releasing either party from obligations accrued to that **Review Date**) and a new agreement on those new terms and conditions shall apply; or
- (b) do not accept the new terms and conditions by the relevant **Review Date**, SunWater may by written notice to you not later than 3 months after the relevant **Review Date**, elect to continue to supply the **Water Supply Services** and **Related Services** on the terms of this **Agreement** or to terminate this **Agreement** as and from the date of such notice.

### 3.3 Changes arising from changes in law

Where there has been a change in any **Law**, the **Resource Operations Licence**, or any other instrument made under the **Act**, SunWater may require reasonable changes to this **Agreement**, after consultation with you.

### 3.4 Other amendments have to be agreed with you

Except as set out in clauses 3.2 or 3.3, this **Agreement** may only be amended by another agreement executed by you and SunWater.

## 4 Term

### 4.1 When this Agreement commences

The **Agreement** commences on the **Commencement Date**, subject to the satisfaction or waiver of the **Conditions Precedent** (if any).

Where this **Agreement** commences part way through a **Water Year** or item 2 in the **Customer Details** is completed:

- (a) you must make yourself aware of the volume of water taken by the **Current Holder** during the **Water Year** in which the **Commencement Date** occurs.
- (b) you promise that you will make arrangements satisfactory to SunWater for the **Meter** of the **Current Holder** to be read at the time immediately prior to you taking water under this **Agreement** and provide details of that **Meter** reading to SunWater promptly. If you fail to do so, SunWater may adopt the last water reading held in SunWater's records (even if this reading falls prior to the date of commencement or transfer); and
- (c) you accept that no representation of warranty is given by SunWater about the volume of water which may be taken by you during the balance of that **Water Year**.

The **Current Holder** shall remain principally liable for all charges until you are entitled to take the **Current Holder's** water under this **Agreement**, however you indemnify SunWater in respect of any such **Charges** not paid by the **Current Holder**.

#### 4.2 When this Agreement ends

The **Agreement** continues until it is terminated in accordance with its provisions.

### 5 Water Supply Services

#### 5.1 SunWater to Release water

SunWater must release water within the **Regulated Area** from the **SunWater Works** which SunWater reasonably estimates will satisfy your likely demand from time to time.

#### 5.2 Conditions of Release

The release of water cannot be guaranteed.

You acknowledge that the release of water by SunWater is subject to:

- (a) the **Resource Operations Licence**;
- (b) the **Customer's Allocation**;
- (c) any conditions or constraints on the **Customer's Allocation**;
- (d) SunWater's estimate of the likely demand of other customers within the **Regulated Area**;
- (e) the capacity of, and availability of water from, the **SunWater Works**;
- (f) the provisions of the **Act** and instruments made under it; and
- (g) this **Agreement**.

#### 5.3 No promise as to water quality

You must satisfy yourself about the quality of water by testing or other means prior to diverting or taking any water in the **Regulated Area**.

SunWater makes no representation and gives no warranty:

- (a) about the quality of water within the **SunWater Works** or the **Regulated Area**;
- (b) that any actions, measures or steps will be taken by SunWater to prevent any adverse effects on the quality of water prior to its diversion or taking by you or on your behalf (whether in the **Regulated Area**, within the **SunWater Works** or after its release from **SunWater Works**); or
- (c) that water within **SunWater Works**, the **Regulated Area** or available for diversion or taking by you at the **Customer's Nominated Works** is potable or suitable for any purpose (whether or not SunWater knows about that intended purpose).

You must indemnify SunWater against any **Liability** incurred or suffered by or brought or made or recovered against SunWater in connection with the quality of water within the **SunWater Works** and the **Regulated Area** where your act or omission (whether or not under this **Agreement**) has affected the quality of such water, and by any person to whom you have supplied water or allowed to take water.

You release SunWater from all **Liability** which you may have or claim to have or but for this release might have had against SunWater connected with the quality of water within the **SunWater Works**, the **Regulated Area** or diverted or taken by or on your behalf.

#### 5.4 Risks you assume in relation to water releases

You bear the risk of and any **Liability** resulting from:

- (a) destruction of or damage to the **Customer's Nominated Works** from an **Event of Force Majeure** or resulting from SunWater's releasing water, under this or any other agreement or the **Resource Operations Licence**;
- (b) **Supply Water Losses**;
- (c) the exercise of a **Statutory Right**, for example, a water permit issued by the **Regulator**, and
- (d) any action taken under a **State Direction**.

## 6 Restrictions on water releases

### 6.1 When SunWater can suspend or restrict water releases to you

SunWater may suspend or restrict releases of water from the works of SunWater:

- (a) during maintenance or replacement of the **SunWater Works** or of the water infrastructure of the holder of another resource operations licence in the **Regulated Area**;
- (b) where SunWater or the holder of another resource operations licence in the **Regulated Area** is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of SunWater, such release:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including SunWater or you);
  - (ii) may cause or contribute to loss of life or injury to persons;
  - (iii) may cause or contribute to an adverse effect on public health;
  - (iv) is likely to constitute a breach by SunWater of its obligations under the **Resource Operations Licence**, any **Law** or an agreement; or
  - (v) would be impractical considering the level of demand, performance of the watercourse (including potential water losses) and the requirements of other customers within the **Regulated Area** at the time;
- (d) by reason of an **Event of Force Majeure**; or
- (e) where provided for under the **SunWater Rules**.

### 6.2 When SunWater can direct you not to take water

SunWater may direct you or any person diverting or taking water pursuant to the **Customer's Allocation**, not to divert or take water under the **Customer's Allocation**, where you:

- (a) have committed a material breach of this **Agreement**;
- (b) are in arrears for payments for **Charges** for more than 2 months;
- (c) have breached this **Agreement** and have not reimbursed SunWater for costs incurred by SunWater in rectifying the breach;
- (d) have not provided the security required under clause 10; or
- (e) have breached any of clauses 9.1, 11.1(a), 11.1(b), 12.3(b), 12.3(c) or 12.5.

Any such direction must give you a reasonable time (being 7 days for payment of outstanding debts and 14 days for provision of security) within which you are permitted to object in writing to the direction, and must take the remedial steps required.

### 6.3 Consequences of you ordering but not taking water

If you breach clause 11.2(c) and, in the reasonable opinion of SunWater, that represents a risk that:



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- (a) SunWater is in breach of its obligations under the **Resource Operations Licence** or any other instrument made under the **Act**; or
- (b) the rights and interests of other customers within the **Regulated Area** will be adversely affected,

then SunWater must notify you within 3 months of the end of the **Water Year** in which the breach occurred, that:

- (c) your right to take the **Customer's Maximum Delivery Volume** under this **Agreement** is reduced, by the volume of water not taken; and
- (d) the reduction will be made from your **Customer's Maximum Delivery Volume** in the current and subsequent **Water Years** until the volume of water not taken has been entirely deducted.

The parties acknowledge that action or inaction by SunWater under the provisions of this clause 6, does not prevent SunWater from taking action under another clause of this **Agreement**.

### 6.4 Consequences if you do not comply with a direction not to take water

Where SunWater considers that you, or a person to who the direction is given, has not complied with or will not comply with a direction under clause 6.2, SunWater may take all reasonable steps to ensure that you or the other person complies with the direction, including not releasing water under this **Agreement** and/or stopping you or other person's taking water by making modifications to **SunWater Works**, the **Meter** or the **Customer's Nominated Works**.

