



Dealing Number

# OFFICE USE ONLY

## Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

<b>1. Lessor</b> Burnett Water Pty Ltd ACN 097 206 614	<b>Lodger</b> (Name, address, E-mail & phone number) Burnett Water Pty Ltd ACN 097 206 614 PO Box 15536 CITY EAST BRISBANE 4002	<b>Lodger Code</b> 2235
---	--	----------------------------

<b>2. Lot on Plan Description</b> Water Allocation .....on Crown Plan AP 6975	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
---	---------------	---------------	------------------------

<b>3. Lessee</b> Given names	Surname/Company name and number	(include tenancy if more than one)
------------------------------	---------------------------------	------------------------------------

**4. Interest being leased**  
Water Allocation

**5. Description of premises being leased**

<b>6. Term of Lease</b> Commencement date/event:    /    / Expiry date: 30/06/2016 and/or Event: #Options: pages 27-29 #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	<b>7. Rental/Consideration</b> See Schedule
---	--

**8. Grant/Execution**  
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- the attached schedule.

\* delete if not applicable

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

.....signature  
 .....full name  
 .....qualification

Signed on behalf of Burnett Water Pty Ltd ACN 097 206 614 by the Chief Executive Officer/Company Secretary of SunWater Limited ACN 131 034 985 under Registered Power of Attorney No. 711775942 who warrants that the Power of Attorney is valid and has not been revoked:

<b>Witnessing Officer</b> (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)	/ / <b>Execution Date</b>	.. <b>Lessor's Signature</b>
---	------------------------------	---------------------------------

**9. Acceptance**  
The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

.....Signature  
 .....full name  
 .....qualification

/ / <b>Execution Date</b>	] .. <b>Lessee's Signature</b>
------------------------------	-----------------------------------

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Title Reference [Title Reference]

**INDEX**

<b>PARTICULARS SCHEDULE</b>	<b>6</b>
<b>1. CONSTRUCTION</b>	<b>7</b>
1.1. Definition	7
1.2. General Interpretation	11
<b>2. SUNWATER</b>	<b>12</b>
<b>3. NATURE AND EXTENT OF LEASE INTEREST</b>	<b>12</b>
3.1. Grant of rights about a volume of water	12
3.2. No diminution of Lessor's Water Allocation rights	12
3.3. Acknowledgement and release by Lessee about certain matters	12
3.4. Indemnity by Lessee	13
<b>4. TERM, COMMENCEMENT DATE AND OPTIONS TO RENEW</b>	<b>13</b>
4.1. Term of the Lease	13
<b>5. DEPOSIT AND RENT</b>	<b>13</b>
5.1. Deposit	13
5.2. Rent	13
5.3. CPI Reviews	13
5.4. Payment of Rent is an unconditional obligation	14
5.5. Duty and Costs	14
5.6. Method of Payment	14
5.7. Allocation of Payments	15
<b>6. USE OF WATER</b>	<b>15</b>
6.1. Overall Statutory Framework for Lease	15
6.2. Use for Permitted Use Only	15
6.3. No warranty as to suitability or availability	15
6.4. No Warranty by Lessor	16
6.5. Lessee to Test	16
6.6. Lessee to Indemnify	16
6.7. Compliance with laws and requirements	16
6.8. Lessor's rights if Lessee fails to comply	17

Title Reference [Title Reference]

<b>7. ASSIGNMENT</b>	<b>17</b>
7.1. No disposal of Lessee's interest	17
7.2. Change in corporate ownership	19
7.3. Lessee acknowledgment about Assignment Approvals	19
7.4. Mortgaging Lessee's interest in Leased Water Allocation	19
7.5. Caveat	20
7.6. Assignment by the Lessor	20
<b>8. CROSS DEFAULTS</b>	<b>20</b>
<b>9. EXCLUSION OF LESSOR'S LIABILITY</b>	<b>20</b>
9.1. Risk and Release of Lessee	20
9.2. Exclusion of implied covenants	21
9.3. Disclosure of information and disclaimers	21
9.4. Extent of Liability for Losses	21
9.5. Indemnity	21
<b>10. DEFAULT AND TERMINATION</b>	<b>22</b>
10.1. Events of Default	22
10.2. Termination of Lease	23
10.3. Damages for breach of essential conditions	23
10.4. Lessor may rectify	23
10.5. Benefit of Lessee's obligations	23
<b>11. POWER OF ATTORNEY</b>	<b>23</b>
11.1. Persons appointed as Lessee's attorney	23
11.2. Lessee ratifies and confirms	24
11.3. Unpaid costs	24
<b>12. TRUSTEE PROVISIONS</b>	<b>24</b>
12.1. Application of this clause	24
12.2. Capacity of Lessee	24
12.3. Warranty by Lessee	25
<b>13. NON-AVAILABILITY</b>	<b>25</b>
13.1. Suspension or Restriction of Breach	25
13.2. If Lessee does not comply with direction	25
<b>14. DISPUTE RESOLUTION</b>	<b>25</b>
14.1. Activation	25

**Title Reference [Title Reference]**

<b>14.2. Appointment of representative</b>	<b>25</b>
<b>14.3. Discussions</b>	<b>25</b>
<b>14.4. Negotiation of procedures</b>	<b>26</b>
<b>14.5. Methods of resolution</b>	<b>26</b>
<b>14.6. Exchange of information</b>	<b>26</b>
<b>14.7. Termination</b>	<b>26</b>
<b>15. NATIVE TITLE</b>	<b>26</b>
<b>15.1. Existence of Native Title</b>	<b>26</b>
<b>16. GST</b>	<b>26</b>
<b>17. FIRST OPTION TO RENEW</b>	<b>27</b>
<b>17.1. Right to renew</b>	<b>27</b>
<b>17.2. Terms and Conditions of renewed Lease</b>	<b>27</b>
<b>17.3. Rent</b>	<b>27</b>
<b>18. SECOND OPTION TO RENEW</b>	<b>27</b>
<b>18.1. Right to renew</b>	<b>27</b>
<b>18.2. Terms and Conditions of renewed Lease</b>	<b>27</b>
<b>18.3. Rent</b>	<b>28</b>
<b>19. THIRD OPTION TO RENEW</b>	<b>28</b>
<b>19.1. Right to renew</b>	<b>28</b>
<b>19.2. Terms and Conditions of renewed lease</b>	<b>28</b>
<b>19.3. Rent</b>	<b>28</b>
<b>20. FOURTH OPTION TO RENEW</b>	<b>28</b>
<b>20.1. Right to renew</b>	<b>28</b>
<b>20.2. Terms and Conditions of renewed lease</b>	<b>29</b>
<b>20.3. Rent</b>	<b>29</b>
<b>21. MISCELLANEOUS</b>	<b>29</b>
<b>21.1. Obligations for the Benefit of Third Parties</b>	<b>29</b>
<b>21.2. Notices</b>	<b>29</b>
<b>21.3. Amendment</b>	<b>30</b>
<b>21.4. No Waiver</b>	<b>30</b>
<b>21.5. Further Assurances</b>	<b>30</b>
<b>21.6. Effect of void provision</b>	<b>30</b>
<b>21.7. Governing law</b>	<b>30</b>

**Title Reference [Title Reference]**

<b>21.8. Business days</b>	<b>30</b>
<b>21.9. Lessor's obligations</b>	<b>30</b>
<b>21.10. Lessee's obligations</b>	<b>30</b>
<b>21.11. All signatories bound</b>	<b>31</b>
<b>21.12. Warranty of authority</b>	<b>31</b>
<b>21.13. No limitation by other words</b>	<b>31</b>
<b>21.14. Whole agreement</b>	<b>31</b>
<b>21.15. Consent of the Lessor</b>	<b>31</b>
<b>21.16. Separate suits</b>	<b>31</b>
<b>21.17. Earlier breaches</b>	<b>31</b>
<b>21.18. Authority to date and complete</b>	<b>31</b>
<b>21.19. Partnership, agency and joint venture negatived</b>	<b>32</b>
<b>21.20. Time of the essence</b>	<b>32</b>
<b>22. GUARANTEE AND INDEMNITY</b>	<b>32</b>
<b>22.1. Guarantee</b>	<b>32</b>
<b>22.2. Payment</b>	<b>33</b>
<b>22.3. Liability unaffected by other events</b>	<b>33</b>
<b>22.4. Principal and independent obligation</b>	<b>33</b>
<b>22.5. No marshalling</b>	<b>34</b>
<b>22.6. No competition</b>	<b>34</b>
<b>22.7. Suspense account</b>	<b>34</b>
<b>22.8. Rescission of payment</b>	<b>34</b>
<b>22.9. Continuing guarantee</b>	<b>34</b>
<b>22.10. Increase in Charges</b>	<b>35</b>
<b>22.11. Indemnity</b>	<b>35</b>
<b>22.12. Waivers, Remedies Cumulative</b>	<b>35</b>
<b>22.13. Severance</b>	<b>35</b>
<b>22.14. Moratorium Legislation</b>	<b>35</b>
<b>22.15. Costs and Expenses</b>	<b>35</b>
<b>22.16. Further Assurance</b>	<b>36</b>
<b>22.17. Assignment</b>	<b>36</b>
<b>22.18. Notices</b>	<b>36</b>
<b>22.19. Acknowledgment by Guarantors</b>	<b>36</b>
<b>22.20. Governing Law and Jurisdiction</b>	<b>36</b>
<b>22.21. Counterparts</b>	<b>37</b>
<b>22.22. Deed Binding on Signatories</b>	<b>37</b>

Title Reference [Title Reference]

**PARTICULARS SCHEDULE**

Item A	Rent	.....
Item B	Deposit	.....
Item C	Deposit Holder	SunWater
Item D	Resource Operations Plan	Burnett Basin Resource Operations Plan
Item E	Resource Operations Licence	Upper Burnett Water Supply Scheme Resource Operations Licence or Bundaberg Water Supply Scheme Resource Operations Licence
Item F	Permitted Purpose	Any
Item G	Nominal Volume	.....ML
Item H	Lessor's address for notices	SunWater – Customer Support PO Box 15536 CITY EAST BRISBANE 4002
Item I	Lessee's address for invoices	..... ..... .....
Item J	Lessee's address for other notices	..... ..... ..... Facsimile:.....
Item K	Guarantor (s) and address	..... ..... ..... Facsimile:.....

