



## Standard Contract Channel & Pipeline

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(excluding Mareeba-Dimbulah Irrigation Area or Project)

This is the standard supply contract for the storage and delivery by SunWater for interim water allocations, under the *Water Act 2000* and applies to each individual interim water allocation granted under the *Water Act 2000*.

This contract is a copy of the contract approved by the Minister under section 1116(1) of the *Water Act 2000* at the time SunWater was granted an interim resource operations licence under section 1111 of the *Water Act 2000*.

The approval of this contract was published in the Queensland Gazette in accordance with section 1116(3) of the *Water Act 2000* on 10 November 2000.

This contract applies to a holder of an interim water allocation in Queensland who takes water from a channel or pipeline owned by SunWater (formerly a Part 9 licence under the *Water Resources Act 1989* or a licence under section 38(1)(d) of the *Water Resources Act 1989* ).

This contract does not apply to interim water allocations mentioned in section 1117 of the *Water Act 2000*.

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## Background

- A Substantial changes have been made to the regulatory framework for water law in Queensland.
  - B Extensive public consultation has occurred prior to the making of those changes.
  - C As a consequence of such changes existing legislative arrangements for the storage and delivery of water have been superseded.
  - D As a result of these changes the Customer holds, or is entitled to hold, a water entitlement under the *Water Act 2000* for the taking of water from the Regulated Area.
  - E The Customer has nominated SunWater to divert into the Distribution Network the water which the Customer is entitled to divert under the Customer's ROL Contract from the Regulated Area.
  - F SunWater operates the Distribution Network.
  - G This Agreement has been approved by the Minister under the *Water Act 2000* as a supply contract for the storage and delivery of water by SunWater.
  - H The entitlement of the Customer to water arises from the holding of a water entitlement under the Act and not from this Agreement.
  - I The Customer acknowledges that considerable amounts of money have been spent in establishing the Distribution Network and there are considerable fixed costs associated with the Distribution Network.
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## 1. Diversion and Acceptance of Water

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SunWater must divert water on behalf of the Customer into the Distribution Network as SunWater reasonably estimates will satisfy the likely demand of the Customer from time to time. The Customer accepts that the diversion of water by SunWater is subject to:

- (a) the Resource Operations Licence;
- (b) the water available under the Customer's ROL Contract;
- (c) the capacity of the Distribution Network from time to time;
- (d) SunWater's estimate of the likely demand of other customers within the Distribution Network;
- (e) the provisions of the Act; and
- (f) this Agreement.

## 2. Overall Statutory Framework for Services

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In the performance of this Agreement, SunWater and the Customer acknowledge that, under the Act, each is required to comply with:

- (a) the Act; and
- (b) the Strategic Asset Management Plan.

## 3. SunWater's Obligations and Acknowledgements

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- (a) SunWater shall use reasonable endeavours to promptly repair any damage to or malfunction in the Meter of which details are notified to SunWater by the Customer;
- (b) SunWater shall use reasonable endeavours in diverting water to the Distribution Network;
- (c) Where consultation is required under this Agreement SunWater shall:
  - (i) consult fairly and reasonably with the Customer and any entity representing customers of SunWater within the Regulated Area; and
  - (ii) allow the Customer a reasonable opportunity to participate in any such consultation;
- (d) SunWater shall, at approximately annual intervals, during this Agreement publish a report comparing the performance of SunWater with the Service Targets;
- (e) SunWater shall publish Service Targets for the Regulated Area and revise these from time to time having regard to changes to customer needs determined through customer consultation, changes in industry practice and procedures.

## 4. Customer's Obligations and Authorities

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The Customer:

- (a) may take only the water available under the Customer's ROL Contract through the SunWater Diversion Works and the Customer's Offtake works;

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- (b) in taking water, must comply with:
  - (i) the approval under clause 10.4 for the Customer's Offtake Works including the reconfiguration, specifications of and maximum diversion rate from the Customer's Offtake Works;
  - (ii) this Agreement;
  - (iii) each State Direction; and
  - (iv) the SunWater Distribution Rules.
- (c) must not, by any act or omission, cause SunWater to be in breach the Act;
- (d) must not take more than the Customer's Maximum Distribution Volume, except as allowed by this Agreement;
- (e) where a system for the ordering of water is in place under the SunWater Distribution Rules:
  - (i) must take water only to the extent the Customer has complied with the ordering system;
  - (ii) must not take more water than the amount ordered;
  - (iii) must take all water that has been ordered by the Customer, unless an Event of Force Majeure has occurred and the Customer has given notice to SunWater; and
  - (iv) agrees that all water ordered will be accounted for under the water sharing rules administered under the Resource Operations Licence (that is, where the water sharing rules contain capacity sharing arrangements and provide for water accounting at the works of SunWater that manage flows in the river and at the SunWater Diversion Works, water orders by the Customer will be used to determine water available to the Customer; where water sharing rules do not provide for water accounting as above, water meter readings will be used to determine water taken by the Customer);
- (f) where access conditions, for restricting the taking of water are in place under the SunWater Distribution Rules, must:
  - (i) take water only to the extent the Customer has complied with the access conditions;
  - (ii) take water only at the rate and times to which the Customer is entitled under the access conditions at the available pressure; and
  - (iii) not take more water than the amount to which the Customer is entitled under the access conditions.
- (g) bears the risks of:
  - (i) destruction of or damage to the Customer's Offtake Works from an Event of Force Majeure or resulting from SunWater's diverting water, in accordance with this Agreement or any other agreement or the Resource Operations Licence;
  - (ii) the exercise of a Statutory Right;
  - (iii) any action taken under a State Direction; and
  - (iv) Transportation Losses.

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- (h) during the Term the Customer must maintain in full force and effect, and comply with the terms of:
  - (i) the Customer's water entitlement;
  - (ii) the Customer's Development Permit; and
  - (iii) the Customer's ROL Contract, including making all payments when due under the Customer's ROL Contract.
- (i) exclusively authorises SunWater to divert, on the Customer's behalf, water available to the Customer under the Customer's ROL Contract;
- (j) must not divert from the Regulated Area water the subject of this Agreement; and
- (k) irrevocably authorises SunWater to order on behalf of the Customer a release of water under the Customer's ROL Contract.

