



Bulk Water Supply
Contract – LMA
Scheme

Version 1

1. Documents comprising this Agreement

- (a) In this Agreement:
- (i) **Deemed Contract** means a contract so described in a written notice by SunWater to the Customer prior to the Transfer Day.
 - (ii) **Distribution Contract** means the contract deemed to be formed under section 738I(5) of the *Water Act 2000* (Qld) between the Customer and the relevant Irrigation Entity in respect of the water allocation the subject of this Agreement.
 - (iii) **Existing Contract** means the contract for bulk water supply (however named) in force between SunWater and the Customer immediately prior to the Transfer Day in relation to the Customer's Allocation.
 - (iv) **Irrigation Entity** has the meaning set out in section 721 of the *Water Act 2000* (Qld).
 - (v) **Relevant Section** means section 738JA(5) of the *Water Act 2000* (Qld)
 - (vi) **Transfer Day** means the relevant 'Transfer Day' defined in section 718 of the *Water Act 2000* (Qld)
- (b) This Agreement has effect due to the operation of the Relevant Section and comprises:
- (i) the Existing Contract, excluding the Standard Conditions of that contract; and
 - (ii) where the Existing Contract is a Deemed Contract, the terms set out in Part B; and
 - (iii) where the Existing Contract is not a Deemed Contract, the terms set out in Part A,
- as amended by Part C.
- (c) Where, immediately following the Transfer Day, the Fixed Charges or Consumption Charges are not Regulated Charges, then, subject to paragraph (d), on and from the Transfer Day the Fixed Charges or Consumption Charges (as applicable) described in the Customer's Schedule are replaced by the Fixed Charges or Consumption Charges (as applicable) advised to the Customer in writing by SunWater prior to the Transfer Day.
- (d) The aggregate of:
- (i) a Fixed Charge rate or Consumption Charge rate notified in writing by SunWater prior to the Transfer Day; and
 - (ii) the equivalent Fixed Charge rate or Consumption Charge rate under the Distribution Contract as at the Transfer Day,
- cannot exceed the relevant Fixed Charge or Consumption Charge under the Existing Contract.
- (e) Where the Existing Contract included a requirement for a Guarantee and Indemnity (**Guarantee**) by any person (**Guarantor**):
- (i) SunWater and the Customer agree that this Agreement is a replacement of the Existing Contract for the purposes of a Guarantee; and
 - (ii) the Customer must promptly upon request by SunWater procure a replacement Guarantee from the Guarantor on terms reasonably acceptable to SunWater, which specifically relates to this Agreement.

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Part A

General Conditions

1. Release and Acceptance of Water

SunWater must release water from the SunWater Works, as SunWater reasonably estimates will satisfy the likely demand of the Customer from time to time. The Customer accepts that the release of water by SunWater is subject to:

- (a) the Resource Operations Licence;
- (b) the Customer's Allocation;
- (c) SunWater's estimate of the likely demand of other customers within the Regulated Area;
- (d) the availability of water from the SunWater Works;
- (e) the capacity of the SunWater Works;
- (f) the provisions of the Act; and
- (g) this Agreement.

2. Overall Statutory Framework for Services

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

- (a) the Act;
- (b) the Water Resource Plan;
- (c) the Resource Operations Plan;
- (d) the Resource Operations Licence;
- (e) the Strategic Asset Management Plan, if any; and
- (f) trading rules set out in the Resource Operations Licence.

3. SunWater's Obligations

- (a) SunWater shall release water within the Regulated Area;
- (b) Where consultation is required under this Agreement, SunWater shall:
 - (i) consult fairly and reasonably with the Customer or any entity representing customers of SunWater within the Regulated Area; and
 - (ii) allow the Customer a reasonable opportunity to participate in any such consultation;
- (c) SunWater shall, at approximately annual intervals, during this Agreement publish a report comparing the performance of SunWater with the Service Targets;
- (d) SunWater shall publish Service Targets for the Regulated Area and revise these from time to time after considering changes in customer needs determined through customer consultation, and changes in industry practice and procedures.

4. Customer's Obligations

The Customer:

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- (a) may take only the water the Customer is entitled to take under the Customer's Allocation through the Customer's Nominated Works;
- (b) the maximum diversion rate under clause 10.4 may be varied from time to time:
 - (i) by agreement between the parties under this clause; and
 - (ii) either for a fixed period of time or on a permanent basis, provided the variation does not breach a Law or have the potential to adversely impact on another person.
- (c) in taking water, must comply with:
 - (i) the initial approval or any variation of that approval under clause 10.4 including the configuration, specifications of and maximum diversion rate from the Customer's Nominated Works;
 - (ii) this Agreement;
 - (iii) each State Direction; and
 - (iv) the SunWater Rules.
- (d) must not, by any act or omission, cause SunWater to breach the Resources Operation Licence;
- (e) must not take more than the Customer's Maximum Delivery Volume, except as allowed by this Agreement or as a Statutory Right;
- (f) must not take water until approval is granted and, if required, registration of the Customer as the holder of the Customer's Allocation;
- (g) where a system for the ordering of water is in place under the SunWater Rules:
 - (i) must take water only to the extent the Customer has complied with the ordering system;
 - (ii) must not take water at a rate or volume greater than the amount ordered;
 - (iii) must take reasonable measures to take all water that has been ordered by the Customer, unless;
 - (A) it is unreasonable for the Customer to take the water;
 - (B) the Customer was unable to take the water due to an Event of Force Majeure; or
 - (C) in the Customer's reasonable opinion, the water was not of a suitable quality for the Customer's usual purpose; or
 - (D) provided for under the SunWater Rules.
 - (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 or provide for water accounting at the SunWater 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 at the SunWater Works, water meter readings will be used to determine water available to the Customer);
- (h) must ensure that the Customer's Nominated Works are appropriately positioned to take water under this Agreement, having regard to storage, bank and stream conditions;
- (i) bears the risks of:
 - (i) destruction of or damage to the Customer's Nominated Works from an Event of Force Majeure or resulting from SunWater's releasing water, under this or any other agreement or the Resource Operations Licence;

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- (ii) Supply Water Losses;
 - (iii) the exercise of a Statutory Right, for example, a water permit issued by the Regulator; and
 - (iv) any action taken under a State Direction;
- (j) during the Term must procure and 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) Customer's Allocation, if any.