Title Reference [Title Reference]

1. CONSTRUCTION

1.1. Definition

The following definitions apply to this Lease unless the context requires otherwise:

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

**Associated Documents** means:

- a) any advertising brochures issued by the Lessor or SunWater; and
- b) any other information provided in writing by the Lessor or SunWater to the Lessee.

**Authorisation** means any licence, permit, consent, approval, determination or permission required from any Authority or any other whether required under any Law.

**Authority** means any court, or any state or federal government, local government, statutory or public authority, instrumentality or body or any other person having jurisdiction over the Leased Water Allocation or anything for the Leased Water Allocation.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Brisbane or Bundaberg.

**Claim** means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of any monetary obligation.

**Commencement Date** means the commencement date of the Term being the date specified in Item 6 of the Form 7 and as provided for in clause 4.1(b).

**Date of this Lease** means the date that the Lessor executes this Lease.

**Deposit** means the deposit specified in Item B of the Particulars Schedule being 10 percent of the Rent.

**Deposit Holder** means the deposit holder referred to in Item C of the Reference Schedule.

**End of the Term** means the end of the Term whether arising through termination of this Lease or through effluxion of time or otherwise.

**Event of Force Majeure** means:

- a) any:
  - i) Supply Water Losses;
  - ii) exercise of a Statutory Right;
  - iii) action taken under a State Direction;
  - iv) destruction of or damage to the assets of the holder of the Resource Operations Licence, the Works or the Lessee's Nominated Works; and
- b) an 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:
  - i) drought, fire, lightening, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;

Title Reference [Title Reference]

- ii riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockade or revolution;
- iii strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- iv 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 acknowledgement;
- v 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);
- vi non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- vii existence of Native Titles or any Native Titles affecting the Leased Water Allocation or any part of the land across, under or upon which either the Works or the Lessee's Nominated Works are constructed; or
- viii the prevention of access to repair damage to or malfunction of the Works caused by any of the events set out above.

**Expiry Date** means the expiry date of the Term being the date specified in Item 6 of the Form 7.

**First Option Period** has the meaning given to it in clause 17.

**First Renewal Option** has the meaning given to it in clause 17.

**Fourth Option Period** has the meaning given to it in clause 20.

**Fourth Renewal Option** has the meaning given to it in clause 20.

**Government Directive** means a directive, notice or request of any kind and in any form issued by any Authority to any person.

**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*, 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.

**Guarantor** means each person (if any) named as such in Item K of the Particulars Schedule and includes any:

- a assignee (permitted in writing by the Lessor) or successor of any corporate guarantor; and
- b assignee (permitted in writing by the Lessor) or executor or administrator of any individual who is a guarantor.

**Index Number** means:

- a the Consumer Price Index All Groups number for Brisbane, published from time to time by the Australian Bureau of Statistics; or
- b if the Consumer Price Index All Groups number for Brisbane is suspended or discontinued, an index nominated by the Lessor which reasonably reflects fluctuations of the cost of living in Brisbane.



Title Reference [Title Reference]

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

**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, the Chief Executive under the Act, 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.

**Lease** means this schedule and associated Form 7.

**Leased Water Allocation** means the water allocation the subject of this Lease as described at Item 2 of the Form 7.

**Lessee's Nominated Works** means the works used or nominated by the Lessee for taking water under any water supply agreement between the Lessee and SunWater.

**Lessor** and **Lessee** includes their respective successors, executors, administrators and assigns.

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

**ML** means megalitre.

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

**Nominal Volume** means, in respect of the Leased Water Allocation, the number used to calculate the allocation's share of the water available to be taken by the holder of the Leased Water Allocation as stated in Item G of the Particulars Schedule.

**Officer** means, for a party to this lease, any director, alternate director, secretary, assistant secretary, chief executive officer, attorney, managing agent or solicitor of that party.

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

**Particulars** means the particulars described as such and set out in the Particulars Schedule.

**Particulars Schedule** means the schedule described as such which is included in this Lease.

**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.

**Permitted Use** means the permitted purpose or the proposed permitted purpose under the Act for the Leased Water Allocations described in Item F of the Particulars Schedule.

**Regulated Area** means the area to which the ROL relates.

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

**Rent** means the annual rent payable by the Lessee to the Lessor under this Lease in any Rent Year.

Title Reference [Title Reference]

**Rent Year** means each separate period of 12 months (or part of it) of the Term, each Rent Year will commence on 1 July.

**Resource Operations Licence** or **ROL** means the resource operations licence under the Act held by SunWater and described in Item E of the Particulars Schedule.

**Resource Operations Plan** or **ROP** means the resource operations plan under the Act which applies to the Regulated Area and is specified in Item D of the Particulars Schedule.

**Second Renewal Option** has the meaning given to it in clause 18.

**Second Option Period** has the meaning given to it in clause 18.

**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 Works and any modification, extension or replacement of them from time to time in force.

**Statutory Charge** means all rates, taxes, levies, charges, assessments, duties, impositions, surcharge, fees, bank debits tax or financial institution duty of any Authority or under any Law including (without limitation) any:

- a amounts payable to any Authority relating to the ownership of the Leased Water Allocation and taking or using water under the Leased Water Allocation;
- b all receipt and other duties and taxes payable by the Lessor in consequence of the receipt by the Lessor of the Fee and all other moneys payable under this Agreement or in consequence of the Lessor having any estate or interest in the Leased Water Allocation,

but excluding any

- a tax on the assessable income of the Lessor; or
- b a rate, tax or charge of any kind assessed directly for the Leased Water Allocation and paid or payable by the Lessee.

**Statutory Right** means the right to take water (other than the Leased Water Allocation) under the Act.

**Strategic Asset Management Plan** means the Strategic Asset Management Plan approved from time to time under the Act, if any.

**Supply Water Losses** means the water lost or otherwise rendered unavailable 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 persons within the Regulated Area of an amount of water greater than that person is entitled to;
- f where a system for the ordering of water is in place in the Regulated Area, and a person has:
  - i taken more water than has been ordered by that person; or
  - ii has not taken all of the water that has been ordered by that person;

Title Reference [Title Reference]

- g breaches of the Water Resource Plan, the Resource Operations Plan or the policies, procedures or rules of the Holder of the Resource Operations Licence by other persons.

**SunWater** means SunWater Limited ACN 131 034 985.

**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 the term of this Lease as specified in clause 4.1.

**Third Renewal Option** has the meaning given to it in clause 19.

**Third Option Period** has the meaning given to it in clause 19.

**Water Resource Plan** means the water resource plan, from time to time under the Act which applies to the Regulated Area.

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

**Year** means each 12 month period (or part of it) of the Term commencing 1 July in a calendar year and ending on 30 June in the next calendar year.

1.2. General Interpretation

In interpreting this Lease, 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 a reference to any gender includes a reference to each other gender;
- d where any expression is defined in this Lease, another part of speech or grammatical form of that expression has a corresponding meaning;
- e clause headings are inserted for convenience only and shall not affect the interpretation of this agreement;
- f references to "dollars" and "\$" are references to Australian dollars;
- g references to time are references to time in the location of the Regulated Area;
- h 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;
- i a reference to an Authority includes any successor authority;
- j a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of this Lease;
- k a reference to any agreement (including this Lease) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- l a term used in the Act has the same meaning when used in this Lease;

**Title Reference [Title Reference]**

- m a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- n where the Lessee comprises two or more persons the liability under this Lease shall be joint and several;
- o no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- p a reference to a party means a party to this Lease;
- q any disclaimers, releases or waivers of liability or responsibility contained in, or arising out of, this Lease (either express or implied) for the benefit of the Lessor will be construed and will operate to confer that benefit on each of the Lessor and SunWater (acting as agent of the Lessor).

**2. SUNWATER**

The Lessee acknowledges that the party in Item 1 of the Form 7 is the Lessor. If the party in Item 1 of the Form 7 is any entity other than SunWater then SunWater has been appointed the agent of the Lessor to act on behalf of the Lessor in respect of this Lease.

**3. NATURE AND EXTENT OF LEASE INTEREST**

**3.1. Grant of rights about a volume of water**

The Lessor grants to the Lessee the rights set out in this Lease for the Term. The Lessee acknowledges that:

- (a) this Lease grants to the Lessee exclusive access to the Leased Water Allocation during the Term; and
- (b) at the end of the Term, the Lessee will have no rights or claims concerning this Lease or the Leased Water Allocation and any claim concerning holding over is expressly waived.