### 5. Separate Agreements

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Where the Customer and SunWater have made an agreement, whether before or after the making of this Agreement, in addition to this Agreement, which relates to water within the Regulated Area:

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

### 6. Other Distribution Services

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SunWater must provide, when required under this Agreement, or may provide if requested by the Customer:

- (a) connection services (including SunWater's procuring and installing a meter);
- (b) disconnection services (including SunWater's arranging for the removal of a meter);
- (c) extra meter reading services (involving SunWater's reading a meter in addition to a reading anticipated under this Agreement);
- (d) meter testing services (including SunWater's procuring testing of a meter); or
- (e) further services (involving such other services as SunWater may offer from time to time).

### 7. Charges

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#### 7.1 Water Charges

The Customer must pay SunWater:

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- (a) Distribution Charges for the Distribution Services;
- (b) for the services referred to in clauses 6(a) to (d), the relevant Other Distribution Charges;
- (c) for the services referred to in clause 6(e), where:
  - (i) SunWater has indicated that it is prepared to offer the further service; and
  - (ii) SunWater has stated the terms of providing the further service, including the price and payment of a deposit;  
the price stated if it is a fixed price, otherwise a reasonable price having regard to the cost (including administration and overhead costs) to SunWater in undertaking the further service;
- (d) any money due to the holder of a resource operations licence, by SunWater, where SunWater has diverted water that has been taken by the Customer.

## 7.2 Invoicing

SunWater may, unless otherwise required by Law, render an invoice to the Customer for:

- (a) Distribution Charges and Additional Charges at approximately quarterly intervals or as published in the SunWater Distribution Rules;
- (b) Other Distribution Charges after performance of the Other Distribution Services;
- (c) Where the Water Charges are the Minimum Charge, annually in arrears subject to clause 7.3.

## 7.3 Payment on Account for Minimum Charge

Where, in the reasonable opinion of SunWater, the Minimum Charge will apply for the Water Charges in any Water Year, SunWater may render an invoice for the Minimum Charge in advance with any adjustment to be made in the last invoice for the relevant Water Year.

## 7.4 Calculation and Payment of Charges

- (a) Distribution Take or Pay Charges shall be calculated and payable in advance for the relevant period in which the invoice is rendered.
- (b) Distribution Consumption Charges and Additional Charges shall be rendered in arrears for the period for which meter readings have been taken on behalf of SunWater.
- (c) The balance payable for the Other Distribution Charges and for the Other Distribution Services shall be rendered in arrears after performance of the services.

## 7.5 Re-invoicing after Errors

If an error is discovered in any invoice, within 2 years from the date of the invoice, SunWater may issue a subsequent invoice, with an amount reflecting the error. If the error is such that SunWater is to reimburse the Customer, reimbursement may be effected by carrying the reimbursable amount forward to be set off against amounts payable on future invoices or if no future invoices, then by a direct refund to the Customer.

## 7.6 Payment

The Customer must pay invoices within 30 days after the date of the invoice.

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## 7.7 Interest on Arrears

Any amounts charged to SunWater under clause 19.1, if not paid by the Customer when due, will accrue interest at either the rate applicable to such amount under any agreement between the Customer and SunWater or otherwise at the Overdue Rate, calculated on a daily basis and compounded at the end of each calendar month, from the date of the invoice to the date the unpaid amount is paid. Interest payable under this clause may be included by SunWater in an invoice subsequently forwarded to the Customer.

## 7.8 Charges for Water Ordered but Not Taken

If, in the reasonable opinion of SunWater, the failure to take water by the Customer in accordance with clause 4(e)(iii) either represents a risk that:

- (a) SunWater is in breach of its obligations under any Law;
- (b) the holder of the Resource Operations Licence is in breach of the obligations under the Resource Operations Licence; or
- (c) the rights and interests of other customers within the Distribution Network will be adversely affected, then,

SunWater may exercise a right to require the Customer to pay the Distribution Consumption Charges for all water ordered but not taken by the Customer. If the relevant charge is included in an invoice issued by SunWater within 3 months of the end of the Water Year, the Customer must pay the relevant charge. However, nothing in this clause shall limit any other rights of SunWater under this Agreement or otherwise against the Customer in relation to any such breach. In particular, SunWater may require the Customer to pay an amount equal to the costs reasonably incurred by SunWater in complying with the Customer's order, less the relevant charge for Consumption Charges.

## 7.9 Consequences for Water Ordered but Not Taken

Where SunWater forms the opinion referred to in clause 7.8, and the sum of the water ordered, but not taken and the water taken, is in excess of the total of the Customer's Maximum Distribution Volume, the Customer shall be deemed to be in breach of clause 4(d).

## 7.10 Acknowledgement Concerning Distribution Take or Pay Charges

The Customer must pay SunWater the Distribution Take or Pay Charges throughout the Term notwithstanding that:

- (a) the Customer may not take any water;
- (b) the water available under the Customer's ROL Contract is reduced for any reason.

## 8. Term

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### 8.1 Initial Term

This Agreement commences on the Commencement Date and continues unless terminated in accordance with its provisions.

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## 9. SunWater Distribution Rules and Charges

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### 9.1 SunWater Distribution Rules

SunWater may make and amend rules and guidelines including rules providing an ordering system for water or access conditions for the taking of water (such as the time and rate of taking) concerning the Distribution Network, including:

- (a) implementing SunWater's rights and obligations regarding the operation of the Distribution Network; and
- (b) setting out, clarifying or amending the rights and obligations of SunWater and the Customer under this Agreement;
- (c) guidelines for the exercise of SunWater's discretion under this Agreement, provided that the SunWater Distribution Rules,
- (d) are not inconsistent with any Law applying to the operation of the Distribution Network;
- (e) are not inconsistent with the Strategic Asset Management Plan; and
- (f) have been the subject of consultation with the Customer or any group representing customers supplied by the Distribution Network (if such group exists).