## 7 Related Services

If you are not in breach of this **Agreement**, then SunWater will provide at your request each of the following **Related Services**:

- (a) connection services (including SunWater's procuring and installing a **Meter**);
- (b) disconnection services (including SunWater's arranging for the removal of a **Meter**);
- (c) extra **Meter** reading services (involving SunWater's reading a **Meter** in addition to a reading anticipated under this **Agreement**);
- (d) **Meter** testing services (including SunWater's procuring testing of a **Meter**);
- (e) assistance with obtaining approvals referred to in clause 11.1(a)(iv); or
- (f) further services (involving such other services as SunWater is offering from time to time).

## 8 What you pay

### 8.1 Charges

You must pay SunWater:

- (a) **Service Charges** for the **Water Supply Services**;
- (b) for the **Related Services** referred to in clause 7(a) to 7(d), the relevant **Other Charges**;
- (c) for the **Related Services** referred to in clause 7(e) to 7(f), where:
  - (i) SunWater has indicated that it is prepared to offer the further service; and
  - (ii) SunWater has stated the terms of providing the further service, including the price and payment of a deposit;

the price stated if it is a fixed price, otherwise a reasonable price having regard to the cost (including administration and overhead costs) to SunWater in undertaking the further service.

## 8.2 How your charges are calculated

- (a) **Fixed Charges** are calculated and payable in advance for the relevant period in which the invoice is rendered.
- (b) **Consumption Charges** are rendered in arrears for the period for which **Meter** readings have been taken on behalf of SunWater.
- (c) **Other Charges**: The balance payable for **Other Charges** for **Related Services** shall be rendered, at SunWater's election, in advance or in arrears of performance of the **Related Services**.
- (d) **Minimum Charges**: Where, in SunWater's reasonable opinion, the **Minimum Charge** (if any) will apply for the **Water Charges** in any **Water Year**, SunWater may render an invoice for the **Minimum Charge** in advance with any adjustment to be made in the last invoice for the relevant **Water Year**.
- (e) **Indexation of Fixed Charges and Consumption Charges**: Where the relevant **Charges** are not **Regulated Charges**, as and from each 1 July which is not a **Review Date**, the **Consumption Charges** and the **Fixed Charges** shall be increased by the proportion by which the **Index Number** last published for the period immediately prior to the relevant 1 April has increased, over the **Index Number** published for the relevant period immediately prior to the preceding 1 April.

## 8.3 When you will be invoiced

SunWater may, unless otherwise required by **Law**, render an invoice to you for:

- (a) **Water Service Charges** at approximately the **Billing Interval** or as published in the **SunWater Rules**;
- (b) **Other Charges** after performance of any **Related Services**; and
- (c) where the **Service Charges** are the **Minimum Charge**, annually in arrears subject to clause 8.2(d).

If SunWater does not render an invoice at the time it was first entitled to do so under this clause 8.3, SunWater may render an invoice up to two years after that time.

## 8.4 Invoicing errors

If you receive an invoice that you believe is incorrect, you can contact us on 13 15 89 or email [customersupport@sunwater.com.au](mailto:customersupport@sunwater.com.au).

If an error is discovered in any invoice to you, within 2 years from the date of the invoice, SunWater may issue a subsequent invoice to you, with an amount reflecting the error. If correcting the error requires:

- (a) SunWater to reimburse you, reimbursement may be effected by setting off the reimburseable amount against amounts payable on the next invoice or by refunding the reimbursable amount on request by you; or
- (b) If the error is such that you are required to pay SunWater an additional amount, then SunWater must invoice you for that amount, which will become due as provided for in clause 8.5.

## 8.5 Due date for payment

- (a) You must pay all invoices from SunWater within 30 date after the date of the invoice.
- (b) Where you notify SunWater of a dispute about an invoice under clause 16, you must pay to SunWater the undisputed amount in accordance with this clause. Once the dispute is

resolved, the amount agreed or determined to be outstanding must be paid within 30 days of that resolution.

- (c) Any amounts charged by SunWater, if not paid by you when due, will accrue interest at either the rate applicable to such amount under any agreement between you and SunWater or otherwise at the **Overdue Rate**. Such interest will be calculated on a daily basis and compounded at the end of each calendar month, from the due date for payment up to and including the date the unpaid amount is paid. SunWater may include interest payable under this clause 8.5(c) in an invoice subsequently forwarded to you.

#### **8.6 SunWater is entitled to use estimates for Consumption Charges in certain circumstances**

If, for any period during the current **Water Year** or the most recently completed **Water Year**:

- (a) SunWater has reasonable grounds to believe that the **Meter** is or was not measuring accurately;
- (b) no **Meter** is installed;
- (c) access to the **Meter** was not obtained for any reason; or
- (d) SunWater has reasonable grounds to believe that you have not strictly complied with the requirements of clauses 12.3(a), 12.3(b), 12.3(c) or 12.3(d),

SunWater may make an estimate of the volume of water taken by you over that period to determine your **Consumption Charges**.

Any estimate made by SunWater under this clause may be issued to you as a separate invoice by SunWater.

In making such an estimate, SunWater must consult with you, act reasonably and may have regard to any relevant matter including water ordered by you, your prior water use history, hours pumped, electricity consumed, industry practice or the area under irrigation.

#### **8.7 How your charges are made or amended by SunWater**

Where **Consumption Charges** or **Fixed Charges** are:

- (a) **Regulated Charges**, SunWater shall charge you the **Regulated Charges**; or
- (b) not **Regulated Charges**, SunWater shall charge you the charges as published in the **Customer Details**, as indexed under clause 8.2(e) and reviewed on each **Review Date**.

Where charges are initially **Regulated Charges** and then cease to be, the first **Review Date** will be the date from which such **Consumption Charges** or **Fixed Charges** are not **Regulated Charges**.

During the period commencing 6 months before any **Review Date** and expiring 6 months after any **Review Date**, SunWater may notify you of the amount of the **Consumption Charges** and/or the **Fixed Charges** as and from the relevant **Review Date**. In determining such **Charges**, SunWater shall:

- (a) act reasonably; and
- (b) have regard to the criteria which would be taken into account under any statutory regime for prices oversight from time to time applying in Queensland.

SunWater's determination of such **Charges**, shall be final and binding on you unless it is manifestly unreasonable having regard to the criteria described above.

SunWater may make or amend the **Other Charges** and the **Minimum Charge** (if any), and shall publish particulars of such **Other Charges** and **Minimum Charge** from time to time;

### 8.8 Charges for water you order but do not take

If you do not take water ordered in accordance with clause 11.2(c) and, in SunWater's reasonable opinion, the failure to do so either represents a risk that:

- (a) SunWater is in breach of its obligations under the **Resource Operations Licence** or another instrument made under the **Act**; or
- (b) the rights and interests of other customers within the **Regulated Area** will be adversely affected,

then SunWater may require you to pay the **Consumption Charges** for all water you ordered but did not take including the relevant charge in an invoice issued by SunWater within 3 months of the end of the relevant **Water Year**.