**3.2. No diminution of Lessor's Water Allocation rights**

Nothing in this Lease gives the Lessee any right, title or interest in the Leased Water Allocation except as expressly provided by this Lease or any right to hold or exercise any rights, powers or privileges available to the Lessor as holder of the Leased Water Allocations.

**3.3. Acknowledgement and release by Lessee about certain matters**

The Lessee acknowledges that:

- (a) the holder of the Resource Operations Licence and the owner of the Works must carry out their responsibilities, functions and operations within the overall statutory framework described in clause 6;
- (b) the actions and decisions of the holder of the Resource Operations Licence and the owner of the Works within that framework may involve the exercise of a discretion;
- (c) nothing in this Lease imposes an obligation on the Lessor as to how the Lessor exercises any such discretion where the Lessor is the owner of the Works; and
- (d) the Lessee has no rights against the Lessor for and the Lessee therefore releases the Lessor from all liability for any claim arising out of or relating to any act, omission or decision of a holder of the Resource Operations Licence or the owner of the Works (even if that person be the Lessor or a related entity) which affects the Leased Water Allocations other than a breach of the Act by the Lessor or related entity.

**Title Reference [Title Reference]**

**3.4. Indemnity by Lessee**

The Lessee must indemnify the Lessor and its agents, employees, managers and contractors against each claim, incurred or suffered by or brought or made or recovered against the Lessor by any person arising out of the circumstances in which the Lessee releases the Lessor under clause 3.3(d).

**4. TERM, COMMENCEMENT DATE AND OPTIONS TO RENEW**

**4.1. Term of the Lease**

- (a) The Term commences on the Commencement Date and expires on the Expiry Date subject to the provisions of this Lease, including the options to renew the Lease contained in clauses 17, 18, 19 and 20.
- (b) The Commencement Date will be the day that is 30 days from the Date of this Lease unless the Lessor executes this Lease in June, in which case the Commencement Date will be the last Business Day of June of that year.
- (c) The Expiry Date is the date stated in Item 6 of the Form 7.

**5. DEPOSIT AND RENT**

**5.1. Deposit**

- (a) The Lessor acknowledges that the Lessee has paid the Deposit specified in Item B of the Reference Schedule to the Deposit Holder prior to the Date of this Lease.
- (b) The Deposit Holder will hold the Deposit until one of the parties is entitled to receive it or apply it under the terms of this Lease;

**5.2. Rent**

- (a) The Lessee will pay the Rent to the Lessor quarterly in advance in equal instalments on 1 July, 1 October, 1 January and 1 April in each Rent Year without deduction or set-off, subject to clause 5.2(c).
- (b) The rent for the initial Rent Year is specified in Item A of the Reference Schedule.
- (c) During the period from the Commencement Date until the end of the initial Rent Year, Rent will be paid on a pro rata basis. The Lessee will pay Rent for the initial quarter of the initial Rent Year calculated on a pro rata basis on the Commencement Date. Rent for the remaining quarters of the Initial Rent Year will be due on the dates outlined in clause 5.2(a).
- (d) The Rent for each Rent Year will be the Rent for the previous Rent Year increased in accordance with clause 5.3.

**5.3. CPI Reviews**

- (a) On 1 July each Year the Rent will increase to the amount calculated by applying the following formula:

$$R = \frac{A \times C}{B}$$

Where:

R = the Rent for the Year which commences on 1 July in the relevant Year;

**Title Reference [Title Reference]**

A = the Index Number in the Consumer Price Index for Brisbane (All Groups) published by the Australian Bureau of Statistics ("CPI") in respect of the quarter ended 31 March in the Year prior to the Year for which the Rent is being calculated;

B = the Index Number in the CPI for the quarter ended 31 March in the Year prior to the Year which is prior to the Year for which the Rent is being calculated;

C = the Rent for the Year prior to the Year for which the Rent is being calculated ("Relevant Year").

(b) The Rent for a Relevant Year will not be less than the Rent for the previous Year. In the event that the Rent for a Relevant Year calculated in accordance with clause 5.3(a) is less than the Rent for the previous Year then the Rent for the Relevant Year will be equal to the Rent for that previous Year.

(c) If the Index Number is suspended or discontinued the Rent will be revised by a suitable substitute formula as reasonably determined by the Lessor.

**5.4. Payment of Rent is an unconditional obligation**

The Lessee must pay the Rent in accordance with the Lease, whether or not:

- (a) the Lessee actually takes or uses or has access to any water available under the Leased Water Allocation; or
- (b) there is any volume of water available under the Leased Water Allocation.

**5.5. Duty and Costs**

The Lessor and Lessee shall each pay their own costs relating to this Lease. However, the Lessee shall pay to the Lessor on demand:

- (a) all duty on or arising from this Lease (including penalties and fines, other than penalties and fines due to the default of the Lessor); and
- (b) all the Lessor's legal costs, reasonable administration costs and other costs (on a full indemnity basis) for:
  - i. the execution, stamping and registration of this Lease and any document arising out of or contemplated by this Lease;
  - ii. any application for consent (including that of the Lessor and any mortgagee) required under this Lease (whether or not the consent is given);
  - iii. any proposed assignment or other dealing for this Lease (whether or not the assignment or other dealing occurs);
  - iv. any surrender or termination of this Lease otherwise than by effluxion of time;
  - v. any litigation or arbitration in which the Lessor is made a party or is otherwise involved, arising directly or indirectly out of this Lease or the Lessee's exercise of rights to take water under the Leased Water Allocation (except where a court or arbitrator awards costs in favour of the Lessee against the Lessor); and
  - vi. default by the Lessee in observing or performing any obligations contained or implied in this Lease; and
- (c) in the last year of the Term, the Lessor's estimate of any duty which will be payable for this Lease after the Termination Date.

**5.6. Method of Payment**

- (a) The Lessee shall pay Rent and any other payments under this Lease either by bank cheque or by personal cheque or by direct debit or automatic transfer from the Lessee's bank account to the Lessor's bank account, whichever the Lessor stipulates from time to time.

**Title Reference [Title Reference]**

- (b) The Lessee's obligations to pay Rent and any other payments required under this Lease are absolute and unconditional. The Lessee shall not (save to the extent that this Lease specifically provides otherwise) abate, set-off or reduce or make any counter-claim against Rent or other payments owing under this Lease.

**5.7. Allocation of Payments**

To the extent permitted by Law, the Lessor may apply payments by the Lessee towards payment of such Rent, moneys, debts, costs and expenditure under this Lease or under any other lease between the Lessor and the Lessee as the Lessor determines in its absolute discretion.

**6. USE OF WATER**

**6.1. Overall Statutory Framework for Lease**

The Lessor and the Lessee acknowledge that the performance of this Lease and the rights and obligations under this Lease are governed by, and subject to, the following:

- (a) the Act;
- (b) the Water Resource Plan;
- (c) the Resource Operations Plan;
- (d) the Resource Operations Licence;
- (e) the conditions on the Leased Water Allocation;
- (f) any Government Directive;
- (g) the SunWater Distribution Rules; and
- (h) the Strategic Asset Management Plan, if any.

**6.2. Use for Permitted Use Only**

The Lessee must not use the water available under the Leased Water Allocation other than for the Permitted Use.

**6.3. No warranty as to suitability or availability**

The Lessee acknowledges and agrees with the Lessor that (otherwise than as is expressly contained in this Lease) no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor regarding:

- (a) the suitability of the Leased Water Allocation for any purpose including without limitation for any business to be carried on;
- (b) availability of water under the Leased Water Allocation at any time or from time to time;
- (c) the volume of water or any change in the volume of water available under the Leased Water Allocation at any time or from time to time;
- (d) any element of Lessor's entitlement under the Leased Water Allocation, including the Permitted Use; or
- (e) the use of any water available or taken under this Lease.

Alternatively, the Lessee agrees that any such promise, representation, warranty or undertaking if given, has not been relied upon by the Lessee in entering into this Lease and has not in any material way induced the Lessee to

**Title Reference [Title Reference]**

enter into this Lease. The benefit of any such promise, representation, warranty or undertaking which may have been given is expressly disclaimed by the Lessee.

**6.4. No Warranty by Lessor**

The Lessee acknowledges and agrees with the Lessor that (otherwise than as is expressly contained in this Lease) no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor:

- (a) that the Nominal Volume of the Leased Water Allocation (or any part of it) will be available or delivered to the Lessee;
- (b) about the quality of water within the Works or the Regulated Area;
- (c) about the management of the Works or the water within the Works or the Regulated Area;
- (d) about the manner of storage or release of water in the Regulated Area;
- (e) about the supply of the water available under the Leased Water Allocation by the holder of the Resource Operations Licence;
- (f) that any actions, measures or steps will be taken by Lessor to prevent any adverse effects on the quality of water in the Regulated Area; or
- (g) that water within the Works, the Regulated Area or available under the Leased Water Allocation is potable or suitable for any purpose (whether or not it is a purpose to which Lessor knows the Lessee may put the water).

**6.5. Lessee to Test**

The Lessee shall satisfy itself about the quality of water by testing or other means prior to diverting or taking any water in the Regulated Area.