5. Separate Agreements

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, then:

- (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 Services

If the Customer is not in breach of this Agreement and the Customer requests SunWater, under this clause, then SunWater must provide:

- (a) connection services;
- (b) disconnection services; or
- (c) further services (involving such other services as SunWater may offer from time to time).

7. Charges

7.1 Water Charges

The Customer must pay SunWater:

- (a) Water Charges for the Release Services;
- (b) for the services referred to in clauses 6(a) to (b), the relevant Other Charges;
- (c) for the services referred to in clause 6(c), 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.

7.2 Invoicing

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

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

SunWater may also permit an Irrigation Entity to render an invoice to the Customer on SunWater's behalf.

7.3 Payment on Account for Minimum Charge

Where, in SunWater's reasonable opinion, 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) Fixed Charges shall be calculated and payable in advance for the relevant period in which the invoice is rendered.
- (b) Consumption Charges shall be rendered in arrears for the period for which meter readings have been taken on behalf of the Irrigation Entity.
- (c) The balance payable for Other Charges for Other 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 the next invoice or by refunding the reimbursable amount on request by the Customer. Such a request may be made by telephone or in writing to SunWater.

If the error is such that the Customer is obliged to pay SunWater an additional amount, then SunWater must invoice the Customer for the amount, with the amount becoming due as provided for in clause 7.6.

7.6 Payment

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

Where the Customer has notified SunWater of a dispute about the invoice under clause 21, the Customer must pay to SunWater the undisputed amount in accordance with this clause. Once the dispute is resolved, the agreed amount outstanding must be paid within 30 days.

7.7 Interest on Arrears

Any amounts charged to SunWater under clause 16.1, 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 due date for payment up to and including the date the unpaid amount is paid. SunWater may include interest payable under this clause in an invoice subsequently forwarded to the Customer.

7.8 Charges for Water Ordered but Not Taken

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

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

SunWater may exercise a right to require the Customer to pay the 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, exceeds the total of the Customer's Maximum Delivery Volume, the Customer shall be deemed to be in breach of clause 4(e).

7.10 Obligations where Another Person has Diverted on Behalf of the Customer

Where:

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

then,

- (c) the Customer will pay the Consumption Charge, calculated on the volume of water that would have been diverted to allow the water to be taken or ordered; and
- (d) the Customer will be deemed to be in breach of clause 4(e).

8. Term

8.1 Initial Term

This Agreement commences on the Commencement Date and continues unless terminated under its provisions.

8.2 Changes to Contract Conditions

The Customer acknowledges that some provisions of this Agreement may be rendered inappropriate over time and accept that SunWater may initiate consultation with the Customer or any group representing customers within the Regulated Area (if such group exists) with a view to establishing new terms and conditions.

8.3 Notice of New Terms

Where, after consultation with the Customer or a group representing customers within the Regulated Area, SunWater has determined new terms and conditions which should apply to the Release Services, SunWater may by written notice given to the Customer 3 months prior to a Review Date, notify the Customer of the new terms and conditions.

8.4 Customer's Response to New Terms

If the Customer, prior to the relevant Review Date, accepts in writing the new terms and conditions, then as and from the relevant Review Date this Agreement shall terminate and the new agreement shall apply.

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If the Customer does not accept the new terms and conditions by the relevant Review Date, SunWater may by written notice to the Customer given not later than 3 months after the relevant Review Date, elect to continue to supply Release Services to the Customer on the terms of this Agreement or to terminate this Agreement as and from the date of such notice.

8.5 Failure to hold Water Entitlement

If, on any Review Date, the Customer does not hold a water entitlement, that part of this Agreement that relates to the water entitlement shall automatically terminate as and from such Review Date.

Where the customer holds an Additional Contract, that part of this Agreement for the supply of water available under the Additional Contract will terminate on the relevant Termination Date for the Additional Contract specified in Schedule 2.

9. SunWater Rules and Charges

9.1 SunWater Rules

SunWater may make and amend the SunWater Rules concerning the Regulated Area, including:

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

provided that the SunWater Rules:

- (c) are not inconsistent with the Resource Operations Licence and this Agreement;
- (d) are not inconsistent with the Strategic Asset Management Plan if any; and
- (e) has been the subject of consultation with the Customer or any group representing customers within the Regulated Area (if such group exists).

9.2 SunWater Charges

SunWater may make or amend:

- (a) the Other Charges and the Minimum Charge, and shall publish particulars of such Other Charges from time to time;
- (b) the Consumption or Fixed Charges as and from any Review Date as provided in clause 9.3, except where the Charges are Regulated Charges; and
- (c) where the Consumption or Fixed Charges are no longer Regulated Charges, the first Review Date will be the date from which such Consumption or Fixed Charges are not Regulated Charges.

9.3 Process to make or amend the Consumption or Fixed Charges

- (a) During the period commencing 6 months before any Review Date and expiring 6 months after any Review Date SunWater may notify the Customer of the amount of the Consumption Charges and/or the Fixed Charges as and from the relevant Review Date;
- (b) In determining such Charges SunWater shall:
 - (i) act reasonably; and
 - (ii) have regard to the criteria which would be taken into account under any statutory regime for prices oversight from time to time applying in Queensland;
- (c) SunWater's determination of such Charges, shall be final and binding on the parties unless the same is manifestly unreasonable having regard to the criteria which

would be taken into account under any statutory regime for prices oversight from time to time applying in Queensland.