This clause does not limit any other rights of SunWater under this **Agreement** or otherwise against you in relation to any such breach. In particular, SunWater may require you to pay an amount equal to the costs reasonably incurred by SunWater in complying with your order, less the relevant charge for **Consumption Charges**.

### 8.9 Consequences where water ordered beyond Maximum Delivery Volume

Where SunWater forms the opinion referred to in clause 8.8, and the sum of the water you ordered but did not take and the water taken, exceeds the total of your **Customer's Maximum Delivery Volume**, you shall be deemed to be in breach of clause 11.1(a)(iii).

### 8.10 Consequences where another person has diverted water for you

Where:

- (a) another person diverts water on your behalf; and
- (b) in taking the water from that other person, you have taken more water than:
  - (i) you were entitled to take from that person; or
  - (ii) was ordered from that person,

then:

- (c) you will pay the **Consumption Charge**, calculated on the volume of water that would have been diverted to allow the water to be taken or ordered; and
- (d) the Customer will be deemed to be in breach of clause 11.1(a)(iii).

### 8.11 Costs to you of SunWater providing information or approvals

Where information or an approval is to be provided by SunWater under this **Agreement** or by **Law**, you shall pay to SunWater an administration charge for the information or dealing with the approval:

- (a) as set out in the **Regulated Charge**; or
- (b) and if there is no such **Regulated Charge**, the charge published from time to time in accordance with clause 8.7, if any.

### 8.12 GST

The parties agree that:

- (a) if the whole or any part of any **Payment** is the consideration for a **Taxable Supply** for which the payee is liable to **GST**, the payer must pay to the payee an additional amount equal to the **GST Amount**, either concurrently with that **Payment** or as otherwise agreed in writing;

- (b) any reference to a cost or expense in this **Agreement** excludes any amount for **GST** forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an **Input Tax Credit**; and
- (c) the payee will provide to the payer a **Tax Invoice** if clause 8.12(a) applies.

## 9 Regulatory compliance

### 9.1 Statutory framework

You and SunWater agree that, in the performance of this **Agreement**, each party is required to comply with:

- (a) the **Act** and instruments made under it or developed in connection with the **Act** or such instruments;
- (b) the **Water Plan**;
- (c) the **Water Entitlement Notice**;
- (d) the **Resource Operations Licence**;
- (e) the **Water Management Protocol**;
- (f) **Operations Manual**; and
- (g) trading rules set out in the **Resource Operations Licence**.

You must not, by an act or omission cause SunWater to breach any of those documents.

### 9.2 SunWater Rules

SunWater may make and amend the **SunWater Rules** concerning the **Regulated Area**.

The **SunWater Rules** may impose additional obligations on you, or prescribe how SunWater will conduct its activities, for the purposes of:

- (a) implementing SunWater's rights and obligations as the holder of the **Resource Operation Licence**; and
- (b) setting out, clarifying or amending the rights and obligations of SunWater and you under this **Agreement**.

Changes to the **SunWater Rules** must not be inconsistent with the **Resource Operations Licence** and this **Agreement** and must first be the subject of consultation with you or any group representing customers within the **Regulated Area** (if such group exists).

### 9.3 Native Title

If, under any **Law** relating to **Native Title**, the commencement or performance of this **Agreement** is affected by **Native Title** or any requirement under such **Law**, then this **Agreement** and SunWater's obligations under this **Agreement** are subject to any such requirement.

## 10 Your obligations in relation to provision of Security

SunWater incurs significant fixed costs in providing services, such that it requires certainty of payment from each of its customers.

### 10.1 When and how much security you can be required to provide?

- (a) SunWater requires security upfront if so indicated in the 'Service Details' section of Part A.
- (b) In addition, SunWater may require you provide security if:

- (i) you commit a breach nominated in either of clause 6.2(a), 6.2(b), 6.2(c) or 6.2(e) of this **Agreement**, whether SunWater has given a direction or not; or
  - (ii) SunWater is not reasonably satisfied as to your financial capacity to comply with your obligations under this **Agreement**.
- (c) Either:
- (i) if paragraph (a) applies; or
  - (ii) after a request in writing by SunWater under paragraph (b),
- you must promptly provide (and maintain until released in accordance with clause 10.4) a security of an amount nominated by SunWater up to the **Service Charges** invoiced for the previous **Water Year** (or for the first **Water Year**, SunWater's reasonable estimate of the **Service Charges** for that **Water Year**).

## 10.2 What type of security can you provide?

The security you provide must take the form of an on demand guarantee on terms and from a bank reasonably acceptable to SunWater.

## 10.3 What happens if you don't provide security?

Failing to provide security where required under clause 10.1 is a breach of this **Agreement**.

SunWater is not obliged to provide any services under this **Agreement** until:

- (a) the security is provided to SunWater; and
- (b) thereafter, if SunWater uses the security to pay amounts owing by you under this **Agreement**, until you have provided further security so that the total security is for an amount not less than the amount calculated under clause 10.1.

## 10.4 Getting your Security released

Upon the later of termination of this **Agreement** and the payment of all moneys owing by you (whether or not then due or owing contingently or prospectively) SunWater shall release any security provided by you under this **Agreement**. SunWater is not obliged to pay to you any interest accrued in relation to any security provided under this **Agreement**.

## 11 Your obligations in relation to taking water

### 11.1 General obligations in relation to taking water

- (a) **Limits on taking water:** You must not take water:
  - (i) beyond the water you are entitled to take under the **Customer's Allocation** through the **Customer's Nominated Works**;
  - (ii) at a rate higher than the maximum diversion rate under clause 13.2(a), which may be varied temporarily or permanently from time to time by agreement between the parties, provided the variation does not breach a **Law** or have the potential to adversely impact on another person;
  - (iii) that is more than the **Customer's Maximum Delivery Volume**, except as allowed by this **Agreement** or as a **Statutory Right**; and
  - (iv) until approval is granted and, if required, you are registered as the holder of the **Customer's Allocation**.
- (b) **Conditions on taking water:** In taking water, you must comply with:

- (i) the initial approval or any variation of that approval under clause 13.2(a) including the configuration, specifications of and maximum diversion rate from the **Customer's Nominated Works**;
  - (ii) this **Agreement**;
  - (iii) each **State Direction**; and
  - (iv) the **SunWater Rules** (see clause 11.2 below).
- (c) **Position of Customer's Nominated Works:** You must ensure that your **Customer's Nominated Works** are appropriately positioned to take water under this **Agreement**, having regard to storage, bank and stream conditions.

## 11.2 Ordering water in accordance with the SunWater Rules

Where a system for the ordering of water is in place under the **SunWater Rules**, you

- (a) must take water only to the extent you have complied with the ordering system;
- (b) must not take water at a rate or volume greater than the amount ordered;
- (c) must take reasonable measures to take all water that you have ordered, unless;
  - (i) it is unreasonable for you to take the water;
  - (ii) you were unable to take the water due to an **Event of Force Majeure**;
  - (iii) in your reasonable opinion, the water was not of a suitable quality for your usual purpose; or
  - (iv) otherwise provided for under the **SunWater Rules**.