**6.6. Lessee to Indemnify**

The Lessee must indemnify the Lessor against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Lessor:

- (a) in connection with the quality of water within the Works and the Regulated Area where an act or omission of the Lessee (whether or not under this Lease) has affected the quality of such water; and
- (b) by any person to whom the Lessee has agreed to supply or has supplied water or who the Lessee has allowed to take water.

**6.7. Compliance with laws and requirements**

The Lessee must:

- (a) comply with and observe at the Lessee's cost all Laws and requirements of Authorities for or affecting the Leased Water Allocation whether or not those laws or requirements are addressed to or required to be complied with by either or both of Lessor and the Lessee or by any other person;
- (b) immediately provide a complete copy to the Lessor of any requirements of Authorities notified to or served on the Lessee concerning the Leased Water Allocation;
- (c) obtain, maintain, comply with and observe at the Lessee's cost all consents, licences or approvals from all Authorities which may from time to time be necessary or appropriate for the Lessee's business and/or the Lessee's use of water under the Leased Water Allocation for the Permitted Use;



**Title Reference [Title Reference]**

- (d) not by any act or omission cause or permit any consent, licence or approval referred to in paragraph (c) to lapse or be revoked or cancelled; and
- (e) not by any act or omission cause or permit any event or circumstance to occur which will or could lead to the forfeiture of or any change to Leased Water Allocation or any change to the Resource Operations Plan under the Act which would adversely affect Lessor.

**6.8. Lessor's rights if Lessee fails to comply**

- (a) The Lessor may (without prejudice to any of the Lessor's other rights for non compliance) elect, at the Lessee's cost, to comply either wholly or partly with any Laws which the Lessee is required to comply with and observe under this Lease, including where the Lessee fails to comply within the appropriate time with any of the Lessee's obligations.
- (b) Where the Lessor does exercise any rights referred to in paragraph (a), the Lessor may elect to have the balance of any Laws complied with by the Lessee.

**7. ASSIGNMENT**

**7.1. No disposal of Lessee's interest**

The Lessee shall not (and shall not commence or attempt to) assign, grant any rights over or otherwise dispose or deal with the Leased Water Allocation or this Lease or any part of them or any interest in them ("Dealing"), unless:

- (a) the Lessee gives the Lessor not less than one month's written notice of the proposed Dealing as a condition precedent to the Lessee's ability to undertake the Dealing and provides full details of the persons involved, the documentation proposed and any other relevant information requested by the Lessor. Without limitation, the notice shall be accompanied by:
  - i. in relation to the proposed assignee or other party to the Dealing:
    - A if a company, its full name, registered office and ABN;
    - B if an individual, their full name and residential address;
    - C if an individual, a character reference;
    - D a business reference;
    - E an up to date summary of assets and liabilities prepared by and signed by a public accountant;
    - F if a company, an up to date copy of its Constitution and the certificate of registration all certified by a director as correct and up to date; and
    - G if a trustee, an up to date copy of the stamped trust deed and any amendments all certified by the trustee (or a director of the trustee if the trustee is a company) as correct and up to date.
  - ii. for the guarantors required to sign a guarantee and indemnity under this clause:
    - A if a company, its full name, registered office and ACN;
    - B if an individual, their full name and residential address;
    - C if an individual, a character reference;
    - D a business reference;

**Title Reference [Title Reference]**

- E an up to date summary of assets and liabilities prepared by and signed by a public accountant;
  - F if a company, an up to date copy of its Constitution and the certificate of registration all certified by a director as correct and up to date; and
  - G if a trustee, an up to date copy of the stamped trust deed and any amendments all certified by the trustee (or a director of the trustee if the trustee is a company) as correct and up to date.
- iii. Copies or details (as the case may be) of all agreements (whether oral or written) made between the Lessee and the proposed assignee, licensee or other party to the Dealing relating to the Dealing (all of which must be verified by a statutory declaration if required by the Lessor).
- (b) the Lessee is not, at the time of giving the notice to the Lessor or prior to the completion of the Dealing, in default in the timely observance or performance of each of the obligations on the Lessee's part, and in particular (without limitation) the Rent and all other moneys payable by the Lessee to the Lessor up to the date of the proposed Dealing have been paid;
- (c) the Lessee pays to the Lessor all reasonable costs incurred by the Lessor for the Dealing or the proposed Dealing (whether or not the proposed Dealing proceeds to completion) including (without limitation) the Lessor's administrative and legal costs for the Dealing or proposed Dealing and the Lessor's costs reasonably incurred in investigating the persons involved in the proposed Dealing;
- (d) the Lessee proves to the satisfaction of the Lessor that the proposed assignee, licensee, guarantor or other party to the Dealing is:
- i. a suitable, respectable, responsible and solvent person who is financially substantial according to the obligations proposed to be assumed (and in the case of an assignee, is no less financially substantial than the lessee);
  - ii. capable of performing and willing to perform the obligations of the Lessee under this Lease including (in the case of an assignee) payment of all Rent and other amounts payable by the Lessee;
- (e) the Lessee and the assignee, or other party to the Dealing enter into a deed or agreement with the Lessor in the form required by the Lessor prior to taking water under the Leased Water Allocation which includes:
- i. provisions that the assignee, or other party to the Dealing will not cause or contribute to a breach of this Lease;
  - ii. an undertaking that the assignee or other party to the Dealing will observe and perform the obligations on the Lessee's part contained in this Lease (whether or not they touch and concern the Leased Water Allocation);
  - iii. a power of attorney in favour of the Lessor in similar terms to that given by the Lessee in this Lease;
  - iv. (to the extent to which the Lessor is lawfully able to do so) provisions which modify or add to the provisions of this Lease to confirm, clarify, or re-establish the originally intended rights, powers and remedies of the Lessor having regard to developments in the Law or case law since the Commencement Date or that arise as a result of the proposed Dealing;
- (f) the Lessee and the Guarantor each enters into a deed or agreement with the Lessor in the form required by the Lessor under which the Lessee and the Guarantor each releases and indemnify the Lessor from all Claims which the lessee or the Guarantor (or both of them) then has, and (in the case of an assignment) in the future may have, against the Lessor for this Lease or for claims from third parties related to the water, the availability of water, the quality of the water and including those matters referred to in clauses 6.3 or 6.4;
- (g) the Lessee and the assignee or other party to the Dealing comply with the Lessor's requirements for the documentation, stamping and registration (if applicable) of the proposed assignment or other Dealing;

**Title Reference [Title Reference]**

(h) if required by the Lessor, the assignee or other party to the Dealing provides in favour of the Lessor a guarantee and indemnity as required by the Lessor, in a form and by a person acceptable to the Lessor, of the obligations of the assignee or other party to the Dealing; and

(i) the Dealing is permissible by Law,

and the Lessee and the Guarantor each agrees that irrespective of the satisfaction of the preceding conditions, the Lessee and the Guarantor shall remain liable to the Lessor under this Lease notwithstanding the Dealing.

**7.2. Change in corporate ownership**

If the Lessee is a company (other than a company the shares in which are listed on a recognised stock exchange) any transfer, transmission, issue, trust, amendment to rights or other dealing with shares or any other event or circumstances ("Dealing") having the effect of altering the effective control of the Lessee or having the effect that the shareholders of the Lessee at the date of this Lease (or, if this Lease has been assigned to the Lessee, then at the date of the assignment) together beneficially hold or control less than 51% of the voting, income or capital participation rights in the Lessee, shall be deemed to be a breach of the Lessee's obligation not to assign its interest in this Lease unless:

(a) the Lessee gives the Lessor not less than one month's written notice of the proposed Dealing and provides full details of the persons involved, documentation proposed and any other relevant information;

(b) the Lessee is not, at the time of giving the notice to the Lessor or prior to the completion of the Dealing, in default in the timely observance and performance of each of the obligations on the Lessee's part, and in particular (without limitation) the Rent and all other moneys payable by the Lessee to the Lessor up to the date of the proposed Dealing have been paid;

(c) the Lessee pays to the Lessor all reasonable costs incurred by the Lessor for the Dealing or proposed Dealing (whether or not the proposed Dealing proceeds to completion) including (without limitation) the Lessor's administrative and legal costs for the Dealing or proposed Dealing and the Lessor's costs reasonably incurred by the Lessor in investigating the persons involved in the proposed Dealing; and

(d) the Dealing involves the assumption of control of the company by a person who –

i. proves to the satisfaction of the Lessor that he is a suitable, respectable, responsible and solvent person who is financially substantial and otherwise capable of ensuring that the Lessee will remain capable of performing the obligations of the Lessee under this Lease; and

ii. furnishes to the Lessor such Leases, undertakings, indemnities and guarantees for the performance of the obligations of the Lessee under this Lease as the Lessor shall require in its absolute discretion.

**7.3. Lessee acknowledgment about Assignment Approvals**

The Lessee acknowledges that:

(a) the Lessor does not enter into any obligations under this Lease in its capacity as a holder of the Resource Operations Licence or the owner of the Works;

(b) the Lessor contracts under this Lease solely in its capacity as the owner of the Leased Water Allocation.