9.4 Index Review of the Consumption and Fixed Charges

Where the relevant Charges are not Regulated Charges, as and from each 1 July which is not a Review Date, the Consumption Charges and the Fixed Charges shall be increased by the proportion by which the Index Number last published for the period immediately prior to the relevant 1 April has increased, over the Index Number published for the relevant period immediately prior to the preceding 1 April.

10. Customer Obligations – SunWater Works and Customer’s Nominated Works

10.1 Customer not to Damage

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

10.2 Customer to Notify Damage

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

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

10.4 Customer’s Nominated Works to be Approved

Prior to installing or altering the Customer’s Nominated Works the Customer must obtain the prior written approval of SunWater to the Customer’s Nominated Works, including the configuration, specifications of and maximum diversion rates for any pump included in the Customer’s Nominated Works, which approval may not be unreasonably withheld.

10.5 Miscellaneous Provisions for Clause 10

- (a) Nothing in clauses 10.1 or 10.3 makes the Customer liable to SunWater for an Event of Force Majeure or for operating SunWater’s Works in accordance with SunWater’s instructions in 10.3.
- (b) An example of “omission” as used in clause 10.1, is the failure to maintain the Customer’s Nominated Works.

10.6 Access by Customer

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

11. Meter/Measurement

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’s Nominated Works or SunWater Works
- (b) The Customer may:
 - (i) install the Meter itself; or
 - (ii) arrange for a third party to install the Meter.

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- (c) Any party installing a Meter shall install the same correctly in accordance with the approval under clause 10.4.
- (d) 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 Nominated 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 Nominated Works to take water.

An example of "omission" as used in clause 11.2, is the failure to maintain the Customer's Nominated Works.

11.3 Ownership of Meter

Any Meter shall upon installation become and remain the property of the Irrigation Entity.

11.4 Disclosure of Records

- (a) By SunWater

The Customer authorises SunWater to make available to:

- (i) the Regulator;
 - (ii) a holder of a resource operations licence or distribution operations licence in the Regulated Area;
 - (iii) any other person as required under any Law; and
-
- (iv) with the consent of the Customer, any person proposing a dealing with the Customer's Allocation,

such information and records concerning the Customer, the Customer's Allocation, 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 electricity supplier

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

11.5 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,

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to determine applicable Consumption Charges, SunWater may make an estimate of the volume of water taken by the Customer over that period. Any estimate made by SunWater under this clause may be issued as a separate invoice by SunWater and shall bind the Customer;

- (b) In making such an 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;
- (c) Clause 21 shall apply to an estimate made under this clause;
- (d) Examples of "reasonable grounds" under clause 11.9(a), include:
 - (i) testing of the Meter; or
 - (ii) timing the Meter against a known discharge; or
 - (iii) where the Meter is not registering and water is being taken.

11.6 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;

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- (b) permit SunWater or any person authorised by SunWater to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and
- (c) permit SunWater or any person authorised by SunWater to have access to the land of the Customer for any purpose reasonably associated with the performance of this Agreement or carrying out its responsibilities under the Resource Operations Licence.

12. Non-release Authorisations

12.1 Suspension or Restriction of Releases

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

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

12.2 Direction Not to Take Water

- (a) Where the Customer:
 - (i) has committed a material breach of this Agreement;
 - (ii) is in arrears for payments for Charges for more than 2 months;
 - (iii) has breached this Agreement and has not reimbursed SunWater for costs incurred by SunWater in rectifying the breach;
 - (iv) has not provided the security required under clause 20;

- (v) has breached any of clauses 4(a), (c), (d), (e), (f), 11.2, 11.5 or 11.10 then, SunWater may direct the Customer or any person diverting or taking the Customer's Allocation, not to divert or take water under the Customer's Allocation.
- (b) The direction under this clause must give a reasonable time within which:
 - (i) the Customer must object in writing, to the direction; and
 - (ii) the Customer must take the remedial steps required, with examples of "reasonable times" being:
 - (A) 7 days, for the payment of an outstanding debt; and
 - (B) 14 days, for the provision of security under clause 20.

12.3 Consequences of Ordering and Not Taking Water

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

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

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

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

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

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 releasing water under this Agreement;
- (b) stopping the Customer's or other person's taking water by making modifications to SunWater Works, the Meter or the Customer's Nominated Works.

13. Water Quality

13.1 No Warranty by SunWater

SunWater makes no representation and gives no warranty:

- (a) about the quality of water within the SunWater Works or the Regulated Area;
- (b) that any actions, measures or steps will be taken by SunWater to prevent any adverse effects on the quality of water in the Regulated Area, within the SunWater Works or after its release from SunWater Works and prior to its diversion or taking by or on behalf of the Customer; or
- (c) that water within SunWater Works, the Regulated Area or available for diversion or taking at the Customer's Nominated 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).

13.2 Customer to Test

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

13.3 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 SunWater 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.

13.4 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 the quality of water within the SunWater Works, the Regulated Area or diverted or taken by or on behalf of the Customer.

14. Assignment/Subcontracting by SunWater

14.1 Assignment by SunWater

SunWater may assign its rights and obligations under this Agreement to any person provided such person:

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

14.2 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.

15. Amendment, Transfer, Lease or Addition to Customer's Allocation

15.1 Notice of Application

If the Customer:

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

then the Customer shall give written notice of the application to SunWater promptly after the application or Additional Contract is made.

15.2 Effect of Approval

Where the amendment, transfer, lease dealing with or change of the whole or part of the Customer's Allocation or of another water allocation or Additional Contract for the Regulated Area is approved, SunWater shall, subject to:

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

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

15.3 Amendment, Transfer, Lease, Dealing With, Change, or Additional Contract Outside the Regulated Area

Clauses 15.1 and 15.2 apply only to an amendment, a transfer, a lease, dealing with, change or Additional Contract within the Regulated Area.