You agree that all water ordered will be accounted for under the water sharing rules administered under the **Resource Operations Licence** such that:

- (d) where the water sharing rules contain capacity sharing arrangements or provide for water accounting at the **SunWater Works**, your water orders will be used to determine water available to you; and
- (e) where water sharing rules do not provide for water accounting at the **SunWater Works**, water meter readings will be used to determine water available to you.

## 12 Your obligations in relation to metering

### 12.1 Meter installation

- (a) A **Meter** acceptable to SunWater must be acquired and installed at your cost, within the **Customer's Nominated Works** or **SunWater Works**.
- (b) You may install the **Meter** yourself, arrange of a third party to install the **Meter** or request SunWater to install the **Meter** in accordance with clause 7 of this **Agreement**.
- (c) Any entity installing a **Meter** shall install the **Meter** correctly in accordance with the approval under clause 13.2(a).
- (d) A **Meter** acquired and installed by SunWater remains the property of SunWater despite any payment by you.
- (e) Any **Meter** installed by you shall, upon installation, become and remain the property of SunWater.

### 12.2 Meter upgrade or replacement

SunWater's has a right to require you to replace or upgrade a **Meter** already installed at your cost where such replacement or upgrading is necessary in the reasonable opinion of SunWater. The

costs of such replacement or upgrade will be payable by you if you have breached clause 12.3(c), or otherwise payable by SunWater.

### 12.3 Your obligations in respect of Meter

- (a) **Meter readings:** When directed by SunWater, or as required by the **SunWater Rules**, you must:
- (i) take readings (including date, time and volume readings) from the **Meter**;
  - (ii) advise SunWater (by telephone or email) of a **Meter** reading within 24 hours of taking the reading;
  - (iii) maintain written records of such **Meter** readings; and
  - (iv) provide copies of such records to SunWater (if requested by SunWater).
- (b) **Access to Meter:** You must ensure that, at all reasonable times, SunWater, and any person nominated or authorised by SunWater, has safe and convenient access to the **Meter** and the **Customer's Nominated Works** (for purposes including reading, testing, repairing and calibrating the **Meter** and assessing compliance with this **Agreement**).
- (c) **No damage or interference with Meter:** You must not:
- (i) damage or by any act or omission permit damage to the **Meter**, or
  - (ii) do or omit to do anything (including failing to maintain the **Customer's Nominated Works**) which may affect:
    - (A) the accuracy of any **Meter** used by SunWater in connection with this **Agreement**;
    - (B) the operation of the **Customer's Nominated Works** or any **Meter** used by SunWater so as to render inaccurate the recording of the volume of water taken; or
    - (C) the capacity of the **Customer's Nominated Works** to take water.
- (d) **Reporting Meter malfunctions or damage:** You must, in becoming aware of any actual or threatened damage to or malfunction in the **Meter**, promptly notify SunWater:
- (i) where the damage or malfunction is serious, verbally as soon as possible and subsequently in writing within seven days; and
  - (ii) where the damage is of a minor nature only, in a manner convenient to the Customer be that either in writing or verbally within seven days.

### 12.4 SunWater obligations to repair Meter

SunWater must promptly repair any damage to or malfunction in the **Meter** which you notify SunWater of, with such repairs to be at your cost if you have breached clauses 12.3(c) or 13.1(a) or otherwise payable by SunWater.

### 12.5 Other assistance you are to provide

You must:

- (a) upon request by SunWater, supply to SunWater any relevant document or information in your possession or control which would assist SunWater in making an estimate under clause 8.6;
- (b) permit SunWater or any person authorised by SunWater to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and



- (c) permit SunWater or any person authorised by SunWater to have access to your land for any purpose reasonably associated with the performance of this **Agreement** or carrying out its responsibilities under the **Resource Operations Licence**.

## 12.6 If you think the Meter is inaccurate

Where you think the **Meter** is not measuring or reading accurately, you may request SunWater to test and calibrate the **Meter**.

The cost of such testing or calibration shall be borne by:

- (a) you, where the **Meter** is operating within the manufacturer's specifications or you have breached clause 12.3(c); or
- (b) otherwise, SunWater.

To the extent that, following such testing or calibration, SunWater reasonably considers that the **Meter** has not been operating within the manufacturer's specification, your charges must be adjusted for the current **Water Year** or the most recently completed **Water Year**, under clause 8.6.

You are also entitled to have the **Meter** tested and calibrated by a certified testing authority, with the prior consent of SunWater (not to be unreasonably withheld).

## 12.7 Removal of Meter on termination

On termination of this **Agreement**, SunWater may remove the **Meter** and seal off any **SunWater Works** at your cost.

## 12.8 SunWater may disclose / receive information

You consent to SunWater making available to:

- (a) the **Regulator**,
- (b) a holder of a **Resource Operations Licence** in the **Regulated Area**;
- (c) any other person as required under any **Law**; and
- (d) with your consent, any person proposing a dealing with the **Customer's Allocation**,

such information and records concerning you, the **Customer's Allocation**, the **Meter** and the volumes of water taken, as is required by **Law** or to which you consent, or which may be required for the proposed dealing (as applicable).

You consent to any electricity supplier to supply to SunWater particulars of electricity consumption by you for the taking of water.

## 13 Your obligations in relation to SunWater's Works and Customer's Nominated Works

### 13.1 SunWater Works

- (a) **No damage:** You must not, by any act or omission, damage, or permit damage to, the **SunWater Works** (including through any failure to maintain the **Customer's Nominated Works**).
- (b) **Notification of damage:** You must, on becoming aware of any actual or threatened damage to, or malfunction in the **SunWater Works**, promptly notify SunWater verbally and subsequently in writing (where the damage or malfunction is serious) or otherwise in a manner convenient to you.

- (c) **Care and attention in activities for the operation of the SunWater Works:** Where you, at SunWater's request, carry out activities or perform services for the operation of the **SunWater Works**, you must carry out such activities and services reasonably and promptly and with proper care and attention.

You will not be liable to SunWater under clauses 13.1(a) or 13.1(c) for an **Event of Force Majeure** or for operating **SunWater's Works** in accordance with SunWater's instructions given in requests made under clause 13.1(c).

### 13.2 Customer's Nominated Works

- (a) **Required approval:** Prior to installing or altering the **Customer's Nominated Works** you must obtain the prior written approval of SunWater to the **Customer's Nominated Works**, including the configuration, specifications of and maximum diversion rates for any pump included in them, which approval may not be unreasonably withheld.
- (b) **Maintenance:** You must maintain the **Customer's Nominated Works**.

SunWater authorises you, and any person nominated or authorised by you, to access the **Customer's Nominated Works** for the purposes of operation, maintenance and **Meter** reading, but at your or such other person's risk.

## 14 Powers granted to SunWater to secure payment

### 14.1 You grant a charge over the Customer's Allocation

You charge to SunWater the **Customer's Allocation** to secure the due and punctual payment of:

- (a) all moneys payable under this **Agreement**;
- (b) all moneys payable under the additional agreements referred to in clause 2.3;
- (c) all debts (including amounts which become a debt due to SunWater under the **Act**) from time to time due by you to SunWater; and
- (d) the **Termination Amount** payable by you under clause 17.3.

To the extent permitted by **Law**, SunWater may apply any payments by you towards payment of such moneys, debts and amounts as SunWater determines in its absolute discretion.