### 9.2 SunWater Distribution Charges

SunWater may make or amend Charges for the Services concerning the Distribution Network and shall publish particulars of such Charges from time to time.

## 10. Customer Obligations – SunWater Distribution Works and Customer's Offtake Works

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### 10.1 Customer not to Damage

The Customer shall not damage or by any act or omission permit damage to the SunWater Distribution Works or the Distribution Network.

### 10.2 Customer to Notify Damage

The Customer promptly on becoming aware of any actual or threatened damage to or malfunction in the SunWater Distribution Works or the Distribution Network, must notify SunWater:

- (a) where the damage or malfunction is serious, verbally and subsequently in writing; and
- (b) otherwise in a manner convenient to the Customer.

### 10.3 Customer's Operation of SunWater Distribution Works

Where the Customer, at the request of SunWater, carries out activities or performs services for the operation of the SunWater Distribution Works or the Distribution Network, the Customer shall carry out such activities and services reasonably and promptly and with proper care and attention.

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## 10.4 Customer's Offtake Works to be Approved

Prior to the installation or alteration of the Customer's Offtake Works the Customer, at the request of SunWater, must obtain the prior written approval of SunWater to the Customer's Offtake Works, including the positioning, configuration, specifications of and maximum diversion rates for the Customer's Offtake Works, which approval may not be unreasonably withheld.

## 10.5 Operation and Maintenance of Customer's Offtake Works

The Customer must:

- (a) operate in accordance with sound operating procedures and manufacturer's specifications and with any requirements in the SunWater Distribution Rules; and
- (b) maintain in good working order and condition, the Customer's Offtake Works.

## 10.6 Access by Customer

SunWater authorises the Customer and any person nominated or authorised by the Customer to have access to the Customer's Offtake Works for the purposes of operation, maintenance and meter reading but at the risk of the Customer or such other person.

# 11. Meter/Measurement

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## 11.1 Meter Installation

- (a) Unless this requirement is waived by SunWater, a Meter acceptable to SunWater must be acquired and installed, at the cost of the Customer, within the Customer Offtake Works or SunWater Distribution Works by:
  - (i) SunWater; or
  - (ii) if requested by SunWater, by the Customer.
- (b) Any party installing a Meter shall install the same correctly in accordance with the approval under clause 10.4.
- (c) SunWater's right under subclause (a) includes the right to require the replacement or upgrade of a Meter already installed where such replacement or upgrading is necessary in the reasonable opinion of SunWater but at the cost of SunWater or, where the Customer has breached clause 11.2, the Customer.

## 11.2 No Actions Affecting Meter

The Customer must not:

- (a) damage or by any act or omission permit damage to the Meter; or
- (b) do or omit to do anything which may affect;
  - (i) the accuracy of any Meter used by SunWater in connection with this Agreement;
  - (ii) the operation of the Customer's Offtake Works or any Meter used by SunWater so as to render inaccurate the recording of the volume of water taken; or
  - (iii) the capacity of the Customer's Offtake Works to take water.

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## 11.3 Ownership of Meter

- (a) A Meter acquired and installed by SunWater remains the property of SunWater despite any payment by the Customer.
- (b) Any Meter installed by the Customer shall upon installation become and remain the property of SunWater.

## 11.4 Meter Readings

When required by the SunWater Distribution Rules or as directed by SunWater, the Customer must:

- (a) take readings (including date, time and volume readings) from the Meter;
- (b) advise SunWater by telephone or fax of the reading within 24 hours of taking the reading;
- (c) maintain written records of such readings;
- (d) provide copies of such records to SunWater (if requested by SunWater).

## 11.5 Access to Read, Test, Repair, Calibrate

At all reasonable times, the Customer must ensure that SunWater, and any person nominated or authorised by SunWater, has safe and convenient access to the Meter and the Customer's Off-take Works for the purposes of reading, testing, repairing and calibrating the Meter and to determine if the Customer is complying with this Agreement.

## 11.6 Disclosure of Records

- (a) By SunWater

The Customer authorises SunWater to make available to the Regulator a holder of a resource operations licence in the Regulated Area and any other person as required under any Law and, with the consent of the Customer, any proposed purchaser of the Customer's water entitlement, such information and records concerning the Customer, the Customer's water entitlement, the Meter and the volumes of water taken as is required by Law or to which the Customer consents or which may be required for the proposed dealing.

- (b) By the Regulator or other holder

The Customer authorises the Regulator and a holder of a resource operations licence in the Regulated Area with whom the Customer has a contract for the supply of water to make available to SunWater such information and records concerning the Customer, the water entitlement of the Customer under such other contract and a copy of such other contract, as is required to enable SunWater to determine whether the Customer has complied with this Agreement or to enable SunWater to issue an invoice to the Customer.

- (c) By electricity supplier

The Customer authorises any electricity supplier to supply to SunWater, particulars of electricity consumption by the Customer for the taking of water.

## 11.7 Report Malfunctions, Damage

The Customer, promptly on becoming aware of any actual or threatened damage to or malfunction in the Meter, must notify SunWater:

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- (a) where the damage or malfunction is serious, verbally and subsequently in writing; and
- (b) otherwise in a manner convenient to the Customer.

### 11.8 Removal of Meter on Termination

On Termination of this Agreement under clause 22.1, SunWater may remove the Meter and seal off any SunWater Distribution Works at the cost of the Customer.

### 11.9 Estimate

- (a) If, for any period during the current Water Year or the most recently completed Water Year only:
  - (i) SunWater has reasonable grounds to believe that the Meter is or was not measuring accurately;
  - (ii) no Meter is installed;
  - (iii) access to the Meter was not obtained for any reason; or
  - (iv) SunWater has reasonable grounds to believe the Customer has not strictly complied with the requirements of clauses 11.2, 11.4 or 11.7,to determine applicable Consumption Charges, SunWater may make an estimate of the volume of water taken by the Customer over that period.
- (b) In making such estimate, SunWater must consult with the Customer, act reasonably and may have regard to any relevant matter including water ordered by the Customer, the Customer's prior water use history, hours pumped, electricity consumed, industry practice or the area under irrigation. Any estimate made by SunWater under this clause may be issued as a separate invoice by SunWater and shall bind the Customer.