15.4 SunWater's Duty Unaffected

Where, under the Act, SunWater is to approve the amendment, transfer, lease, dealing with, change or dealing related to the Additional Contract referred to in this clause, the Customer acknowledges that SunWater is obliged to carry out its responsibility under the Act in accordance with the terms of the Act and any other Law binding on it without regard to this Agreement.

15.5 Further or Amended Supply Agreement

Where SunWater is to approve the amendment, transfer, lease, dealing with, change or dealing related to the Additional Contract then its statutory responsibility is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

15.6 Temporary Transfer of Water

The Customer may apply to reduce or increase the Customer's Maximum Delivery Volume for a period within a single Water Year. This will be dealt with as a variation to this Agreement, on terms acceptable to both the Customer and SunWater in their absolute discretion.

16. Power of Sale

16.1 Charge of Allocation

The Customer charges to SunWater the Customer's Allocation 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 5;
- (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 19.2.

16.2 Exercise of Statutory Power

Where the Customer is in breach of this Agreement or if SunWater is entitled to terminate this Agreement under clause 19.1, SunWater may, subject to giving notice as required by the Act, and SunWater giving the Customer notice of the breach or the existence of SunWater's rights under clause 19.1, sell the Customer's Allocation.

16.3 Further Powers

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

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

16.4 Manner of Dealing

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.

16.5 Application of Sale Proceeds

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

- (a) firstly, in paying the costs of the Dealing by Attorney;
- (b) secondly, in discharging the Customer's liability to SunWater for the moneys, debts and amounts charged to SunWater under this Agreement;
- (c) thirdly, in discharging the liability, if any, of the Customer for the Customer's Allocation 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 Allocation on the Water Allocations Register;
- (e) fifthly, in payment to the Customer.

16.6 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 Allocation; or
 - (iii) amend, transfer sell, lease, deal with or enter into an Additional Contract concerning the Customer's Allocation and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such amendment, change, sale, lease or Additional Contract.
- (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, lease and other assurance of any of the Customer's Allocation in favour of any purchaser, assignee, lessee or any nominee; and

- (ii) delegate his powers (including delegation).
- (c) No Attorney may act under this clause:
 - (i) unless notice required by clause 16.2 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 in the exercise or non-exercise of any power;
 - (ii) for any loss (including consequential loss) which results; or
 - (iii) for negligence of the Attorney, where the sale has been made after a public process (eg: auction, tender, public notification of sale),except where the liability arises from the fraud or wilful misconduct of the Attorney.

Nothing in this Agreement limits the Customer's ability to obtain advice or engage another person to act on the Customer's behalf.
- (e) No party to any sale, transfer, or lease or Additional Contract and no person asked to register a Dealing by Attorney is bound to enquire:
 - (i) whether 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.

17. Substantial Destruction or Damage to SunWater Works

This Agreement shall terminate where in SunWater's reasonable opinion, SunWater is no longer able to control the level of water in or the rate of release from the relevant water infrastructure because the SunWater Works or water infrastructure of the holder of another resource operations licence or a distribution 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.

18. Limitation of Liability and Release

18.1 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 error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (b) complying with a State Direction.

18.2 Customer has Remedies under the Act

SunWater and the Customer acknowledge and agree that clause 18.1 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.

18.3 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 Nominated Works, other property, livestock, crops or assets as a consequence of any action by SunWater other than actions that would constitute a breach of this Agreement or negligence by SunWater, including for example, the storing or releasing of water where such action is necessary for SunWater to comply with the requirements of any Law binding on it;
- (b) alterations to storage levels or stream and bank conditions however caused including, for example, as a consequence of releases of water by SunWater causing the movement of water weeds to clog pumps, the washing away of pumping pools, slumping of riverbanks, and the impact of sudden losses or fluctuations of flow;
- (c) the circumstances in which the Customer bears the risk as stated in clause 4(i).

18.4 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 18.3.

19. Default and Termination

19.1 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; or
- (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.

19.2 Payment on Termination for Breach by Customer

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

19.3 Termination Amount

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

20. Security

20.1 Request for Security

SunWater may request the provision of security if:

- (a) the Customer commits a breach nominated in either of clause 12.2(a)(i), (ii), (iii), or (v) of this Agreement, whether SunWater has given a direction or not; or

Bulk Water Supply Contract

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

20.2 Provision of Security

The Customer must provide, promptly after a request in writing by SunWater, a security of an amount equal to one quarter of the Water Charges invoiced for the previous Water Year 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.

20.3 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.

20.4 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 20.2.

20.5 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.

21. Dispute Resolution

21.1 Activation

- (a) The objective of clause 21 is to provide an effective and equitable process for the resolution of disputes and to encourage the participants to discuss and resolve the matter.
- (b) If a dispute arises under this Agreement (apart from a dispute in relation to Charges set under clause 9.3 or clause 9.4, or a dispute which arises either prior to the exercise of rights of termination in clauses 5 and 6 of the Terms of the Agreement, or in the Special Conditions of this Agreement or in relation to such rights of termination), any party may give written notice to the party with whom the dispute exists. The notice shall designate a representative with the appropriate authority to negotiate the dispute.

21.2 Appointment of representative

Within five business days of receipt of the notice referred to in clause 21.1, the recipient shall designate a representative with similar authority.

21.3 Discussions

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

21.4 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.

21.5 Methods of resolution

A party receiving a request under clause 21.4 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 responsibility for payment of the costs of the mode agreed under subclause (a);
- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

21.6 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 21 is to attempt to settle a dispute between the parties.

21.7 Termination

Any party may terminate the dispute resolution procedure provided by this clause 21 at any time and pursue other available remedies.