### 14.2 SunWater's power of sale of Customer's Allocation

Where you are in breach of this **Agreement** or if SunWater is entitled to terminate this **Agreement** under clause 17.2, SunWater may, subject to giving notice as required by the **Act**, and SunWater giving you notice of the breach or the existence of SunWater's rights under clause 17.2, sell the **Customer's Allocation**.

### 14.3 Further powers of SunWater

Where SunWater is entitled to sell the **Customer's Allocation**, SunWater may also, amend, transfer, lease, deal with, or enter into an **Additional Contract** in respect of the whole or part of the **Customer's Allocation**.

Where SunWater exercises its power under this clause 14, then SunWater must use reasonable endeavours to ascertain the amount of the **Customer's Allocation** that is required to be dealt with to recover the moneys due to SunWater.

### 14.4 You appoint SunWater as your Attorney

- (a) **Appointment:** For valuable consideration and by way of security you irrevocably appoints the Chief Executive Officer of SunWater as your attorney to:

## River Supply Contract

- (i) do anything which you are obliged to do under or in relation to this **Agreement** but have failed to do so;
- (ii) do anything which you are entitled to do under the **Act** in relation to the **Customer's Allocation**; or
- (iii) amend, transfer sell, lease, deal with or enter into an **Additional Contract** to which you are a party concerning the **Customer's Allocation** and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such amendment, change, sale, lease or **Additional Contract**.

Without limitation, the **Attorney** may at any time:

- (i) do anything which in the opinion of SunWater or **Attorney** is necessary or expedient to secure, preserve, perfect or give effect to the security contained in this **Agreement** and for this purpose without limitation may execute any application, transfer, lease and other assurance of any of the **Customer's Allocation** in favour of any purchaser, assignee, lessee or any nominee; and
- (ii) delegate his powers (including delegation).

Without limitation, any **Dealing** by **Attorney** may be made:

- (i) by public auction, private treaty or tender;
- (ii) for cash or on credit;
- (iii) in one lot or in parcels;
- (iv) either with or without special conditions or stipulations as to title or time or mode of payment of purchase moneys or otherwise;
- (v) with power to allow the whole or any part of the purchase moneys to be deferred with or without any security; and
- (vi) whether or not in conjunction with the sale of any property by any person.

(b) **Pre-requisites for SunWater acting as Attorney:** No **Attorney** may act under this clause 14:

- (i) unless notice required by clause 14.2 has been given; or
- (ii) inconsistently with this **Agreement**.

(c) **Liability of Attorney:** To the extent permitted by **Law**, no **Attorney** will be liable:

- (i) for any conduct or delay in the exercise or non-exercise of any power;
- (ii) for any loss (including consequential loss) which results; or
- (iii) for negligence of the **Attorney**, where the sale has been made after a public process (eg: auction, tender, public notification of sale),

except where the **Liability** arises from the fraud or wilful misconduct of the **Attorney**.

Nothing in this **Agreement** limits your ability to obtain advice or engage another person to act on your behalf.

(d) **Authority of Attorney:** No party to any sale, transfer, or lease or **Additional Contract** and no person asked to register a **Dealing** by **Attorney** is bound to enquire:

- (i) whether you have breached this **Agreement** or whether this **Agreement** has become enforceable;
- (ii) whether a person who is, or purports or is purported to be, an **Attorney** is duly appointed;

- (iii) as to the amount of any moneys and whether such moneys are due and payable;  
or
- (iv) in any other way as to the propriety or regularity of the **Dealing** by **Attorney**.

#### 14.5 How SunWater will apply proceeds from any Dealing

Any amounts received from the **Dealing** by **Attorney** shall be applied in the way required by the **Act** and if there is no requirement, as follows:

- (a) firstly, in paying the costs of the **Dealing** by **Attorney**;
- (b) secondly, in discharging your **Liability** to SunWater for the moneys, debts and amounts charged to SunWater under this **Agreement**;
- (c) thirdly, in discharging your **Liability**, if any, for the **Customer's Allocation**;
- (d) fourthly, in discharging, in accordance with the priorities of their registered interests, any **Liability** owing by you to a person who has a registered interest recorded over the **Customer's Allocation** on the **Water Allocations Register**; and
- (e) fifthly, in payment to you.

### 15 Changes to your Allocation

#### 15.1 When you should give notice to SunWater

If you:

- (a) apply to amend, transfer, lease or deal with the **Customer's Allocation** (being an interim water allocation) in whole or in part;
- (b) apply for a change to the **Customer's Allocation** (being a water allocation) in whole or in part;
- (c) apply for or enter into a contract to acquire, lease or deal with the **Customer's Allocation**;
- (d) enter into an **Additional Contract**,

then you must give written notice of the application or entry to SunWater promptly after the application is made or **Additional Contract** is entered.

#### 15.2 What happens following approval

Where an amendment, transfer, lease, deal with or change of the whole or part of the **Customer's Allocation** you applied which relates to the **Regulated Area** is approved, or another water allocation or **Additional Contract** for the **Regulated Area** is approved, SunWater shall, subject to:

- (a) the payment of all moneys and debts charged to SunWater under this **Agreement**;
- (b) SunWater and the transferee, assignee, you or counterparty to the **Additional Contract** entering into a further supply contract or an amendment to your agreement on terms acceptable to SunWater in its absolute discretion;
- (c) SunWater and you entering into either a further supply contract or an amendment to this **Agreement** on terms acceptable to SunWater in its absolute discretion; and
- (d) where all of the **Customer's Allocation** has been transferred, SunWater and you entering into a release of this **Agreement** on terms acceptable to SunWater in its absolute discretion,

give SunWater's consent and where required give notice of the existence of a supply contract to the **Registrar** when that supply contract is made.

### 15.3 Agreement does not change SunWater's obligations under the Act

Where, under the **Act**, SunWater is to approve the amendment, transfer, lease, dealing with, change or dealing related to the **Additional Contract** referred to in this clause 15:

- (a) you acknowledge that SunWater is obliged to carry out its responsibility under the **Act** in accordance with the terms of the **Act** and any other **Law** binding on it without regard to this **Agreement**; and
- (b) SunWater's statutory responsibility is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

### 15.4 Applying for a temporary transfer of water

You may apply to reduce or increase your **Customer's Maximum Delivery Volume** for a period within a single **Water Year**.

Where you apply for such a change it will be dealt with as a variation to this **Agreement**, which will be implemented to the extent terms are agreed by you and SunWater (in each party's absolute discretion).

## 16 What to do if you are unhappy with the service provided by SunWater or have a dispute

### 16.1 Customer Complaints

**SunWater** places a high value on customer feedback with a view to improving our performance to increase customer satisfaction. **SunWater** recognise that there may be times when we do not get it right, when this happens we want to learn and understand so we can improve. If you are unhappy with our service, **SunWater** has provided under this **Agreement**, we welcome the opportunity to put things right, you can contact us on 13 15 89 or make contact with your local water officer. When you let us know about your complaint, we will try to resolve it straight away. If it is complex, or involves other parties we may need longer.