### 11.10 Customer to Assist

The Customer shall:

- (a) upon request by SunWater supply to SunWater any relevant document or information in the possession or control of the Customer which would assist SunWater in making an estimate under clause 11.9;
- (b) permit SunWater or any person authorised by SunWater to have access to and read any electricity meter recording electricity used in connection with the taking of water;
- (c) permit SunWater or any person authorised by SunWater to have access to the land of the Customer for any purpose reasonably associated with the performance of this Agreement or carrying out its responsibilities in connection with management of the Distribution Network.

### 11.11 Testing and Calibrating at Request of Customer

The Customer may request SunWater to test and calibrate the Meter. Where the Meter is operating within the manufacturers specifications or the Customer has not complied with clause 11.2, the cost of such testing and calibration shall be met by the Customer, otherwise the cost shall be met by SunWater. The charges payable by the Customer to SunWater must be adjusted for the current Water Year or the most recently completed

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Water Year, under clause 11.9(b), to the extent SunWater reasonably considers that the Meter has not been operating within the manufacturer's specification.

## 12. Non-diversion Authorisations

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### 12.1 Suspension or Restriction of Diversions

SunWater may suspend or restrict both diversions of water by SunWater on behalf of the Customer and the taking of water by the Customer:

- (a) during maintenance or replacement of the Distribution Network or the SunWater Distribution Works or of the water infrastructure of the holder of the Resource Operations Licence;
- (b) where the holder of the Resource Operations Licence is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of SunWater such diversion or taking:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including SunWater or the Customer);
  - (ii) may cause or contribute to loss of life or injury to persons;
  - (iii) may cause or contribute to an adverse effect on public health;
  - (iv) is likely to constitute a breach by SunWater of its obligations under any Law or an agreement;
  - (v) would be impractical considering the level of demand, the performance of the Distribution Network (including potential water losses) and the requirements of other customers taking water from the Distribution Network or within the Regulated Area at the time;
  - (vi) would not be allowed under the Water Resources Plan, the Resource Operations Plan or the Resources Operations Licence;
- (d) by reason of an Event of Force Majeure;
- (e) due to the non-availability or limited availability of water to be diverted into the Distribution Network, for any reason;
- (f) where the Customer is not entitled to take water under the Customer's ROL Contract and the holder of the Resource Operations Licence has given notice to SunWater;
- (g) where provided for under the SunWater Distribution Rules.

### 12.2 Direction Not to Take Water

Where the Customer:

- (a) has committed a material breach of this Agreement;
- (b) is in arrears for payments for Charges for more than 2 months;
- (c) has breached this Agreement and has not reimbursed SunWater for costs incurred by SunWater in rectifying the breach;
- (d) has not provided the security required under clause 23;
- (e) has breached any of clauses 4 (a), 4(c), (d), (e), (f), 11.2, 11.5, or 11.10 then,

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SunWater may direct the Customer or any person diverting or taking the Customer's water entitlement, not to divert or take water under the Customer's water entitlement.

### 12.3 Consequences of Ordering and Not Taking Water

If, in the reasonable opinion of SunWater, the breach by the Customer of clause 4(e)(iii), either represents a risk that:

- (a) there is a breach of the Act; or
- (b) the rights and interests of other customers taking water from the Distribution Network or within the Regulated Area will be adversely affected, then,

SunWater must notify the Customer within 3 months of the end of the Water Year, that:

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

However, nothing in this clause shall limit the rights of SunWater under this Agreement or otherwise against the Customer for any such breach.

### 12.4 If Customer does Not Comply with Direction Not to Take Water

Where SunWater considers that the Customer, or a person to whom the direction is given, has not complied with or will not comply with a direction under clause 12.2, SunWater may take all reasonable steps to ensure that the Customer or other person complies with the direction, including:

- (a) not diverting water under this Agreement;
- (b) stopping the Customer's or other person's taking water by making modifications to the Distribution Network, the SunWater Distribution works, the Meter, the Customer's Offtake Works or the Customer's Additional Works.

## 13. Water Quality

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### 13.1 No Warranty by SunWater

SunWater makes no representation and gives no warranty:

- (a) about the quality of water within the Distribution Network or the SunWater Distribution Works or the Regulated Area;
- (b) that any actions, measures or steps will be taken by SunWater to prevent any adverse effects on the quality of water in the Distribution Network or the Regulated Area, within the SunWater Distribution Works or after its diversion and prior to its taking by or on behalf of the Customer; or
- (c) that water within the Distribution Network or SunWater Distribution Works, the Regulated Area or available for diversion or taking at the Customer's Offtake Works is potable or suitable for any purpose (whether or not it is a purpose to which SunWater knows the Customer may put the water).

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### 13.2 Acknowledgement by Customer

The Customer acknowledges SunWater may, from time to time, add chemicals to water in the Distribution Network for overall maintenance purposes including weed control and that such chemicals will affect water quality.

### 13.3 Customer to Test

The Customer shall satisfy itself about the quality of water by testing or other means prior to taking water from the Distribution Network or diverting water from the Regulated Area by SunWater.

### 13.4 Customer to Indemnify

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

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

### 13.5 Release by Customer

The Customer releases SunWater from all claims, actions, demands, proceedings and liability which it may have or claim to have or but for this release might have had against SunWater connected with:

- (a) the quality of water within the Distribution Network, the SunWater Distribution Works, the Regulated Area or taken by the Customer; or
- (b) the addition of chemicals to water in the Distribution Network as acknowledged in clause 13.2.

## 14. Additional Water Taken by Customer

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The Customer acknowledges that SunWater may, in the circumstances stated in the SunWater Distribution Rules, from time to time, divert to the Distribution Network water which the Customer may take in addition to the Customer's Maximum Distribution Volume on:

- (a) complying with the SunWater Distribution Rules;
- (b) complying with clause 11.4; and
- (c) paying the Additional Charges for the water taken by the Customer.