22. Native Title

22.1 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.

23. GST

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;
- (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.

24. Miscellaneous

24.1 Obligations for the Benefit of Third Parties

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

24.2 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 Rules or if not nominated, closest to the Regulated Area;
 - (ii) for the Customer,
 - (A) for an invoice under clause 7 at the Address for Invoices in the Customer's Schedule;
 - (B) for any other notice, either:
 - (1) to the Facsimile Number in the Customer's Schedule;
 - (2) at the Address for Notices in the Customer's Schedule;
 - (3) at the address last known to SunWater; or
 - (4) at the address shown in the register that records the details of the Customer's Allocation.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by 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.

24.3 Entire Agreement

This Agreement contains the entire agreement of the parties concerning its subject matter namely the Services of SunWater to the Customer in relation to the Customer's Maximum Delivery 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 concerning its subject matter.

24.4 Amendment

This Agreement may be amended:

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

24.5 No Waiver

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

24.6 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 and shall indemnify SunWater for the amount of such stamp duty and associated costs.

24.7 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 provisions of this Agreement.

24.8 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 Allocation.

24.9 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 from time to time in accordance with clause 9.2, if any.

24.10 Allocation of Payments

To the extent permitted by Law, SunWater may apply payments by the Customer towards payment of such moneys, debts and amounts referred to in clause 16.1 as SunWater determines in its absolute discretion.

25. Definitions/Interpretation

25.1 Definitions

Act means the *Water Act 2000*.

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

Agreement means the agreement of which these standard conditions comprise Schedule 3.

AMTD means the adopted middle thread distance on watercourse, being a unique identifiable nominal point along a watercourse.

Billing Interval means the billing interval referred to in the Customer's Schedule

Charges means Water Charges and Other Charges.

Commencement Date means, the earlier of the date of this Agreement, or the date of commencement stated in the Customer's Schedule.

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

- (a) the Regulated Charge for the Customer's Allocation if applicable; or
- (b) where there is no applicable Regulated Charge the Consumption Charge described as such in the Customer's Schedule as varied under clause 9.3, or clause 9.4.

Current Holder means the person who is, at the date of this Agreement, the holder of the water entitlement which is the Customer's Allocation or from which the Customer's Allocation is derived.

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

Customer's Allocation means:

- (a) the interest in a water entitlement for the Regulated Area as stated in the Customer's Schedule;

- (b) any amendment to the interest in the water entitlement mentioned in subclause (a) of this definition as amended under clause 15 and includes:
- (i) any additional water entitlement of the Customer as amended under clause 15 of this Agreement; and
 - (ii) for the term of an Additional Contract, the amount of the water entitlement forming the basis of the Additional Contract as approved or varied under clause 15.

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

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

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

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

Dealing by Attorney includes a water entitlement, any amendment, change, lease, sale or Additional Contract.

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

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;
- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the SunWater Works or the Customer's Nominated Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the SunWater Works, the Meter or the Customer's Nominated Works caused by any of the events set out above.

Fixed Charges means either:

- (a) the Regulated Charge for the Customer's Allocation if applicable;
- (b) where there is no applicable Regulated Charge, the Fixed Charges described as such in the Customer's Schedule as varied under clause 9.3 or clause 9.4.

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.

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

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

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

- (a) an application being presented to wind up the body corporate;
- (b) a meeting of members or creditors of the person being called to consider a resolution to wind up the body corporate;
- (c) a scheme of arrangement or a composition being entered into with its creditors, unless such application is dismissed within twenty-one (21) days of its presentation or unless such scheme of arrangement or composition is for the purposes only of a corporate reconstruction in circumstances where the body corporate remains solvent;
- (d) a 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.

Law means:

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

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

Minimum Charge means either:

- (a) the Regulated Charge if applicable described as a Minimum Charge if nominated in the Customer's Schedule; or
- (b) where there is no applicable Regulated Charge the Minimum Charge described as such in the Customer's Schedule as varied under clause 9.2(a).

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

Other Services means the services identified in clause 6 and any services, which SunWater indicates, in the SunWater 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.

Registrar means the registrar under the Act.

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

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

Regulator means the regulator or chief executive under the Act.

Release Services means the services described in clause 1.

Resource Operations Licence means:

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

under the Act held by SunWater 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.

Review Date means 30 June 2007 or the relevant date at five yearly intervals after that date until the expiration of this Agreement.

Services means Release Services and Other Services.

Service Target means a target from time to time nominated by SunWater for the level of services it provides. For example, a Service Target may be about:

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

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 after release from the SunWater Works or otherwise rendered unavailable to be taken, diverted or used by the Customer as a result of:

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

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

SunWater Rules means the rules and guidelines made and amended from time to time under clause 9.1.

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

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

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

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

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

- (a) where the Customer has an interest in the water entitlement, for the period of 10 years after the date of termination; and
- (b) where the Customer has an Additional Contract with SunWater for the lesser of the period of 10 years after the date of termination and the unexpired period of the Additional Contract.

Termination Date means the date on which the event in clause 8.4 of clause 8.5 first occurs.

Water Charges means the greater of:

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

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

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

25.2 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, novated, 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.

Part B

Deemed Contract

Conditions

1. Release and Acceptance of Water

SunWater must release water from the SunWater Works, as SunWater reasonably estimates will satisfy the likely demand of the Customer from time to time. The Customer accepts that the release of water by SunWater is subject to:

- (a) the Resource Operations Licence;
- (b) the Customer's Allocation;
- (c) SunWater's estimate of the likely demand of other customers within the Regulated Area;
- (d) the availability of water from the SunWater Works;
- (e) the capacity of the SunWater Works
- (f) the provisions of the Act; and
- (g) this Agreement.