### 16.2 Commencing a formal dispute

If a dispute arises under this **Agreement** (apart from a dispute in relation to **Charges** set under clauses 8.2(e) or 8.7(b), or a dispute which arises either prior to the exercise of rights of termination in clause 17 of the **Terms** of the **Agreement**, or in relation to such rights of termination), any party may give written notice to the party with whom the dispute exists. The notice shall designate a representative with the appropriate authority to negotiate the dispute.

### 16.3 Appointment of representative

Within 5 **Business Days** of receipt of the notice referred to in clause 16.2, the recipient shall designate a representative with similar authority.

### 16.4 Discussions

The representatives shall promptly discuss the dispute, following whatever investigation each considers appropriate.

### 16.5 Negotiation of procedures

If the dispute is not resolved as a result of the discussions within 15 **Business Days** of the notice referred to in clause 16.2 being given, either party may request the commencement of negotiations in good faith on a dispute resolution procedure, other than litigation or arbitration.

## 16.6 Methods of resolution

A party receiving a request under clause 16.5 shall promptly discuss the following and other related subjects with the party making the request:

- (a) the mode of proceeding, whether by negotiation, mediation, conciliation, expert appraisal, expert determination or mini-trial;
- (b) the responsibility for payment of the costs of the mode agreed under clause 16.6(a);
- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) procedural rules and a timetable for the conduct of the selected mode of proceeding; and
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

## 16.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement under this clause 16 is to attempt to settle a dispute between the parties.

## 16.8 Termination

Any party may terminate the dispute resolution procedure provided by this clause 16 at any time and pursue other available remedies.

## 17 Termination Events

### 17.1 Termination before the Approval Date

You have a right to terminate this **Agreement** by written notice to SunWater if, before the **Approval Date**, approval under the **Act** has not been obtained for either:

- (a) the transfer of the **Customer's Allocation** to you; or
- (b) any change to the **Customer's Allocation** referred to in clause 11.1(a)(iv).

SunWater has a right to terminate this **Agreement** by written notice to you if SunWater is a party to a supply contract or otherwise obliged to supply water to the **Current Holder** and SunWater has not, by the **Approval Date**, entered an agreement for release with the **Current Holder**.

If this **Agreement** is terminated by either party under this clause 17.1, neither party shall have any further obligations to the other, except if you have breached clauses 2.2 or 11, in which case you shall be liable to SunWater for all **Liability** incurred or suffered by SunWater in carrying out its obligations under this **Agreement** or as a consequence of that breach.

### 17.2 Other circumstances in which this Agreement may terminate

This **Agreement** may terminate in the following circumstances:

- (a) **Bankruptcy or insolvency:** SunWater may terminate this **Agreement** immediately by giving notice to you of its intention to terminate where you are bankrupt (where you are a natural person) or **Insolvent** (where you are a corporation).
- (b) **Breach:** SunWater may terminate this **Agreement** by giving notice to you of its intention to terminate where you breach a provision of this **Agreement** and have not remedied that breach within a reasonable period, having regard to the nature of the breach, after service of notice of the breach from SunWater of its intention to terminate.

- (c) **Ceasing to hold the Customer's Allocation:** If, on any **Review Date**, you do not hold the **Customer's Allocation**, SunWater may terminate this **Agreement** immediately by giving you notice.
- (d) **Termination of Additional Contract:** Where you hold an **Additional Contract**, that part of this **Agreement** for the supply of water available under the **Additional Contract** will terminate on the relevant Termination Date for the **Additional Contract** specified in the **Customer Details**.
- (e) **Damage to water infrastructure:** This **Agreement** shall terminate where, in SunWater's reasonable opinion, SunWater is no longer able to control the level of water in or the rate of release from the relevant water infrastructure because the **SunWater Works** or water infrastructure of the holder of another **Resource Operations Licence** are substantially destroyed or damaged. As soon as is reasonably practicable after SunWater has formed that opinion, SunWater shall notify you and this **Agreement** shall terminate from the date stated in the notice to you.

### 17.3 Termination Amount

- (a) Where this **Agreement** is terminated as a consequence of your breach, you are liable to pay to SunWater the **Termination Amount** (without limiting any other rights of SunWater under this **Agreement** or otherwise against you in relation to any such breach).
- (b) You acknowledge that the **Termination Amount** is intended to represent a reasonable assessment of the loss of future profit, increased average operating costs, proportionate share of ongoing fixed costs and decommissioning costs likely to be incurred by SunWater for the **SunWater Works** having regard to the quantities of water supplied and the persons supplied from the **SunWater Works**.
- (c) SunWater has the right to undertake a formal assessment of the **Termination Amount**, at your cost.

## 18 Liability

### 18.1 Limits on SunWater's Liability to you

To the extent permitted by **Law**, SunWater shall is not liable to you under or in connection with this **Agreement** for any **Liability** incurred or suffered by you or by anyone claiming through you for any error in the data, assumptions or methodology for a standard, plan or licence issued by a **Regulator** or complying with a **State Direction**.

That limitation does not limit action which you make take against SunWater under the **Act** or for any wilfully negligent acts of SunWater.

### 18.2 Matters which you release SunWater for

You release SunWater from all **Liability** which you may have or claim to have or but for this release might have had against SunWater connected with:

- (a) death or personal injury, damage to the **Customer's Nominated Works**, other property, livestock, crops or assets as a consequence of any action by SunWater other than actions that would constitute a breach of this **Agreement** or negligence by SunWater, including for example, the storing or releasing of water where such action is necessary for SunWater to comply with the requirements of any **Law** binding on it;
- (b) alterations to storage levels or stream and bank conditions however caused including, for example, as a consequence of releases of water by SunWater causing the movement of

water weeds to clog pumps, the washing away of pumping pools, slumping of riverbanks, and the impact of sudden losses or fluctuations of flow; or

- (c) the circumstances in which you bear the risk as stated in clause 5.4.

You indemnify SunWater against any **Liability** incurred or suffered by or brought or made or recovered against SunWater arising out of the circumstances for which you release SunWater under this clause 18.2.

## 19 Warranties – what you promise

You warrant and promise to SunWater that, where Item 2 in the **Customer Details** has been completed or is applicable, that:

- (a) you have entered a contract for the acquisition or lease of the **Customer's Allocation**;
- (b) true particulars of which contract are stated in the **Customer Details**;
- (c) such contract is and will remain in full force and effect;
- (d) you will take such actions as are reasonably necessary and within your power or control, including but not limited to procuring the detailed information, calculations and studies referred to in 19(e) to ensure that approval as required under the **Act** to:
- (i) the transfer or lease of the **Customer's Allocation** to you; and
- (ii) any change necessary to the **Customer's Allocation** necessary to give effect to this **Agreement**,

is approved and registered promptly; and

- (e) that you are aware that to secure the approvals referred to in clause 19(d), where the same are not provided for under a resource operations plan, that detailed information, calculations and studies, including hydrological studies may be required by the chief executive in deciding whether or not to grant the approvals referred to in clause 19(d).

## 20 Assignment and Subcontracting

### 20.1 Assignment by SunWater

SunWater may assign its rights and obligations under this **Agreement** (so that that person provides the services to you) to any person provided such person:

- (a) is or becomes the holder of the **Resource Operations Licence** or a new licence issued in lieu; and
- (b) such person enters into a covenant in favour of you to be bound by the provisions of this **Agreement**.