## 15. Decommissioning of Distribution Network by SunWater

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Where the total of all water entitlements located at the SunWater Diversion Location and the subject of an existing distribution contract for diversion into the Distribution Network becomes less than 10% of the Distribution Network's capacity, then SunWater may

## Standard Contract – Channel/Pipeline

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terminate this Agreement by notice in writing to the Customer. This Agreement shall terminate 2 years after notice is given by SunWater.

### 16. Assignment/Subcontracting

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#### 16.1 Assignment by SunWater

SunWater may assign its rights and obligations under this Agreement to any person provided such person enters into a covenant in favour of the Customer to be bound by the provisions of this Agreement.

#### 16.2 SunWater may Subcontract

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

### 17. Amendment of Customer's ROL Contract

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#### 17.1 Further Supply Contract

The Customer shall not enter into a variation of the Customer's ROL Contract or a new ROL Contract except:

- (a) as a consequence of an application referred to in clause 17.3; and
- (b) unless
  - (i) SunWater and the Customer have entered into a further supply contract or an amendment to this Agreement on terms acceptable to SunWater in its absolute discretion; and
  - (ii) where the holder of the Resource Operations Licence and the other party to the contract, if any holder have entered into a further supply contract or an amendment to the other supply agreement.

#### 17.2 Acknowledgement of Consequences of clause 17.1

The Customer acknowledges that:

- (a) until this clause has been complied:
  - (i) all Charges payable under this Agreement remain payable to SunWater; and
  - (ii) that SunWater is not obliged to take any action to deliver water as proposed by the Customer in the variation;
- (b) SunWater in exercising its discretion in clause 17.1(b)(i):
  - (i) will not act in a way that reduces the income of SunWater from the Distribution Network; and
  - (ii) may require a single payment to pay out the Customer's obligations under this Agreement.

#### 17.3 Notice of Application

If the Customer applies:

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- (a) to amend or transfer the Customer's interim water allocation; or
- (b) for a change to a water allocation, a transfer, seasonal water assignment or lease of a water allocation for the Customer's water allocation;
- (c) for or enters a contract to acquire, take a seasonal water assignment of or lease a water entitlement for the Regulated Area;

in whole or in part then the Customer shall give written notice of the application to SunWater promptly after the application or contract is made.

### 17.4 SunWater's Duty Unaffected

Where, under the Act, SunWater is to approve the amendment, transfer, seasonal water assignment or lease referred to in this clause, SunWater shall carry out its responsibility under the Act strictly in accordance with the terms of the Act and any other Law binding on it without regard to this Agreement.

### 17.5 Further or Amended Supply Agreement

Where SunWater is to approve the amendment, transfer, seasonal water assignment or lease then its statutory responsibility or SunWater's decision under a ROL Contract, is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

## 18. Alternate Location for Taking Water

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### 18.1 Notice to SunWater

If the Customer wishes to nominate an alternative Location for Taking Water for taking all or a part of the Customer's Maximum Delivery Volume in the Water Year or for a number of water years, the Customer must obtain the prior written approval of SunWater.

### 18.2 On-Supply to be Lawful or Approved

The Customer shall not seek the approval of SunWater under clause 18.1 unless such dealing:

- (a) is lawful;
- (b) may be effected without an approval under Law; or
- (c) if it may be effected subject to obtaining an approval under Law, that approval is obtained.

### 18.3 Further Supply Contract

The Customer shall not enter into any contract or arrangement for the purposes of clause 18.1, unless:

- (a) SunWater has agreed to an amendment of this Agreement on terms acceptable to SunWater in its absolute discretion; and
- (b) where necessary, SunWater has entered into a supply contract with another person on terms acceptable to SunWater in its absolute discretion.

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## 19. Power of Sale

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### 19.1 Charge of Allocation

The Customer charges to SunWater the Customer's water entitlement with the due and punctual payment of:

- (a) all moneys payable under this Agreement;
- (b) all moneys payable under the additional agreements referred to in clause 7;
- (c) all debts (including amounts which become a debt due to SunWater under the Act) from time to time due by the Customer to SunWater;
- (d) the Termination Amount payable by the Customer under clause 22.2.

### 19.2 Exercise of Statutory Power

Where the Customer is in breach of this Agreement or if SunWater is entitled to terminate this Agreement under clause 22.1, SunWater may, subject to giving notice as required by the Act, sell the Customer's water entitlement.

### 19.3 Further Powers

Where SunWater is entitled to sell the Customer's water entitlement, SunWater may also amend, lease, grant a seasonal water assignment of or nominate an alternative Location for taking Water, for the whole or part of the Customer's water entitlement.

### 19.4 Manner of Sale

Without limitation, any Dealing by Attorney may be made:

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

### 19.5 Application of Sale Proceeds

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

- (a) firstly, in paying the costs of the Dealing by Attorney;
- (b) secondly, in discharging the liability of the Customer to SunWater for the amounts charged to SunWater under this Agreement;
- (c) thirdly, in discharging the liability, if any, of the Customer in relation to the Customer's water entitlement to the chief executive under the Act;
- (d) fourthly, in discharging, in accordance with the priorities of their registered interests, any liability owing by the Customer to a person who has a registered interest recorded over the Customer's water entitlement on the Water Allocations Register;

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- (e) fifthly, in payment to the Customer.