2. Overall Statutory Framework for Services

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

- (a) the Act;
- (b) the Water Resource Plan;
- (c) the Resource Operations Plan;
- (d) the Resource Operations Licence; and
- (e) the Strategic Asset Management Plan.

3. SunWater's Obligations

- (a) SunWater shall use reasonable endeavours in releasing water within the Regulated Area;
- (b) Where consultation is required under this Agreement SunWater shall:
 - (i) consult fairly and reasonably with the Customer or any entity representing customers of SunWater within the Regulated Area; and
 - (ii) allow the Customer a reasonable opportunity to participate in any such consultation;
- (c) SunWater shall, at approximately annual intervals, during this Agreement publish a report comparing the performance of SunWater with the Service Targets;
- (d) 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

The Customer:

- (a) may take only the water the Customer is entitled to take under the Customer's Allocation through the Customer's Nominated Works;
- (b) in taking water, must comply with:
 - (i) the approval under clause 10.4 including the configuration, specifications of and maximum diversion rate from the Customer's Nominated Works;
 - (ii) this Agreement;
 - (iii) each State Direction; and
 - (iv) the SunWater Rules.
- (c) must not, by any act or omission, cause SunWater to breach the Resources Operation Licence;
- (d) must not take more than the Customer's Maximum Delivery Volume, except as allowed by this Agreement or as a Statutory Right;
- (e) where a system for the ordering of water is in place under the SunWater Rules:
 - (i) must take water only to the extent the Customer has complied with the ordering system;
 - (ii) must not take water at a rate or volume greater than the amount ordered;
 - (iii) must take reasonable measures to take all water that has been ordered by the Customer;
 - (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 SunWater 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 at the SunWater Works, water meter readings will be used to determine water available to the Customer);
- (f) must ensure that the Customer's Nominated Works are appropriately positioned to take water under this Agreement, having regard to storage, bank and stream conditions;
- (g) bears the risks of:
 - (i) destruction of or damage to the Customer's Nominated Works from an Event of Force Majeure or resulting from SunWater's releasing water, under this or any other agreement or the Resource Operations Licence;
 - (ii) Supply Water Losses;
 - (iii) the exercise of a Statutory Right; and
 - (iv) any action taken under a State Direction;

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- (h) during the Term must maintain in full force and effect and comply with the terms of:
 - (i) the Customer's Allocation; and
 - (ii) the Customer's Development Permit.

5. Separate Agreements

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 Services

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

- (a) connection services;
- (b) disconnection services; and
- (c) further services.

7. Charges

7.1 Water Charges

The Customer must pay SunWater:

- (a) Water Charges for the Release Services;
- (b) for the services referred to in clauses 6(a) to (b), the relevant Other Charges;
- (c) for the services referred to in clause 6(c), where:
 - (i) SunWater has indicated that it is prepared to offer the further service; and

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- (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.

7.2 Invoicing

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

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

SunWater may also permit an Irrigation Entity to render an invoice to the Customer on SunWater's behalf.

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) Take or Pay Charges shall be calculated and payable in advance for the relevant period in which the invoice is rendered.
- (b) Consumption Charges shall be rendered in arrears for the period for which meter readings have been taken on behalf of the Irrigation Entity.
- (c) The balance payable for Other Charges for Other 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.

7.7 Interest on Arrears

Any amounts charged to SunWater under clause 16.1, 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

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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.

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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 the Resource Operations Licence; or
- (b) the rights and interests of other customers within the Regulated Area will be adversely affected, then,

SunWater may exercise a right to require the Customer to pay the 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 Delivery Volume, the Customer shall be deemed to be in breach of clause 4(d).

7.10 Obligations where Another Person has Diverted on Behalf of the Customer

Where:

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

then,

- (c) the Customer will pay the Consumption Charge, calculated on the volume of water that would have been diverted to allow the water to be taken or ordered; and
- (d) the Customer will be deemed to be in breach of clause 4(d).

8. Initial Term

This Agreement commences on the Commencement Date and continues unless terminated under its provisions.

9. SunWater Rules and Charges

9.1 SunWater Rules

SunWater may make and amend the SunWater Rules concerning the Regulated Area, including:

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

provided that the SunWater Rules,

- (c) are not inconsistent with the Resource Operations Licence and this Agreement;
- (d) are not inconsistent with the Strategic Asset Management Plan; and
- (e) have been the subject of consultation with the Customer or any group representing customers within the Regulated Area (if such group exists).

9.2 SunWater Charges

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

10. Customer Obligations – SunWater Works and Customer's Nominated Works

10.1 Customer not to Damage

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

10.2 Customer to Notify Damage

The Customer, promptly on becoming aware of any actual or threatened damage to or malfunction in the SunWater Works, 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 Works

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

10.4 Customer's Nominated Works to be Approved

Prior to the installation or alteration of the Customer's Nominated Works the Customer must obtain the prior written approval of SunWater to the Customer's Nominated Works, including the configuration, specifications of and maximum diversion rates for any pump included in the Customer's Nominated Works, which approval may not be unreasonably withheld.

11. Meter/Measurement

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's Nominated Works or SunWater Works.
- (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 Nominated 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 Nominated Works to take water.

11.3 Ownership of Meter

Any Meter shall upon installation become and remain the property of the Irrigation Entity.

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11.4 Disclosure of Records

(a) By SunWater

The Customer authorises SunWater to make available to the Regulator, a holder of a resource operations licence or a distribution operations licence in the Regulated Area and any other person as required under any Law and, with the consent of the Customer, any person proposing a dealing with the Customer's Allocation, such information and records concerning the Customer, the Customer's Allocation, 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.

11.5 Report Malfunctions, Damage

The Customer, promptly on becoming aware of any actual or threatened damage to or malfunction in the Meter, 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.

11.6 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,

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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.

11.7 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 under the Resource Operations Licence.