### 20.2 SunWater may Subcontract

SunWater may subcontract the performance of any of its obligations under this **Agreement**, but any subcontracting does not release SunWater from **Liability** to you for performance of that obligation.

## 21 How to give and receive notices

A number of provisions of this **Agreement** anticipate you giving notices to SunWater or receiving notices from SunWater.

Any notice given under this **Agreement** by you or SunWater:

- (a) must be in writing addressed to the intended recipient:



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- (i) for notices to SunWater, either:
  - (A) at the address of its office, nominated in the **SunWater Rules** or if not nominated, closest to the **Water Supply Scheme**; or
  - (B) by electronic mail, to [customersupport@sunwater.com.au](mailto:customersupport@sunwater.com.au) (or any other electronic mail address notified to you by SunWater from time to time), marked 'Contractual Notice';
- (ii) for notices to you,
  - (A) for an invoice under clause 8 at the Address for Invoices in the **Customer Details**;
  - (B) for any other notice, either:
    - (1) to the email address in the **Customer Details**;
    - (2) at the Address for Notices in the **Customer Details**;
    - (3) at the address last known to SunWater; or
    - (4) where you are the holder of the **Customer's Allocation**, at the address shown in the register that records the details of the **Customer's Allocation**.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by you, will be taken to have been given when delivered, received or left at the above address;
- (d) in the case of a notice given by SunWater by mail:
  - (i) in the case of delivery by express post, 2 **Business Days** after the date of posting to you; and
  - (ii) in the case of delivery by any other method of post, the delivery timeframe for letters in the ordinary course of post published by Australia Post from time to time, after the date of posting to you;
- (e) in the case of a notice forwarded by email, at the earliest of:
  - (i) the time that the sender receives an automated message from your information system confirming delivery of the email;
  - (ii) the time that the recipient confirms receipt of the email by reply email; and
  - (iii) 3 hours after the time the email is sent (as recorded on the device from which SunWater sent the email) unless the recipient receives, within that 3 hour period, an automated message that the email has not been delivered; and
- (f) will be taken to have been given, if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

## 22 General provisions

- (a) **Entire agreement:** This **Agreement** contains the entire agreement of the parties concerning its subject matter and supersedes all earlier agreements. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties concerning its subject matter.

- (b) **Amendment:** This **Agreement** may only be amended by another agreement executed by all parties or as reasonably as reasonably required by SunWater, after consultation, where there has been a change in any **Law**, the **Resource Operations Licence**, or any other instrument made under the **Act**.
- (c) **No waiver:** No failure to exercise and no delay in exercising any right, power or remedy under this **Agreement** will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (d) **Duty and costs:** Each party bears its own costs arising out of the preparation of this **Agreement** but you will bear any duty (including fines and penalties) chargeable on this **Agreement**, on any instruments executed under this **Agreement**, and for a transaction evidenced by this **Agreement** and indemnify SunWater for the amount of such duty and associated costs.
- (e) **Further assurances:** Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to any provisions of this **Agreement**.
- (f) **Governing law:** This **Agreement** is governed by the **Laws** of Queensland. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

## 23 Definitions and Interpretation

### 23.1 Definitions

The following definitions apply unless the context requires otherwise.

**Act** means the *Water Act 2000* (Qld).

**Additional Contract** means an agreement, other than this **Agreement** that enables or will enable the Customer to access a volume of water from the **Regulated Area**.

**Agreement** means this agreement.

**Approval Date** means the date which is 6 months from the date of this **Agreement** (or such later date nominated by SunWater to you by notice in writing).

**Billing Interval** means the billing interval referred to in the **Customer Details**.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Brisbane.

**Charges** means **Service Charges** and **Other Charges**.

**Commencement Date** means the date of this **Agreement**.

**Consumption Charges** means the Charge described by reference to the volume of water taken being either:

- (a) the Regulated Charge for the Customer's Allocation, if applicable; or
- (b) where there is no applicable **Regulated Charge**, the Consumption Charge described as such in the **Customer Details** as varied under clauses 8.2(e) or 8.7(b).

**Current Holder** means the person who is, at the date of this **Agreement**, the holder of the **Customer's Allocation**.

**Customer** means the person identified in the **Customer Details**.

**Customer's Allocation** means:

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- (a) for the purposes of the definitions of 'Customer's Maximum Delivery Volume', 'Fixed Charges', 'Resource Operations Licence', 'RCS', 'Statutory Right' and 'Termination Amount' in this clause 23:
  - (i) where you hold the Customer's Allocation described in Part A, that Customer's Allocation; and
  - (ii) otherwise (including if no Customer's Allocation is described in Part A) each water allocation or interim water allocation from which you have received a seasonal water assignment from time to time or upon which your **Statutory Right** is based; and
- (b) for all other purposes:
  - (i) where you hold the Customer's Allocation described in Part A, that Customer's Allocation; and
  - (ii) otherwise (including if no Customer's Allocation is described in Part A), your **Statutory Right** in the Customer's Allocation described in Part A.

**Customer's Approvals** means each approval required under a law (including any development permit required to be held by the Customer under the *Planning Act 2016* (Qld)) for the **Customer's Nominated Works**.

**Customer Details** means the section of Part A described as such.

**Customer's Maximum Delivery Volume** means the actual volume of water to which the Customer is entitled to, at a specific time, for the **Customer's Allocation**, under the **Water Plan**, the **Resource Operations Licence** and the **Act**.

**Customer's Nominated Works** means the works used or nominated by the Customer for taking water as may be varied during the term of this **Agreement** under clause 13.2(a).

**Dealing by Attorney** includes the **Customer's Allocation**, any amendment, change, lease, sale or **Additional Contract**.

**Event of Force Majeure** means any event or circumstance or combination of events or circumstances which is beyond the reasonable control of the party concerned, including without limiting the generality of the foregoing:

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any compulsory access regime) or failure to obtain any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;
- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);

- (g) existence of **Native Title**, or any claim for **Native Title** affecting any part of the land across, under or upon which either the **SunWater Works** or the **Customer's Nominated Works** are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the **SunWater Works**, the **Meter** or the **Customer's Nominated Works** caused by any of the events set out above.

**Fixed Charges** means either:

- (a) the **Regulated Charge** for the **Customer's Allocation** if applicable; or
- (b) where there is no applicable **Regulated Charge**, the **Fixed Charges** described as such in the **Customer Details** as varied under clauses 8.2(e) or 8.7(b).

**GST** means the goods and services tax as imposed by the **GST Law**.

**GST Amount** means any **Payment** (or the relevant part of that **Payment**) multiplied by the appropriate rate of **GST** (currently 10%) together with any related interest, penalties, fines or other charge.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Index Number** means the Consumer Price Index - All groups for Brisbane, published from time to time by the Australian Bureau of Statistics or where suspended or discontinued a comparable index nominated by the President of the Queensland Law Society.