### 19.6 Power of Attorney

- (a) For valuable consideration and by way of security the Customer irrevocably appoints the Chief Executive Officer of SunWater its attorney to:
  - (i) do anything which the Customer is obliged to do under or in relation to this Agreement but has failed to do so;
  - (ii) do anything which the Customer is entitled to do under the Act in relation to the Customer's water entitlement; or
  - (iii) undertake the Dealing by Attorney and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such sale, assignment or lease.
- (b) Without limitation, the Attorney may at any time:
  - (i) do anything which in the opinion of SunWater or Attorney is necessary or expedient to secure, preserve, perfect or give effect to the security contained in this Agreement and for this purpose without limitation may execute any application, transfer, seasonal water assignment and other assurance or lease of any of the Customer's water entitlement or any other document in favour of any purchaser, assignee, lessee, another customer of SunWater or any nominee; and
  - (ii) delegate his powers (including delegation).
- (c) No Attorney may act under this clause:
  - (i) unless notice required by clause 22.2 has been given; or
  - (ii) inconsistently with this Agreement.
- (d) To the extent permitted by Law, no Attorney will be liable:
  - (i) for any conduct or delay (including negligence) in the exercise or non-exercise of any power; or
  - (ii) for any loss (including consequential loss) which results, except where the liability arises from the fraud or wilful misconduct of the Attorney.
- (e) No party to any Dealing by Attorney and no person asked to register a sale, seasonal water assignment or lease is bound to enquire:
  - (i) whether the Customer has breached this Agreement or whether this Agreement has become enforceable;
  - (ii) whether a person who is, or purports or is purported to be, an Attorney is duly appointed;
  - (iii) as to the amount of any moneys and whether such moneys are due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing by Attorney.

### **20. Substantial Destruction or Damage to the Distribution Network, SunWater Distribution Works**

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This Agreement shall terminate where in SunWater's reasonable opinion, SunWater is no longer able to control the diversion of water to the Distribution Network or control water within the Distribution Network, including meeting demands for taking water, because the Distribution Network, SunWater Distribution Works or water infrastructure of the holder of a Resource Operations Licence are substantially destroyed or damaged. As soon as is reasonably practicable after SunWater has formed the opinion, SunWater shall notify the Customer and this Agreement shall terminate from the date stated by SunWater in that notice to the Customer.

### **21. Limitation of Liability and Release**

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#### **21.1 Extent of Liability for Losses**

To the extent permitted by Law, SunWater shall not be liable to the Customer under or in connection with this Agreement for any claims, actions, proceedings, judgments, cost, expense, loss, damage or liability incurred or suffered by the Customer or by anyone claiming through the Customer for:

- (a) any breach of this Agreement by SunWater;
- (b) water not being available under the ROL Contract;
- (c) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (d) complying with a State Direction.

#### **21.2 Customer has Remedies under the Act**

SunWater and the Customer acknowledge and agree that clause 21.1 is not intended to limit or affect action which the Customer may take against SunWater under the Act or for the wilfully negligent acts of SunWater.

#### **21.3 Releases by Customer**

The Customer releases SunWater from all claims, actions, demands, proceedings and liability which it may have or claim to have or but for this release might have had against SunWater connected with:

- (a) death or personal injury, damage to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of any action by SunWater, including for example, channel overflows however caused, pipeline breaks where such action is necessary for SunWater to comply with the requirements of any Law binding on it;
- (b) death or personal injury, damages to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of flooding or inundation caused by overflows from the Distribution Network or the Distribution Network acting as a barrier as a consequence of a circumstance referred to in paragraphs (a), (e), (f) and (h) of the definition "Event of Force Majeure";
- (c) death or personal injury, damage to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of actions of SunWater in remedying a breach of this Agreement by the Customer or a breach of an agreement for the

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- diversion of water which SunWater has with another customer in the Distribution Network for example, in the removal of unauthorised connections or outlets;
- (d) alterations to the Distribution Network or conditions within the Distribution Network however caused, for example, the movement of water weeds to clog pumps and the impact of sudden losses or fluctuations of flow or pressure surges within the Distribution Network;
  - (e) the circumstances in which the Customer bears the risk as stated in clause 2(g).

### 21.4 Indemnity by Customer

The Customer must indemnify SunWater against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against SunWater arising out of the circumstances in which the Customer releases SunWater under clause 21.3. and a failure to comply with clause 4(h)(iii)

## 22. Default and Termination

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### 22.1 Termination

SunWater may terminate this Agreement, without affecting SunWater's accrued rights, by giving a notice to the Customer of its intention to terminate on any of the following grounds:

- (a) the Customer (being a natural person) has become a bankrupt.
- (b) the Customer (being a corporation) becomes Insolvent.
- (c) the Customer breaches a provision of this Agreement 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 SunWater of its intention to terminate.

### 22.2 Payment on Termination for Breach by Customer

Where this Agreement is terminated, prior to expiration of the Term, as a consequence of a breach by the Customer, the Customer shall pay to SunWater the Termination Amount.

### 22.3 Termination Amount

The Customer acknowledges that the Termination Amount is intended to represent a reasonable apportionment of the loss of future profit, increased average operating costs, proportionate share of ongoing fixed costs and decommissioning costs likely to be capital costs incurred by SunWater for the SunWater Works having regard to the quantities of water supplied and the persons supplied from the SunWater Works. SunWater reserves the right to undertake a formal assessment of the Termination Amount, at the cost of the Customer.

## 23. Security

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### 23.1 Request for Security

SunWater may request the provision of security if:

- (a) the Customer commits a breach nominated in clause 12.2(a), (b), (c) or (e) of this Agreement, whether SunWater has given a direction or not; or

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- (b) SunWater is not reasonably satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement.

### 23.2 Provision of Security

The Customer must provide, promptly after a request in writing by SunWater, a security of an amount at least equal to one quarter of the total of the Distribution Take or Pay Charges and the Distribution Consumption Charges multiplied by the amount of the Customer's water entitlement until the later of:

- (a) termination of this Agreement (for whatever reason); and
- (b) payment of all moneys owing (whether or not then due or owing contingently or prospectively) by the Customer under this Agreement.

### 23.3 Form of Security

The security may take the form of an on demand guarantee on terms and from a financial institution reasonably acceptable to SunWater.

### 23.4 No Services without Security

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

- (a) the security is provided to SunWater; and
- (b) thereafter, if SunWater uses the security to pay amounts owing by the Customer under this Agreement, until the Customer has provided further security so that the total security is for an amount not less than the amount calculated under clause 23.2.