**7.4. Mortgaging Lessee's interest in Leased Water Allocation**

The Lessee shall not mortgage, charge or otherwise encumber this Lease or the Lessee's interest in this Lease or the Leased Water Allocation without first obtaining the written consent of the Lessor, which consent shall not be unreasonably withheld where the credit provider enters into an agreement with the Lessor upon terms and conditions satisfactory to the Lessor.

**Title Reference [Title Reference]**

**7.5. Caveat**

The Lessee will not lodge, and will not allow the lodgement of, any caveat over or in respect of the Leased Water Allocation.

**7.6. Assignment by the Lessor**

The Lessor may assign its rights and obligations under this Lease to any person.

**8. CROSS DEFAULTS**

8.1. Where the Lessee and the Lessor have made an agreement, whether before or after the making of this Lease, in addition to this Lease, which relates to water or to a water entitlement or an interest in or right under a water entitlement within the Regulated Area, then:

- (a) default by the Lessee under any such agreement constitutes default by the Lessee under each such agreement;
- (b) amounts owing by the Lessor under one agreement may be set off against amounts owing by the Lessee under every other agreement;
- (c) any security provided in connection with an agreement may be used by the Lessor as if given as security for obligations under all agreements and for all debts due by the Lessee to the Lessor;
- (d) a failure to pay any debt due by the Lessee to the Lessor when due, is a default under each such agreement.

8.2. Where the Lessee and SunWater have made an agreement whether before or after the making of this Lease, which relates to the sale, supply, distribution or transportation of water or a water entitlement within the Regulated Area, a default by the Lessee under that agreement constitutes a default by the Lessee under this Lease.

**9. EXCLUSION OF LESSOR'S LIABILITY**

**9.1. Risk and Release of Lessee**

The Lessee acknowledges and agrees that this Lease relates to the Leased Water Allocation and therefore:

- (a) the rights of the Lessee to take water under the Leased Water Allocation is subject to the Resource Operations Plan, the term and conditions of which may change from time to time;
- (b) during the Term, the Leased Water Allocation shall be at the sole risk of the Lessee and the Lessee bears the risks of changes to the Resource Operations Plan or the conditions applying to the Leased Water Allocation and the destruction or damage to the assets of the Lessor or the holder of the Resource Operations Licence, the Works or the Lessee's Nominated Works; and
- (c) the Lessee, to the full extent permitted by law, releases the Lessor and its agents, employees, managers and contractors from and they will not be liable for any Claim that the Lessee or any person in any way involved in taking or using water available under this Lease or any person claiming by, through or under the Lessee may incur or make or any which arises from –
  - i. the quantity or quality of any water within the Works or the Regulated Area or available to be taken under the Leased Water Allocation including without limitation the presence in the water of any substance or thing in any state;
  - ii. the availability or non availability of any water to be taken under the Leased Water Allocation for any reason including any Event of Force Majeure;

Title Reference [Title Reference]

- iii. any inability on the part of the Lessee, for any reason at all other than default by the Lessor under this Lease, to exercise any rights to take water available under the Leased Water Allocation;
- iv. any changes to the Resource Operations Plan or the conditions applying to the Leased Water Allocation;
- v. any change in Law;
- vi. any Event of Force Majeure;
- vii. any matter for which the Lessor makes no promise or representation or gives no warranty or undertaking under this Lease or for which the Lessee has disclaimed the benefits of any promise, representation, warranty or undertaking by the Lessor.

9.2. Exclusion of implied covenants

To the extent permitted by law, any covenants and powers implied in this Lease by any Law, including by sections 105 and 107 of the *Property Law Act 1974* (Qld) (if applicable), are expressly excluded from this Lease.

9.3. Disclosure of information and disclaimers

The Lessee acknowledges and agrees that:

- (a) before signing this Lease the Lessee has read this Lease and any Associated Documents; and
- (b) any information and disclaimers contained in any Associated Documents are accepted and will be treated as being disclosed to the Lessee before it enters into this Lease.

9.4. Extent of Liability for Losses

To the extent permitted by Law, the Lessor shall not be liable to the Lessee under or in connection with this Lease for any claims, actions, proceedings, judgments, cost, expense, loss, damage or liability incurred or suffered by the Lessee or by anyone claiming through the Lessee or benefiting from the Leased Water Allocation for:

- (a) any mistake or error made in the description of the Leased Water Allocation in this Lease;
- (b) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (c) complying with a State Direction.

9.5. Indemnity

Notwithstanding that:

- (a) any Claims may have resulted from anything which the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence has been given to the Lessee for any obligation of the Lessee under this clause,

the Lessee indemnifies and shall keep indemnified the Lessor and its agents, employees, managers and contractors against all Claims for which they shall or may be or become liable, whether during or after the Term, for, arising from or contributed to by:

- (c) any act, neglect, default or omission of the Lessee or any person in any way involved in the taking or use of any water under the Leased Water Allocation or any other person claiming through or under the Lessee; and
- (d) without limiting the foregoing:

**Title Reference [Title Reference]**

- i. the use of any water taken under the Leased Water Allocation or the wilful act or omission, or the negligent or careless use or neglect of the water by the Lessee or any person in any way involved in the taking or use of any water or on supply of any water under or available under the Leased Water Allocation or any other person claiming through or under the Lessee; and
- ii. loss of, damage to property, loss of life or injury or breach of Law arising in connection with the availability, taking or use of any water under the Leased Water Allocation by the Lessee or any person in any way involved in the taking or use of any water under the Leased Water Allocation or any other person claiming through or under the Lessee.

**10. DEFAULT AND TERMINATION**

**10.1. Events of Default**

An event of default shall have occurred ("Event of Default"), where:

- (a) any Rent, interest or any other amount or any part of it payable by the Lessee under this Lease remains unpaid for a period exceeding 14 days, whether or not formal or legal demand for payment has been made, or the Lessee or some person on behalf of the Lessee has given notice to the Lessor or a person on behalf of the Lessor that any Rent, interest or any other amount will not be paid or will not be paid in full within 14 days of becoming due;
- (b) the Lessee defaults in paying any amount under another lease between the parties;
- (c) contrary to the provisions of this Lease:
  - i. the Lessee assigns, charges, grants any right over or otherwise disposes or deals with the Leased Water Allocation or this Lease or any part of them or any interest in them; or
  - ii. an event occurs for the corporate ownership of the Lessee which this Lease deems to be a breach of the Lessee's obligation not to assign its interest in this Lease;
- (d) the Lessee fails to duly and promptly perform or observe any of the obligations contained in this Lease which are required to be performed or observed by the Lessee;
- (e) either the Lessee or a Guarantor (being a company) become Insolvent;
- (f) either the Lessee or the Guarantor (being a person) has become a bankrupt;
- (g) judgment is signed or entered against the Lessee or any Guarantor and remains unsatisfied for 30 days or if any execution or other process of court or Authority or any distress issued against or levied upon the Leased Water Allocation and is not paid out or satisfied and withdrawn within 14 days;
- (h) the Lessee or any Guarantor, being an individual, dies or becomes of unsound mind or their estate is liable to be dealt with in any way under the laws relating to mental health;
- (i) the Lessee breaches a provision of this Lease and has not remedied that breach within a reasonable period, having regard to the nature of the breach, after service of notice of the breach from the Lessor of its intention to terminate; or
- (j) any other event or circumstance arises which is deemed under this Lease or any associated document to constitute an event of default.

**Title Reference [Title Reference]**

**10.2. Termination of Lease**

If an Event of Default has occurred, the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee, the Guarantor or any other person for that Event of Default, at any subsequent time do any one or more of the following:

- (a) take possession of and take and deal with the Leased Water Allocation and the rights under this Lease;
- (b) terminate this Lease; or
- (c) recover from the Lessee or the Guarantor any loss suffered by the Lessor as a result of the Lessee's default.

**10.3. Damages for breach of essential conditions**

- (a) The parties agree that if any of the events referred to in clauses 10.1(a), (b) or (c) occur, there shall have been a breach by the Lessee of a fundamental and essential condition in this Lease, amounting to a repudiation of this Lease by the Lessee.
- (b) In addition to the rights of action and remedies of the Lessor referred to in this clause or otherwise, where the Lessor has determined this Lease upon a breach by the Lessee of a fundamental and essential condition in this Lease having occurred, the Lessee shall pay to the Lessor on demand as liquidated damages for loss of custom the difference between all Rent and other money which would have been payable by the Lessee for the balance of the Term had it not been determined and the amount (if any) which the Lessor does receive or reasonably anticipates (at the time when the Lessor makes a claim for damages under this sub clause or, if litigation proceeds to judgment in favour of the Lessor, at the time of the judgment) that it will receive during the period of the balance of the Term from other Lessees of the Leased Water Allocation.
- (c) To the extent that the liquidated damages represents an acceleration of payments which would otherwise have been received over a period of time, each respective accelerated component of such amount shall be rebated at a rate equal to the Overdue Rate prevailing on the date on which the amount is first demanded.
- (d) Such rebate shall be calculated with effect from the day following the day on which the liquidated damages (taking into account any such rebate) are received by the Lessor in full, and until such date, the Lessor shall be entitled to interest at the Overdue Rate on payments which would have accrued under this Lease had it not been determined.

**10.4. Lessor may rectify**

The Lessor may, but shall not be obliged to, remedy at any time without notice any default by the Lessee under this Lease, and all reasonable costs incurred by the Lessor (including, without limitation, legal costs) in remedying a default shall constitute a liquidated debt owed by the Lessee to the Lessor and shall be paid by the Lessee to the Lessor on demand.