12. Non-release Authorisations

12.1 Suspension or Restriction of Releases

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

- (a) during maintenance or replacement of the SunWater Works or of the water infrastructure of the holder of another resource operations licence or a distribution operations licence in the Regulated Area;
- (b) where SunWater or the holder of another resource operations licence or a distribution operations licence in the Regulated Area is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of SunWater, such release:
 - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including SunWater or 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;

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- (iv) is likely to constitute a breach by SunWater of its obligations under the Resource Operations Licence, any Law or an agreement;
- (v) would be impractical considering the level of demand, performance of the watercourse (including potential water losses) and the requirements of other customers within the Regulated Area at the time;
- (d) by reason of an Event of Force Majeure;
- (e) where provided for under the SunWater 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 20;
- (e) has breached any of clauses 4(a), (c), (d), (e), 11.2, 11.5 or 11.10 then,

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

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

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

- (c) the entitlement of the Customer to take under this Agreement the Customer's Maximum Delivery Volume is reduced, by the volume of water not taken; and
- (d) the reduction will be made from the Customer's Maximum Delivery Volume in the current and subsequent Water Years until the volume of water not taken 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 releasing water under this Agreement;
- (b) stopping the Customer's or other person's taking water by making modifications to SunWater works, the Meter or the Customer's Nominated Works.

13. Water Quality

13.1 No Warranty by SunWater

SunWater makes no representation and gives no warranty:

- (a) about the quality of water within the SunWater Works or the Regulated Area;
- (b) that any actions, measures or steps will be taken by SunWater to prevent any adverse effects on the quality of water in the Regulated Area, within the SunWater Works or after its release from SunWater Works and prior to its diversion or taking by or on behalf of the Customer; or
- (c) that water within SunWater Works, the Regulated Area or available for diversion or taking at the Customer's Nominated 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).

13.2 Customer to Test

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

13.3 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 SunWater 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.

13.4 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 the quality of water within the SunWater Works, the Regulated Area or diverted or taken by or on behalf of the Customer.

14. Assignment/Subcontracting by SunWater

14.1 Assignment by SunWater

SunWater may assign its rights and obligations under this Agreement to any person provided such person:

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

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14.2 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.

15. Amendment, Transfer, Seasonal Water Assignment, Lease of or Addition to Customer's Allocation

15.1 Notice of Application

If the Customer applies:

- (a) to amend or transfer the Customer's Allocation (being an interim water allocation);
- (b) for a change to a water allocation, a transfer, seasonal water assignment or lease of a water allocation for the Customer's Allocation (being a water allocation); or
- (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.

15.2 Effect of Approval

Where the transfer, seasonal water assignment or lease of the whole or part of the Customer's Allocation or of another water entitlement for the Regulated Area, is approved, SunWater shall, subject to:

- (a) the payment of all moneys and debts charged to SunWater under this Agreement;
- (b) SunWater and the transferee, assignee or lessee entering into a further supply contract or an amendment to that customer's agreement on terms acceptable to SunWater in its absolute discretion; and
- (c) SunWater and the Customer entering into either a further supply contract or an amendment to this Agreement on terms acceptable to SunWater in its absolute discretion,

give notice of the existence of a supply contract to the Registrar when that supply contract is made, and where all of the Customer's Allocation has been transferred, release the Customer from this Agreement.

15.3 Transfer, Seasonal Water Assignment or Lease Outside the Regulated Area

Clauses 15.1 to 15.2 apply only to an amendment, a transfer, seasonal water assignment or lease within the Regulated Area.

15.4 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.

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15.5 Further or Amended Supply Agreement

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

16. Power of Sale

16.1 Charge of Allocation

The Customer charges to SunWater the Customer's Allocation 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 19.2.

16.2 Exercise of Statutory Power

Where the Customer is in breach of this Agreement or if SunWater is entitled to terminate this Agreement under clause 19.1, SunWater may, subject to giving notice as required by the Act, sell the Customer's Allocation.

16.3 Further Powers

Where SunWater is entitled to sell the Customer's Allocation, SunWater may also, amend, lease or grant a seasonal water assignment of the whole or part of the Customer's Allocation.

16.4 Manner of Dealing

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.

16.5 Application of Sale Proceeds

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

- (a) firstly, in paying the costs of the Dealing by Attorney;
- (b) secondly, in discharging the liability of the Customer to SunWater for the amounts charged to SunWater under this Agreement;

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- (c) thirdly, in discharging the liability, if any, of the Customer in relation to the Customer's Allocation 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 Allocation on the Water Allocations Register;
- (e) fifthly, in payment to the Customer.

16.6 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 Allocation; or
 - (iii) amend, sell, grant a seasonal water assignment or lease the Customer's Allocation and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such amendment, sale 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 Allocation in favour of any purchaser, assignee, lessee or any nominee; and
 - (ii) delegate his powers (including delegation).
- (c) No Attorney may act under this clause:
 - (i) unless notice required by clause 16.2 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 sale, seasonal water assignment or lease and no person asked to register a Dealing by Attorney 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.

17. Substantial Destruction or Damage to SunWater Works

This Agreement shall terminate where in SunWater's reasonable opinion, SunWater is no longer able to control the level of water in or the rate of release from the relevant water infrastructure because the SunWater Works or water infrastructure of the holder of another resource operations licence or a distribution 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.

18. Limitation of Liability and Release

18.1 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) 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.

18.2 Customer has Remedies under Act

SunWater and the Customer acknowledge and agree that clause 18.1 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.

18.3 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 Nominated Works, other property, livestock, crops or assets as a consequence of any action by SunWater, including for example, the storing or releasing of water where such action is necessary for SunWater to comply with the requirements of any Law binding on it;
- (b) death or personal injury, damage to the Customer's Nominated 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 delivery of water which SunWater has with another customer in the Regulated Area for example, in the removal of unauthorised connections or outlets;
- (c) alterations to storage levels or stream and bank conditions however caused

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including, for example, as a consequence of releases of water by SunWater

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

- (d) the circumstances in which the Customer bears the risk as stated in clause 4(g).