### 23.5 Release of Security

Upon the later of termination of this Agreement and the payment of all moneys owing (whether or not then due or owing contingently or prospectively) SunWater shall release the security to the Customer.

## 24. Dispute Resolution

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### 24.1 Activation

If a dispute arises under this Agreement, 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.

### 24.2 Appointment of representative

Within five business days of receipt of the notice referred to in clause 24.1, the recipient shall designate a representative with similar authority.

### 24.3 Discussions

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

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## 24.4 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.

## 24.5 Methods of resolution

A party receiving a request under clause 24.4 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.

A procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

## 24.6 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 24 is to attempt to settle a dispute between the parties.

## 24.7 Termination

Any party may terminate the dispute resolution procedure provided by this clause 24 at any time and pursue other available remedies.

## 25. Native Title

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### 25.1 Existence of Native Title

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

## 26. GST

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The parties agree that:

- (a) all Payments have been calculated without regard to GST;
- (b) SunWater 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;

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

### 27. Miscellaneous

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#### 27.1 Obligations for the Benefit of Third Parties

The Customer acknowledges that a breach by it of its obligations under this Agreement may adversely effect the interests of other customers taking water from the Distribution Network or within the Regulated Area and agrees, for the benefit of such customers, to comply with all its obligations under this Agreement.

#### 27.2 Notices

Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient :
  - (i) for SunWater, at the address of its office nominated in the SunWater Distribution Rules or if not nominated closest to the Distribution Network;
  - (ii) for the Customer, at the address last known to SunWater or shown in the register that records the details of the Customer's water entitlement.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by the Customer will be taken to have been given when delivered, received or left at the above address;
- (d) in the case of a notice by SunWater forwarded by mail, will be taken to have been given 4 days after posting by SunWater;
- (e) if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

#### 27.3 Entire Agreement

This Agreement contains the entire agreement of the parties for its subject matter namely the Services of SunWater to the Customer in relation to the Customer's Maximum Distribution Volume and supersedes all earlier agreements. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties for its subject matter.

#### 27.4 Amendment

This Agreement may be amended:

- (a) only by another agreement executed by all parties; or
- (b) as reasonably required by SunWater, after consultation, where there has been a change in an Law, the Resource Operations Licence, the Distribution Network or Strategic Asset Management Plan.

#### 27.5 No Waiver

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No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

### 27.6 Stamp Duty and Costs

Each party bears its own costs arising out of the preparation of this Agreement but the Customer will bear any stamp duty (including fines and penalties) chargeable on this Agreement, on any instruments executed under this Agreement, and for a transaction evidenced by this Agreement.

### 27.7 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 of the transactions contemplated by this Agreement.

### 27.8 Details from Register

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

### 27.9 Costs of Approval

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

- (a) as set out in the Regulated Charge;
- and if there is no such Regulated Charge:
- (b) the charge published in the SunWater Distribution Rules, if any.

## 28. Definitions/Interpretation

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### 28.1 Definitions

**Act** means the *Water Act 2000*.

**Additional Charges** means the applicable Regulated Charge and if no Regulated Charge applies the charge as made by SunWater when notice of the availability of additional water is given under this Agreement.

**Charges** means Distribution Charges, Additional Charges and Other Distribution Charges.

**Commencement Date** means, where this Agreement is an approved supply contract under the Act the date on which that approval is gazetted and otherwise means the date of commencement stated in the Customer's Schedule.

**Customer** means the person identified in the Customer's Schedule.

**Customer's Additional Works** means works other than the Customer's Offtake Works from which the Customer may take water.

**Customer's Development Permit** means any development permit required to be held by the Customer for the Customer's Off-take Works under the *Integrated Planning Act 1997*.

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**Customer's Maximum Distribution Volume** means the actual volume of water to which the Customer is entitled in any Water Year from the Customer's ROL Contract or as varied under clause 18.

**Customer's ROL Contract** means a ROL Contract between SunWater and the Customer concerning an interim water allocation made under section 1113 of the Act for an authority under part 4, section 38(1)(d) for a pipeline or under part 9, as subsequently converted to a water allocation under the Act or, subject to clause 17.1, as varied under the Customer's ROL Contract.

**Customer's Schedule** means the schedule described as such which is included in this Agreement.

**Customer's Offtake Works** means the works used by the Customer for taking water or as may be varied during the Term under clause 10.4.

**Dealing by Attorney** means for a water entitlement, any amendment, sale, lease, seasonal water assignment or nomination of an alternative Location for Taking Water.

**Distribution Charges** means the greater of:

- (a) the Minimum Charge; or
- (b) the total in any Water Year of:
  - (i) the Distribution Take or Pay Charges; and
  - (ii) the Distribution Consumption Charges.

**Distribution Consumption Charges** means the applicable Regulated Charge for the Customer's water entitlement described by reference to the volume of water taken, as may be incorporated within any other charge, and if no Regulated Charge applies the charge made by SunWater under clause 9.2.

**Distribution Services** means the services described in clause 1.

**Distribution Take or Pay Charges** means the applicable Regulated Charge for the Customer's water entitlement currently described by reference to the volume of the Customer's water entitlement, as may be incorporated within any other charge, and if no Regulated Charge applies the charge made by SunWater under clause 9.2.

**Distribution Network** means the network of channels, pipelines, natural formations and other works as operated from time to time by SunWater known by the description in the Customer's Schedule.

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

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain

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any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;

- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the Distribution Network or the SunWater Distribution Works or the Customer's Offtake Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the Distribution Network or the SunWater Distribution Works, the Meter or the Customer's Offtake Works caused by any of the events set out above.

**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;

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

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

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

**Location for Taking Water** means the Customer's Offtake Work's Location as varied under clause 18;

**Law** means:

- (a) the principles of law or equity established by decisions of Australian courts;
- (b) any legislation, statutes, acts, rules, orders, regulations, by-laws, local laws, policies or ordinances which are enacted, issued or promulgated by the State, a Minister, a corporation or authority constituted for a public purpose or a local authority; and

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- (c) requirements made or arising under or under any of the matters referred to in paragraphs (a) or (b) above.