**10.5. Benefit of Lessee's obligations**

If any person other than the Lessor becomes entitled to receive the Rent either by operation of law or otherwise:

- (a) that person shall have the benefit of all obligations on the part of the Lessee under this Lease; and
- (b) the Lessee at the cost of the Lessor shall enter into any document with that other person in this regard which the Lessor may reasonably require.

**11. POWER OF ATTORNEY**

**11.1. Persons appointed as Lessee's attorney**

The Lessee irrevocably appoints:

**Title Reference [Title Reference]**

- (a) the Lessor;
- (b) each Officer of the Lessor;
- (c) SunWater;
- (d) each Officer of SunWater,

and their substitutes, jointly and each of them severally, to be the attorney of the Lessee to:

- (e) where the Law requires the Lease to be recorded in a register, to sign a document in registrable form on the same terms and conditions contained in this Lease subject to any modifications required by Law, including the form of the document;
- (f) at any time use the name of the Lessee, and in the name of the Lessor, the attorney or the Lessee, at the cost of the Lessee to perform all acts and do all things required to be done by the Lessee under this Lease and do anything relating to the Leased Water Allocation as fully and effectually as the Lessee could do wherever the Lessee has failed to do so promptly; and
- (g) act, after the power to forfeit or terminate contained in this Lease shall have become exercisable (sufficient proof of which shall be a statutory declaration to that effect by or on behalf of the Lessor), to execute (where applicable):
  - i. a transfer, surrender, consent or request to record the determination of this Lease; and
  - ii. a withdrawal of any caveat lodged by the Lessee affecting the Leased Water Allocation or the Leased Water Allocation.

**11.2. Lessee ratifies and confirms**

The Lessee promises in favour of the Lessor and any attorney of the Lessee under this clause to:

- (a) ratify and confirm whatever the attorney appointed under this Lease shall lawfully do or cause to be done for the Leased Water Allocation or this Lease; and
- (b) pay to the Lessor on demand the amount of any costs or other liabilities incurred by or on behalf of the Lessor or the attorney appointed under this Lease in the exercise of the powers referred to in this clause.

**11.3. Unpaid costs**

If the Lessee does not pay to the Lessor on demand the amount of any costs or other liabilities incurred by or on behalf of the Lessor or any attorney appointed under this Lease in the exercise of the powers referred to in this clause, the provisions of this Lease relating to the payment of interest on unpaid amounts shall apply for that unpaid amount from the date of demand until payment is made to the Lessor.

**12. TRUSTEE PROVISIONS**

**12.1. Application of this clause**

This clause applies where the Lessee enters into this Lease as a trustee.

**12.2. Capacity of Lessee**

The Lessee confirms with the Lessor that the Lessee has entered into this Lease in its personal capacity and in its capacity as trustee.



**Title Reference [Title Reference]**

**12.3. Warranty by Lessee**

The Lessee warrants in favour of the Lessor that the Lessee is entitled to be indemnified out of the assets of the trust.

**13. NON-AVAILABILITY**

**13.1. Suspension or Restriction of Breach**

Where the Lessee:

- (a) has committed a material breach of this Lease;
- (b) has breached this Lease and has not reimbursed the Lessor for costs incurred by the Lessor in rectifying the breach; or
- (c) has caused an Event of Default under any of clauses 10.1 (a), (b) or (c),

then the Lessor may direct the Lessee or any person diverting or taking the water available under the Leased Water Allocation, not to divert or take water available under the Leased Water Allocation.

**13.2. If Lessee does not comply with direction**

Where the Lessor considers that the Lessee, or a person to whom a direction under clause 13.1 is given, has not complied with that direction, the Lessor may take all reasonable steps to ensure the Lessee or other person complies with the direction, including:

- (a) not releasing or diverting water under any other lease;
- (b) stopping the Lessee's or other person's taking water including by:
  - i. entering onto the Lessee's land and making modifications to the Works, the Meter or the Lessee's Nominated Works; and
  - ii. informing the holder of the Resource Operations Licence that the Lessee is not presently entitled to the Leased Water Allocation.

**14. DISPUTE RESOLUTION**

**14.1. Activation**

If a dispute arises under this Lease (apart from a dispute for payment of Rent or a dispute which arises either prior to the exercise of right of termination of the Terms of the Lease or for 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.

**14.2. Appointment of representative**

Within five business days of receipt of the notice referred to in clause 14.1, the recipient shall designate a representative with similar authority.

**14.3. Discussions**

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

**Title Reference [Title Reference]**

**14.4. Negotiation of procedures**

If the dispute is not resolved as a result of the discussions, either party may request the commencement of negotiations in good faith on a dispute resolution procedure, other than litigation or arbitration.

**14.5. Methods of resolution**

A party receiving a request under clause 14.4 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 procedure and timetable for exchange of documents and other information relating to the dispute;
- (c) procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

**14.6. 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 14 is to attempt to settle a dispute between the parties.

**14.7. Termination**

Any party may terminate the dispute resolution procedure provided by this clause 14 at any time and pursue other available remedies.

**15. NATIVE TITLE**

**15.1. Existence of Native Title**

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

**16. GST**

The parties agree that:

- (a) all Payments have been calculated without regard to GST;
- (b) the Lessor will comply with its obligations under the Trade Practices Act 1974 when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) 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;
- (d) any reference to a cost or expense in this Lease 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
- (e) the payee will provide to the payer a Tax Invoice if subclause (c) applies.

**Title Reference [Title Reference]**

**17. FIRST OPTION TO RENEW**

**17.1. Right to renew**

The Lessee will be entitled to renew this Lease ("First Renewal Option") for a term of 5 years commencing on the expiry of the initial Term ("First Option Period") if:

- (a) not more than 6 months and not less than 4 months prior to the expiration of the Term the Lessee gives the Lessor notice in writing that the Lessee wishes to renew this Lease for the First Option Period; and
- (b) the Lessee has observed and complied with the provisions of this Lease throughout the Term.

**17.2. Terms and Conditions of renewed Lease**

The terms and conditions of the renewed lease entered into as a consequence of the exercise of the First Renewal Option will:

- (a) be substantially the same as the terms and conditions of this Lease with appropriate amendments being made, including the omission of this clause 17;
- (b) be contained in a new lease which will be prepared by the Lessor (at the cost of the Lessee) and delivered to the Lessee for signing 14 days after the Lessor receives the notice referred to in clause 17.1.

**17.3. Rent**

- (a) The Rent for the first Year of the First Option Period will be the Rent for the last Year of the initial Term increased by a CPI Review in accordance with the formula in clause 5.3.
- (b) The Rent for the second, third, fourth and fifth years of the First Option Period will be calculated by using a CPI Review mechanism contained in the new lease which will be in substantially the same form as the mechanism in clause 5.3.

**18. SECOND OPTION TO RENEW**

**18.1. Right to renew**

The Lessee will be entitled to renew the lease granted under the First Renewal Option ("Second Renewal Option") for a term of 5 Years ("Second Option Period") if:

- (a) not more than 6 months and not less than 4 months prior to the expiration of the First Option Period the Lessee gives the Lessor notice in writing that the Lessee wishes to renew this Lease for the Second Option Period; and
- (b) the Lessee has observed and complied with the provisions of the lease for the First Option Period throughout the First Option Period.

**18.2. Terms and Conditions of renewed Lease**

The terms and conditions of the renewed lease entered into as a consequence of the exercise of the Second Renewal Option will:

- (a) be substantially the same as the terms and conditions of the lease entered into for the First Option Period save for this clause 18; and
- (b) be contained in a new lease which will be prepared by the Lessor and delivered to the Lessee for signing on or before 14 days after the Lessor receives the renewal notice referred to in clause 18.1.

**Title Reference [Title Reference]**

**18.3. Rent**

- (a) The Rent for the first Year of the Second Option Period will be the current market rent for a lease of the Leased Water Allocation for a period of 5 years as determined by the Lessor.
- (b) The Lessor will provide the Lessee with the Lessor's assessment of the current market Rent on or before 14 days from receipt of the renewal notice referred to in clause 18.1 and will constitute the Rent for the first year of the Second Option Period.
- (c) The Rent for the second, third, fourth and fifth Years of the Second Option Period will be calculated by using a CPI Review mechanism contained in the new lease which will be substantially the same form as the mechanism in clause 5.3.

**19. THIRD OPTION TO RENEW**

**19.1. Right to renew**

The Lessee will be entitled to renew the lease granted under the Second Renewal Option ("Third Renewal Option") for a term of 5 Years ("Third Option Period") if:

- (a) not more than 6 months and not less than 4 months prior to the expiration of the Second Option Period the Lessee gives the Lessor notice in writing that the Lessee wishes to renew this Lease for the Third Option Period; and
- (b) the Lessee has observed and complied with the provisions of the lease for the Second Option Period throughout the Second Option Period.

**19.2. Terms and Conditions of renewed lease**

The terms and conditions of the renewed lease entered into as a consequence of the exercise of the Third Renewal Option will:

- (a) be substantially the same as the terms and conditions of the lease entered into for the Second Option Period save for this clause 19; and
- (b) be contained in a new lease which will be prepared by the Lessor and delivered to the Lessee for signing on or before 14 days after the Lessor receives the renewal notice referred to in clause 19.1.