18.4 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 18.3.

19. Default and Termination

19.1 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.

19.2 Payment on Termination for Breach by Customer

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

19.3 Termination Amount

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

20. Security

20.1 Request for Security

SunWater may request the provision of security if:

- (a) the Customer commits a breach nominated in either of 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.

20.2 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 Take or Pay Charges and the Consumption Charges multiplied by the amount of the Customer's Allocation 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.

20.3 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.

20.4 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 20.2.

20.5 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.

21. Dispute Resolution

21.1 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.

21.2 Appointment of representative

Within five business days of receipt of the notice referred to in clause 21.1, the recipient shall designate a representative with similar authority.

21.3 Discussions

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

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21.4 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.

21.5 Methods of resolution

A party receiving a request under clause 21.4 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.

21.6 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 21 is to attempt to settle a dispute between the parties.

21.7 Termination

Any party may terminate the dispute resolution procedure provided by this clause 21 at any time and pursue other available remedies.

22. Native Title

22.1 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.

23. GST

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.

24. Miscellaneous

24.1 Obligations for the Benefit of Third Parties

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

24.2 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 Rules or if not nominated, closest to the Regulated Area;
 - (ii) for the Customer, at the address last known to SunWater or shown in the register that records the details of the Customer's Allocation.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by 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.

24.3 Entire Agreement

This Agreement contains the entire agreement of the parties concerning its subject matter namely the Services of SunWater to the Customer in relation to the Customer's Maximum Delivery 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 concerning its subject matter.

24.4 Amendment

This Agreement may be amended:

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

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24.5 No Waiver

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

24.6 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.

24.7 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.

24.8 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 Allocation.

24.9 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 Rules, if any.

24.10 Allocation of Payments

To the extent permitted by Law, SunWater may apply payments by the Customer towards payment of such moneys, debts and amounts referred to in clause 16.1 as SunWater determines in its absolute discretion.

25. Definitions/Interpretation

25.1 Definitions

Act means the *Water Act 2000*.

Access Charge means the charge for the Customer's water entitlement described by reference to the Customer's land.

Charges means Water Charges and Other 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.

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Consumption Charges means the applicable Regulated Charge for the Customer's Allocation described by reference to the volume of water taken and if no Regulated Charge applies the charge made by SunWater under clause 9.2.

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

Customer's Allocation means the water entitlement for the Regulated Area held by the Customer as stated in the Customer's Schedule as amended under clause 15 and includes each additional water entitlement of the Customer which SunWater has agreed, under clause 15, may be the subject of this Agreement.

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

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

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

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

Dealing by Attorney means for a water entitlement, any amendment, sale, lease or seasonal water assignment.

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

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;
- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the SunWater Works or the Customer's Nominated Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the SunWater Works, the Meter or the Customer's Nominated Works caused by any of the events set out above.

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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.

Law means:

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

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

Minimum Charge means the Regulated Charge described as a minimum charge applicable to the Regulated Area and if there is no Regulated Charge the charge made 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

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be determined after request by SunWater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

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

Other Services means the services identified in clause 6 and any services which SunWater indicates, in the SunWater 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.

Release Services means the services described in clause 1.

Resource Operations Licence means:

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

under the Act held by SunWater 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.

Services means Release Services and Other Services.

Service Target means a target from time to time nominated by SunWater for the level of services it provides. For example, a Service Target may be about:

- (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 Right means the right to take water (other than the Customer's Allocation) under the Act.

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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 after release from the SunWater Works or otherwise rendered unavailable to be taken, diverted or used by the Customer as a result of:

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

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

SunWater Rules means the rules and guidelines made and amended from time to time under clause 9.1.

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

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;

Take or Pay Charges means the applicable Regulated Charge for:

- (a) 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
- (b) the Access Charge, and

if no Regulated Charge applies the charge made by SunWater under clause 9.2.

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 Allocation.

Water Charges means the greater of:

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

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- (ii) the Consumption Charges.

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 Resource Operations Licence and if none is so described the year from time to time nominated by SunWater.

25.2 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, novated, 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 Allocation, the Customer's Nominated Works, the Regulated Area, the Resource Operations Licence and the SunWater Works 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
- (b) recorded by the State for the interim water allocation granted to the Customer under section 1113 of the *Water Act 2000*; 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;
- (b) recorded in the water allocations register for the Customer's Allocation.

Note: SunWater has published Charges for the Services which are not the subject of a Regulated charge.

Amendments

1. Applicability

This Schedule 3 applies if, prior to the Transfer Day, SunWater provides the Customer with written notice to the effect that this Schedule 3 applies.

2. Amendments

The terms set out in Schedule 1 are amended as follows:

(a) in clause 7.5, the words 'the next invoice or by refunding the reimbursable amount on request by the Contractor. Such a request may be made by telephone or in writing to SunWater' are replaced with 'future invoices or if no future invoices, then by a direct refund to the Customer';

(b) clause 8.2 is deleted and replaced with the following:

Supply after Termination Date

Where:

(a) the Customer holds a water entitlement on the Termination Date, then the Termination Date, is increased by 5 years, with this Agreement continuing on the same terms and conditions, including this clause, unless SunWater has given 3 months prior notice to the Customer that this Agreement is to end on the Termination Date;

(b) the Customer does not hold a water entitlement on the Termination Date, this Agreement ends on the Termination Date.

(c) clauses 8.3, 8.4 and 8.5 are deleted;

(d) in clause 9.1, each reference to '1 April' is replaced with '1 July';

(e) clause 11.7 is deleted and replaced with the following:

Report Malfunctions, Damage

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