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

**Minimum Charge** means the Regulated Charge described as a minimum charge applicable to the Regulated Area, as may be incorporated within any other charge, and if there is no Regulated Charge the charge as published from time to time by SunWater under clause 9.2.

**ML** means megalitre.

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

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

**Other Distribution Charges** means the Regulated Charge described as a charge for the Other Distribution Services applicable to the Distribution Network and if there is no Regulated Charge the charge made by SunWater under clause 9.2.

**Other Distribution Services** means the services identified in clause 6 and any services which SunWater indicates, in the SunWater Distribution Rules, that it will provide.

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

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

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

**Regulated Charge** means a charge payable to SunWater for any service to be provided under this Agreement as set as a rate or charge under the Water Resources (Rates and Charges) Regulation 1992 or as otherwise set under any Law.

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

**Resource Operations Licence** means:

- (a) any resource operations licence; or
- (b) any interim resource operations licence;

under the Act held by SunWater or another person and described in the Customer's Schedule.

**Resource Operations Plan** means the resource operations plan if any from time to time under the Act which applies to the Regulated Area.

**ROL Contract** means a contract between the holder of a Resource Operations Licence and the Customer.

**Services** means Distribution Services and Other Distribution Services.

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**Service Target** means a target from time to time nominated by SunWater for the level of services it provides for example:

- (a) making water available in nominated timeframes at nominated locations;
- (b) notification for and timing of interruptions to supply;
- (c) frequency and duration of interruptions to supply;
- (d) timing and duration of planned maintenance
- (e) response times to applications made under this Agreement.

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

**Statutory Rights** means the right to take water (other than the Customer's water entitlement) under the Act.

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

**SunWater** means the Corporation established as a body corporate under the *Government Owned Corporations (State Water Projects Corporatisation) Regulation 2000*.

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

**SunWater Distribution Works** means the works to which the water is to be diverted by SunWater at the SunWater Diversion location.

**SunWater Diversion Location** means that point on a watercourse where water is delivered under a ROL Contract to enable SunWater to deliver water to the Location of the Customer's Offtake Works;

**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;

**Termination Amount** means the amount which represents the value as at the Date of Termination using a discount figure equivalent to the Net Present Value Rate of the Take or Pay Charges and the Consumption Charges which would have been payable under this Agreement for a period of 10 years after the Date of Termination on the assumption that in each Water Year the Customer took the whole of the Customer's water entitlement.

**Transportation Losses** means the water lost after diversion into the Distribution Network or otherwise rendered unavailable to be taken or used by the Customer as a result of:

- (a) contamination (from whatever clause);
- (b) theft or any unlawful taking;
- (c) the taking by other customers within the Distribution Network of an amount of water greater than that to which the customer is entitled;
- (d) where a system for the ordering of water is in place under the SunWater Distribution Rules and a Customer has:
  - (i) taken more water than has been ordered by a customer;

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- (ii) has not taken all of the water that has been ordered by a customer;
- (e) where access conditions including, for example, a system for the rostering of water are in place under the SunWater Distribution Rules and a customer has:
  - (i) taken more water than that to which that customer is entitled; or
  - (ii) taken water at a rate or at a time contrary to such access conditions.

**Water Resource Plan** means the water resources plan if any from time to time under the Act which applies to the Regulated Area.

**Water Year** means the year described as the Water Year in the Water Resource Plan applicable to the Regulated Area and if none is so described the year from time to time nominated by SunWater.

### 28.2 Interpretation

In interpreting this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa.;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in this Agreement, 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 a Governmental 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 Agreement;
- (k) a reference to any agreement (including this Agreement) or instrument includes that agreement or instrument as amended, notated, supplemented, varied or replaced from time to time;
- (l) a term used in the Act has the same meaning when used in this Agreement;
- (m) a reference to **conduct** includes, any omission and any representation, statement or undertaking, whether or not in writing;
- (n) where the Customer comprises two or more persons the liability under this Agreement shall be joint and several.

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## Customer's Schedule

The following provisions constitute the Customer's Schedule when this Agreement is a supply contract approved under the Act.

Particulars of the Customer, the Customer's Offtake Works, the Regulated Area and the Resource Operations Licence shall be those which are either:

- (a) stated in the relevant interim resource operations licence granted to SunWater under section 1110 of the *Water Act 2000* or granted to another person; or
- (b) recorded by the State for the interim water allocation granted under section 1113 of the *Water Act 2000*, because it was an authority under Part 9 of the repealed Act or otherwise; or
- (c) described in the Water Allocation (as that term is defined in the *Water Resources Act 1989*) being the predecessor of the Customer's interim water allocation; or
- (d) as stated in the licence relating to the Water Allocation referred to in (c).

OR

- (a) stated in the relevant Resource Operations Licence held by SunWater or other person;
- (b) recorded in the water allocations register for the Customer's water entitlement;
- (c) the ROL contract.

(The following parts 1 to 5 constitute the Customer's Schedule when this Agreement is not a supply contract approved under the Act)

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## 1. Customer Details

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Customer : [ ]  
ABN : [ ]  
ACN/ARBN : [ ]

## 2. Customer Particulars

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Customer's ROL Contract [ ]  
Location for taking Water : [ ]

## 3. SunWater Distribution Works/Distribution Network

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Customer's Offtake Works : [ ]  
Meter Details : [ ]  
Existing SunWater Distribution Works : [ ]  
Distribution Network [ ]

## 4. Commencement Date

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[ \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ]

## 5. Water and Other Charges

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\* *Delete one*

These Charges are current for the period from \_\_\_\_\_ to \_\_\_\_\_.

Distribution Take or Pay : Regulated Charge\*/  
\$[ ] for [ ] per ML per year\*

Distribution Consumption : Regulated Charge\*/\$[ ] per ML\*

Minimum Charge : [ ]

Billing Period : Monthly\*/quarterly\*

Charges for Connection Services : [ ]

Charges for Disconnection Services : [ ]

Charges for Extra Meter Reading Services : [ ]

Charges for Meter Testing Services : [ ]