**19.3. Rent**

- (a) The Rent for the first Year of the Third Option Period will be the will be current market rent for a lease of the Leased Water Allocation for a period of 5 years as determined by the Lessor.
- (b) The Rent for the second, third, fourth and fifth Years of the Third Option Period will be calculated by using a CPI mechanism contained in the new lease which will be in substantially the same form as the mechanism in clause 5.3.

**20. FOURTH OPTION TO RENEW**

**20.1. Right to renew**

The Lessee will be entitled to renew the lease granted under the Third Renewal Option ("Fourth Renewal Option") for a term of 5 Years ("Fourth Option Period") if:

- (a) not more than 6 months and not less than 4 months prior to the expiration of the Third Option Period the Lessee gives the Lessor notice in writing that the Lessee wishes to renew this Lease for the Fourth Option Period; and

**Title Reference [Title Reference]**

- (b) the Lessee has observed and complied with the provisions of the lease for the Third Option Period throughout the Third Option Period.

**20.2. Terms and Conditions of renewed lease**

The terms and conditions of the renewed lease entered into as a consequence of the exercise of the Fourth Renewal Option will:

- (a) be substantially the same as the terms and conditions of the lease entered into for the Third Option Period save for this clause 20; and
- (b) be contained in a new lease which will be prepared by the Lessor and delivered to the Lessee for signing on or before 14 days after the Lessor receives the renewal notice referred to in clause 20.1.

**20.3. Rent**

- (a) The Rent for the first Year of the Fourth Option Period will be the will be current market rent for a lease of the Leased Water Allocation for a period of 5 years as determined by the Lessor.
- (b) The Rent for the second, third, fourth and fifth Years of the Fourth Option Period will be calculated by using a CPI mechanism contained in the new lease which will be in substantially the same form as the mechanism in clause 5.3.

**21. MISCELLANEOUS**

**21.1. Obligations for the Benefit of Third Parties**

The Lessee acknowledges that a breach by it of its obligations under this Lease may adversely affect the interests of other persons who hold water entitlements within the Regulated Area and agrees, for the benefit of such persons, to comply with all its obligations under this Lease.

**21.2. Notices**

Any notice given under this Lease:

- (a) must be in writing addressed to the intended recipient:
  - i. for the Lessor, at the address of its office, nominated by the Lessor in Item H of the Particulars Schedule or if not nominated, closest to the Regulated Area;
  - ii. for the Lessee,
    - A for an invoice or receipt at the Address for Invoices in Item I of the Particulars Schedule;
    - B for any other notice, either;
      - I to the Facsimile Number in Item J of the Particulars Schedule;
      - II at the Address for Notices in Item J of the Particulars Schedule; or
      - III at the address last known to the Lessor.
- (b) must be signed by a person duly authorised by the sender;
- (c) will be treated as given:
  - i. where posted, 4 days after posting;

**Title Reference [Title Reference]**

- ii. where sent by facsimile, when a clear transmission report is received by the sender; and
- iii. in any case, where given on a non-Business Day or after 5pm on a Business Day, on the next Business Day.

**21.3. Amendment**

This Lease may be amended:

- (a) by an agreement executed by all parties; or
- (b) as reasonably required by the Lessor, after consultation with the Lessee, where there has been a change in any Law, the Resource Operations Plan, the Leased Water Allocation or the Resource Operations Licence.

**21.4. No Waiver**

No failure to exercise and no delay in exercising any right, power or remedy under this Lease 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.

**21.5. 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 Lease.

**21.6. Effect of void provision**

If a court holds that:

- (a) any part of this Lease is void, voidable, illegal or unenforceable; or
  - (b) this Lease is void, voidable, illegal or unenforceable unless any part of this Lease is severed from this Lease,
- that part will be severed from this Lease unless to do so would change the underlying principal commercial purposes of this Lease.

**21.7. Governing law**

This Lease is governed by the laws of Queensland. The parties submit to the non exclusive jurisdiction of courts exercising jurisdiction there.

**21.8. Business days**

If anything is required to be done or condition satisfied on a day that is not a Business Day, it must be done or satisfied instead on the next Business Day.

**21.9. Lessor's obligations**

Every obligation on the part of the Lessor, shall bind the Lessor or any successor or assignee only during the period(s) when it is entitled to receive the Rents and profits of the Leased Water Allocation.

**21.10. Lessee's obligations**

Every obligation on the part of the Lessee shall be deemed to include an undertaking by the Lessee to procure compliance with the obligation by each of the Lessee's employees, agents, contractors, consultants, invitees, visitors and any others involved in any way in taking or using water under the Leased Water Allocation.

Title Reference [Title Reference]

21.11. All signatories bound

This Lease shall bind each of the persons comprising the Lessee and the Guarantor executing it to the full extent provided in this Lease, even though:

- (a) one or more of the persons named as Lessee or Guarantor has not executed this Lease; or
- (b) the execution of this Lease by any of such persons (other than the person sought to be made liable) is or may become void or voidable.

21.12. Warranty of authority

Each person signing this Lease:

- (a) as attorney for any party warrants to the other parties that at the date of execution by him he has not received any notice or information of the revocation of the power of attorney appointing him;
- (b) as an Officer, agent or trustee of any party warrants to the other parties that at the date of execution by him he has full authority to execute this Lease in that capacity; and
- (c) warrant that they and the Lessee have complied with the all relevant provisions concerning the entering into and execution of this Lease.

21.13. No limitation by other words

No word or provision of this Lease shall operate to limit or in any way prejudice the effect of any other word or provision of this Lease unless it is expressly provided otherwise.

21.14. Whole agreement

The provisions contained in this Schedule and the Form 7 comprise the whole of the agreement between the parties for the Leased Water Allocation.

21.15. Consent of the Lessor

Unless this Lease otherwise requires, where the Lessor has a discretion or its consent or approval is required for anything, the Lessor shall be entitled to withhold or delay its decision, consent or approval without giving any reason.

21.16. Separate suits

The Lessor may, without prejudice to any other remedy under this Lease or at law, sue the Lessee for any moneys which may from time to time become due and owing by the Lessee to the Lessor under or in connection with this Lease. In particular, the Lessor may sue for the whole or any part of any instalment of Rent or any other moneys payable under this Lease as and when they become due. Neither the institution of each such suit nor the entering of judgment shall bar the Lessor from bringing a separate or subsequent suit or suits for the balance of any Rent or other moneys due to the Lessor under or in connection with this Lease.

21.17. Earlier breaches

The expiration or determination of this Lease shall not prejudice or affect any rights or remedies of the Lessor against the Lessee or the Guarantor for any earlier breach by the Lessee of any obligations on the part of the Lessee.

21.18. Authority to date and complete

- (a) The parties acknowledge and agree that:

**Title Reference [Title Reference]**

- i. at the time of signing of this Lease the water allocation number and title reference of the Water Allocation to be included in the Form 7 may be incomplete or blank;
  - ii. this Lease is valid and binding despite these omissions in the Items Schedule.
- (b) The Lessee and the Guarantor irrevocably authorise the Lessor, SunWater and any Officer of the Lessor or SunWater to:
- i. complete the Form 7 after the signing of this Lease when the water allocation number and title reference of the Water Allocation become known to the Lessee and SunWater. The Lessee will be notified of these details prior to the Commencement Date.
  - ii. to complete all other blanks in this Lease (including the Commencement Date) and in any other document necessary to procure the stamping and registration (if applicable) of this Lease, including (without limitation) the Commencement Date, the date of execution of this Lease and any information in the Particulars Schedule; and
  - iii. to rectify any manifest error in this Lease and to make any alterations, deletions or additions to this Lease in order to procure the stamping or (if applicable) registration of this Lease.
- (c) If for any reason outside the control of the parties, the particulars of the Water Allocation are not known to SunWater on or before the Commencement Date the parties mutually agree to:
- i. extend the Commencement Date by 7 days with time to remain of the essence (the "Extended Commencement Date"); or
  - ii. where the Commencement Date falls within the last 7 days of June, the Extended Commencement Date will be the last Business Day of June of that year.
- (d) If for any reason outside the control of the parties, the particulars of the Water Allocation are not known to SunWater on or before the Extended Commencement Date then SunWater may on behalf of the Seller terminate this agreement on written notice to the Buyer

**21.19. Partnership, agency and joint venture negated**

Nothing in this Lease shall be deemed or construed as creating the relationship of a partnership or of principal and agent or of joint venture between the parties. No method of computation of Rent or other amounts payable under this Lease nor any acts of the parties shall be deemed to create any such relationship between the parties.

**21.20. Time of the essence**

Time shall be of the essence of this Lease in relation to the performance by the Lessee of its obligations under this Lease.

**22. GUARANTEE AND INDEMNITY**

**22.1. Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Lessor:

- (a) the payment by the Lessee of all moneys payable by the Lessee to the Lessor under the Lease;
- (b) the performance and observance by the Lessee of all its obligations under the Lease; and
- (c) the payment by the Lessee of any damages payable by the Lessee for its failure or delay to fulfil any of its obligations under the Lease.