**Input Tax Credit** has the meaning given to that term by the **GST Law**.

**Insolvent** means with regard to bodies corporate, that one or more of the following events have occurred:

- (a) an application being presented to wind up the body corporate;
- (b) a meeting of members or creditors of the person being called to consider a resolution to wind up the body corporate;
- (c) a scheme of arrangement or a composition being entered into with its creditors, unless such application is dismissed within twenty-one (21) days of its presentation or unless such scheme of arrangement or composition is for the purposes only of a corporate reconstruction in circumstances where the body corporate remains solvent;
- (d) a liquidator being appointed in respect of the body corporate;
- (e) a receiver, receiver and manager or an administrator being appointed over some or all of the assets of the body corporate and such appointment not being revoked within twenty-one (21) days; or
- (f) the body corporate resolves to wind itself up, makes any statement that it is unable to pay its debts when due, takes any action to obtain protection or is granted protection from its creditors under any applicable legislation.

**Law** means:

- (a) the principles of law or equity established by decisions of Australian courts;
- (b) any legislation, statutes, acts, rules, orders, regulations, by-laws, local laws, policies or ordinances which are enacted, issued or promulgated by the State, a Minister, a corporation or authority constituted for a public purpose or a local authority; and
- (c) requirements made or arising under or under any of the matters referred to in paragraphs (a) or (b) above.

**Liability** means a claim, action, proceeding, judgment, damage, loss, expense or liability.

**Meter** means a meter to measure the volume of water taken at the **Customer's Nominated Works** and which includes any valve and associated item nominated by SunWater.

**Minimum Charge** means a minimum charge calculated for customers in accordance with the methodology, if any, published in the **SunWater Rules**.

**ML** means megalitre.

**Native Title** has the same meaning as used in the *Native Title Act 1993* (Cth).

**Net Present Value Rate** means rate equal to the Bank Bill Swap Rate (180 Day) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by SunWater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

**Operations Manual** means the operations manual prepared under the **Act** relating to the Resource Operations Licence.

**Other Charges** means the **Regulated Charge** described as a charge for the **Related Services** applicable to the **Regulated Area** and if there is no **Regulated Charge** the charge made by SunWater under clause 8.7.

**Overdue Rate** means a rate of interest equal to the Suncorp-Metway variable business lending rate applicable from time to time plus two percent (2%) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by SunWater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

**Payment** means any amount payable under or in connection with this **Agreement** including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

**RCS** means a registration confirmation statement in respect of the **Customer's Allocation** as issued by the Queensland Department of Natural Resources and Mines.

**Registrar** means the registrar under the **Act**.

**Regulated Area** means the area to which the **Resource Operations Licence** relates.

**Regulated Charge** means a charge payable to SunWater for any service to be provided under this **Agreement** as set as a rate or charge, or required to be charged to you by SunWater, under any **Law**.

**Regulator** means the regulator or chief executive under the **Act**.

**Related Services** means the services identified in clause 7 and any services, which SunWater indicates, in the **SunWater Rules**, that it will provide.

**Resource Operations Licence** means:

- (a) the resource operations licence; or
- (b) the interim resource operations licence, under the **Act** held by SunWater and which relates to the **Customer's Allocation** (as recorded in the **RCS** for the relevant **Customer's Allocation**).

**Review Date** has the meaning given in clause 3.1.

**Service Charges** means the greater of:

- (a) the **Minimum Charge** (if any); or
- (b) the total in a **Water Year** of:
  - (i) the **Fixed Charges**; and
  - (ii) the **Consumption Charges**.

**Services** means **Water Supply Services** and **Related Services**.

**State Direction** means the requirements of any notice published or any regulation made under the **Act** or any present or future requirement, instruction, direction or order made under any **Law** which is binding on or which would customarily be observed by a reasonable and prudent holder of the **Resource Operations Licence** and/or owner/operator of the **SunWater Works** and any modification, extension or replacement thereof from time to time in force.

**Statutory Right** means a right to take water (other than the **Customer's Allocation**) under the **Act**, for example, a water permit issued by the **Regulator**.

**SunWater** means the corporation established as a body corporate under the *Government Owned Corporations Regulation 2014* (Qld).

**SunWater Rules** means the rules and guidelines made and amended from time to time under clause 9.2.

**SunWater Works** means the water infrastructure described in the **Resource Operations Licence**.

**Supply Water Losses** means the water lost after release from the **SunWater Works** or otherwise rendered unavailable to be taken, diverted or used by you as a result of:

- (a) evaporation or other natural losses;
- (b) seepage;
- (c) contamination (from whatever cause);
- (d) theft or any unlawful taking;
- (e) the taking by other customers within the **Regulated Area** of an amount of water greater than that customer is entitled to;
- (f) where a system for the ordering of water is in place under the **SunWater Rules**, and a customer has:
  - (i) taken more water than has been ordered by the customer; or
  - (ii) has not taken all of the water that has been ordered by the customer; or
- (g) breaches of the **Water Plan**, the **Water Entitlement Notice**, the **SunWater Rules** or any other instrument made under the **Act** by other persons.

**Tax Invoice** has the meaning given to that term by the **GST Law**.

**Taxable Supply** has the meaning given to that term by the **GST Law**.

**Term** means a term of the **Agreement**, but not that of a Schedule.

**Termination Amount** means the amount which represents the value as at the date of termination using a discount figure equivalent to the **Net Present Value Rate** of the **Fixed Charges** and the **Consumption Charges** which would have been payable under this **Agreement** on the assumption that in each **Water Year** you took the whole of the **Customer's Allocation**:

- (a) where you have an interest in the **Customer's Allocation** for the period of 10 years after the date of termination; and

(b) where you have an **Additional Contract** with SunWater for the lesser of the period of 10 years after the date of termination and the unexpired period of the **Additional Contract**.  
**Water Allocations Register** means the register of water allocations maintained pursuant to the **Act**.

**Water Entitlement Notice** means the water entitlement notice, if any, from time to time under the **Act**, that applies to the **Regulated Area**.

**Water Management Protocol** means the water management protocol, from time to time under the **Act**, which gives effect to the **Water Plan**.

**Water Plan** means the water resources plan or resource operations plan, if any, from time to time under the **Act**, that applies to the **Regulated Area**.

**Water Supply Services** means the services described in clause 5.

**Water Year** means the year described as the water year in the **Resource Operations Licence** and if none is so described the year from time to time nominated by SunWater.

## 23.2 Interpretation

Where any details are to be included in the Customer's Schedule then, if not so included, the relevant details shall be deemed to be those appearing for you in the register that records the details of the **Customer's Allocation**.

In interpreting this **Agreement**, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) where any expression is defined in this **Agreement**, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) clause headings are inserted for convenience only and shall not affect the interpretation of this **Agreement**;
- (e) references to "dollars" and "\$" are references to Australian dollars;
- (f) references to time are references to time in the location of the **Regulated Area**;
- (g) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it and includes any subordinate legislation issued under that legislation or as it may be modified, re-enacted or substituted;
- (h) a reference to a governmental authority includes any successor authority;
- (i) a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of this **Agreement**;
- (j) a reference to any agreement (including this **Agreement**) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (k) a term used in the **Act** has the same meaning when used in this **Agreement**;
- (l) a reference to **conduct** includes any omission and any representation, statement or undertaking, whether or not in writing; and
- (m) where the Customer comprises two or more persons the **Liability** under this **Agreement** shall be joint and several.

**Part C – Special Conditions**

***[Note to SunWater: Insert Special Conditions if a Deed of Guarantee is required]***