Title Reference [Title Reference]

22.2. Payment

If the Lessee defaults in:

(a) the payment of any other amount due under the Lease (including the payment of any amount due to be paid by the Lessee on completion of the Lease but which is not paid because, due to the default by the Lessee, completion of the Lease has not taken place in accordance with its terms), the Guarantor shall on demand pay that amount to the Lessor; and/or

(b) the performance and observance of any of the Lessee's obligations under the Lease,

the Guarantor shall on demand pay to the Lessor all losses, damages, expenses and costs which the Lessor is entitled to recover because of that default whether or not the Lessor has exercised or exhausted its remedies for their recovery from the Lessee.

22.3. Liability unaffected by other events

The liability of the Guarantor is not affected by anything which but for this provision, might release, prejudicially affect or discharge him or in any way relieve the Guarantor from any obligation including the following (whether with or without the consent of the Guarantor):

(a) the grant to the Lessee and/or any other person of any time, waiver or other indulgence, or the discharge or release of them;

(b) any transaction or arrangement that may take place between the Lessor and/or the Lessee and/or any other person;

(c) the Liquidation of the Lessee and/or any other person;

(d) the Lessor becoming a party to or bound by any compromise, moratorium, assignment of property, scheme or arrangement, composition of debts or scheme of reconstruction by or relating to the Lessee and/or any other person;

(e) the Lessor exercising or delaying or refraining from exercising any right, power or remedy given to it by Law or by the sublease or by any other document or agreement with the Lessee and/or any other person;

(f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, assignment or transfer in whole or in part and with or without consideration, of the sublease at any time or of any right, obligation, power or remedy;

(g) failure by the Lessee and/or any other person to notify either Guarantor of any default by the Lessee and/or any other person under the sublease;

(h) the Lessor obtaining a judgment against the Lessee and/or any other person for the payment of any money under the sublease or any other document or agreement with the Lessor;

(i) any legal limitation, disability, incapacity or other circumstance relating to the Lessee, either Guarantor and/or any other person;

(j) any change in circumstance (including of a person or in the members or constitution of a partnership); and

(k) this Guarantee not being valid or executed by or binding on any person.

22.4. Principal and independent obligation

This clause 22 is a principal and independent obligation. Except for duty purposes, it is not ancillary or secondary to another right or obligation.

**Title Reference [Title Reference]**

**22.5. No marshalling**

The Lessor is not obliged to marshal or appropriate in favour of the Guarantor or to exercise, apply or recover

- (a) any rights under the Lease, this Guarantee or any other document held by the Lessor at any time; or
- (b) any of the funds or assets that the Lessor may be entitled to receive or have a claim on.

**22.6. No competition**

Until all money under the Lease has been irrevocably paid in full no Guarantor is entitled:

- (a) to be subrogated to the Lessor or to claim the benefit of any security or guarantee held by the Lessor at any time; or
- (b) either directly or indirectly to prove in, claim or receive the benefit of, any distribution, dividend or payment relating to the Liquidation of the Lessee and/or any other person who gives a guarantee or security in respect of that money.

The receipt of any distribution, dividend or other payment by the Lessor relating to any Liquidation will not prejudice its right to recover that money from the Lessee and the Guarantor.

**22.7. Suspense account**

On the Liquidation of the Lessee, the Guarantor authorises the Lessor:

- (a) to prove for all money received by the Lessor under this clause towards satisfaction of the money payable under the Lease; and
- (b) to retain and to carry to a suspense account; and
- (c) to appropriate at the discretion of the Lessor,

any dividend received in the Liquidation of the Lessee and/or any other person and any other money received in respect of the Lease (including those received under this clause), until the Lessor has been paid in full all money payable under the Lease.

**22.8. Rescission of payment**

Wherever for any reason (including under any Law relating to Liquidation, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including any payment or transfer) made before or after the completion of the Lease which relates in any way to the money payable under it is void, set aside or voidable;
- (b) any claim that anything contemplated by paragraph (a) is so is upheld, conceded or compromised; or
- (c) the Lessor is required to return assets (or compensate for them) or repay any money received by it under that transaction,

the Lessor will immediately be entitled against the Guarantor to all rights in respect of the money payable under the Lease which it would have had if all or the relevant part of the transaction or receipt had not taken place. The Guarantor shall indemnify the Lessor on demand against any resulting loss, cost or expense. This clause continues to apply after the Lease is completed or is terminated.

**22.9. Continuing guarantee**

**Title Reference [Title Reference]**

This Guarantee is a continuing guarantee and indemnity despite any settlement of account, intervening payment or anything else until all money payable under the Lease and this Guarantee is paid in full, and all the Lessee's other obligations under the Lease are performed and observed.

**22.10. Increase in Charges**

The Guarantor acknowledges and agrees that:

- (a) under the Lease, the Charges would increase during the currency of this Guarantee and Indemnity; and
- (b) notwithstanding any increase in such Charges, this Guarantee shall be and remain in full force and effect in relation to the payments, performance and observance guaranteed by the Guarantor under this Guarantee.

**22.11. Indemnity**

As a separate and additional liability, the Guarantor indemnifies the Lessor in respect of:

- (a) all liability, including all actions, proceedings, judgments, damages, losses, costs and expenses of any nature, which may be incurred by, brought, made or recovered against The Lessor consequent on or arising directly or indirectly out of any default or delay by the Lessee in the performance and observance of its obligations contained or implied in the Lease; and
- (b) any money payable under the Lease (including money which would have been money payable under the Lease if it were recoverable) which is not recoverable from the Lessee for any reason, including any legal limitation, disability or incapacity affecting the Lessee or an obligation in the Lease being or becoming unenforceable, void or illegal and whether or not:
  - i. any transaction relating to that money was void or illegal or has been avoided; or
  - ii. anything relating to that transaction was or ought to have been known to The Lessor.

**22.12. Waivers, Remedies Cumulative**

- (a) No failure to exercise and no delay in exercising any Power by the Lessor operates as a waiver. Nor does any single or partial exercise of any Power preclude any other or further exercise of that Power or any other Power.
- (b) The Powers under this Guarantee are in addition to, and do not exclude or limit, any right, power or remedy provided by Law.

**22.13. Severance**

Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Guarantee, nor, affect the validity or enforceability of that provision in any other jurisdiction.

**22.14. Moratorium Legislation**

To the full extent permitted by Law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Guarantor any obligation under this Guarantee; or
- (b) delays, prevents or prejudicially affects the exercise by the Lessor of any right, power or remedy given by this Guarantee,

is excluded from this Guarantee.

**22.15. Costs and Expenses**

**Title Reference [Title Reference]**

On demand the Guarantor shall indemnify the Lessor against any cost, charge, expense, liability, outgoing or payment which the Lessor may sustain or incur in relation to:

- (a) the preparation, execution, stamping and completion of this Guarantee; and
- (b) any actual or contemplated enforcement of, or the actual or contemplated exercise, preservation or consideration of any rights under, this Guarantee,

including in each case legal costs and expenses (including in-house lawyers charged at their usual rates) on a full indemnity basis.

**22.16. Further Assurance**

Each party shall take all steps, execute all documents and do everything reasonably required by any other party to give effect to any of the transactions contemplated by this Guarantee.

**22.17. Assignment**

The Lessor may assign any of its rights under this Guarantee at any time, subject to the provisions of the Lease.

**22.18. Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Guarantee:

- (a) must be in writing addressed;
- (b) must be signed by or on behalf of the sender; and
  - i. for the Lessor, at the address of its office, nominated by the Lessor in Item H of the Particulars Schedule or if not nominated, closest to the Regulated Area;
  - ii. for the Guarantor,
    - A to the Facsimile Number for the Guarantor in Item K of the Particulars Schedule; or
    - B at the Address for Notices for the Guarantor in Item K of the Particulars Schedule;
- (c) will be taken to be duly given or made (in the case of delivery in person or by post or facsimile transmission) when delivered, received or left at the address of the recipient shown in this Guarantee or to any other address which it may have notified the sender,

but if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4 pm (local time), it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

**22.19. Acknowledgment by Guarantors**

The Guarantor confirms that:

- (a) it has not entered into this Guarantee in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of the Lessor (including any advice, warranty, representation or undertaking); and
- (b) the Lessor is not obliged to do anything (including disclosing anything or giving advice), except as expressly set out in the Lease or in writing duly signed by or on behalf of the Lessor.

**22.20. Governing Law and Jurisdiction**

**Title Reference [Title Reference]**

This Guarantee is governed by the laws of Queensland. The Guarantor submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**22.21. Counterparts**

This Guarantee may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**22.22. Deed Binding on Signatories**

This Guarantee binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

SAMPLE

Title Reference [Title Reference]

IN WITNESS HEREOF:

SIGNED SEALED AND DELIVERED by [insert guarantor's name] as Guarantor:

\_\_\_\_\_  
Witness' signature

\_\_\_\_\_  
Guarantor's signature

\_\_\_\_\_  
Witness' name

\_\_\_\_\_  
Guarantor's name

\_\_\_\_\_  
Date of execution

SIGNED SEALED AND DELIVERED by [insert guarantor's name] as Guarantor:

\_\_\_\_\_  
Witness' signature

\_\_\_\_\_  
Guarantor's signature

\_\_\_\_\_  
Witness' name

\_\_\_\_\_  
Guarantor's name

\_\_\_\_\_  
Date of execution

SAMPLE