

Contract of Sale of Water Allocation

**Contract of Sale of Water Allocation
(Permanent Transfer) – Instrument of Agreement**

DATED: 2023

BETWEEN:

SUNWATER LIMITED ACN 131 034 985 of Level 9, 515 St Pauls Terrace, FORTITUDE VALLEY QLD 4006
("Seller")

AND

[#INSERT NAME OF BUYER] of [#INSERT ADDRESS OF BUYER] ("Buyer")

IT IS AGREED:

- 1 The Seller will sell and transfer the Water Allocation to the Buyer subject to the terms and conditions of this Agreement.
- 2 The following documents together comprise the Agreement:
 - (a) this Instrument of Agreement;
 - (b) the attached Item Schedule; and
 - (c) the attached Conditions of Sale.
- 3 In the event of any ambiguity, inconsistency or conflict between the documents in clause 2, those documents will take precedence in the order listed in clause 2.

Contract of Sale of Water Allocation
(Permanent Transfer) – Instrument of Agreement

Executed as an Agreement.

SELLER

Signed on behalf of **SUNWATER LIMITED ACN 131 034 985** by the Chief Executive Officer of Sunwater Limited under Power of Attorney No 717524762 who warrants that the Power of Attorney is valid and has not been revoked:

Witness Signature

Attorney Signature

Print Witness Name

Print Attorney Name

Date

Date

BUYER - INDIVIDUAL

EXECUTED by
[INSERT NAME OF INDIVIDUAL] on / /
in the presence of:

^ _____
Buyer Signature

^ _____
Witness Signature

^ _____
Print Witness Name

BUYER - INDIVIDUAL

EXECUTED by
[INSERT NAME OF INDIVIDUAL] on / /
in the presence of:

^ _____
Buyer Signature

^ _____
Witness Signature

^ _____
Print Witness Name

Contract of Sale of Water Allocation
(Permanent Transfer) – Instrument of Agreement

BUYER - COMPANY

EXECUTED BY

[NAME OF COMPANY]

pursuant to section 127 of the *Corporations Act 2001* (Cth):

Director Signature

Director/Secretary Signature

Print Name

Print Name

Date

Date

Contract of Sale of Water Allocation
(Permanent Transfer) – Item Schedule

Item A	Purchase Price		\$(INSERT (being \$xxx per ML * xxx ML))
Item B	Deposit (10% of Purchase Price)		\$(INSERT)
Item C	Deposit Holder		Sunwater Limited ACN 131 034 985
Item D	Water Allocation Particulars	Title Reference	[INSERT]. <i>[If clause 2 applies in respect of a subdivision/amalgamation then use the following wording and include/remove relevant details:</i> [To be advised to the Buyer following subdivision/amalgamation of Water Allocation/s with Title Reference [INSERT]. (Note that Water Allocation with Title Reference [INSERT] is a [INSERT] ML water allocation to be subdivided/amalgamated pursuant to clause 2 to transfer a [INSERT] ML water allocation under this Agreement.)]
		Allocation Type	Water Allocation – Resource Operations Licence
		Allocation Number	[INSERT] <i>[If clause 2 applies in respect of a subdivision/amalgamation then use the following wording and include/remove relevant details:</i> To be advised to the Buyer following subdivision/amalgamation of Water Allocation No. [INSERT] on Crown Plan [INSERT]. (Note that Water Allocation No. [INSERT] on Crown Plan [INSERT] is a [INSERT] ML water allocation to be subdivided/amalgamated pursuant to clause 2 to transfer a [INSERT] ML water allocation under this Agreement.)]
		Water Plan	[INSERT]
		Location	[INSERT]
		ROL	[INSERT]
		ROL Holder	Sunwater Limited ACN 131 034 985
		Nominal Volume	[INSERT] ML
Priority Group	[INSERT (Low/Medium/High)]		

Contract of Sale of Water Allocation
(Permanent Transfer) – Item Schedule

		Purpose	[INSERT]
		Other Conditions	[INSERT]
		Registered Allocation Holder	[INSERT]
Item E	Accepted Encumbrances		[INSERT]
Item F	Place for Completion		Sunwater Limited Level 9, 515 St Pauls Terrace, FORTITUDE VALLEY QLD 4006
Item G	Addresses for Notices	<p>Seller:</p> <p>Post</p> <p>Sunwater Customer Support/ Sunwater Commercial (delete as applicable) PO Box 15536 CITY EAST BRISBANE QLD 4002</p> <p>Email</p> <p>customersupport@sunwater.com.au</p> <p>commercial@sunwater.com.au (delete as applicable)</p>	<p>Buyer:</p> <p>Post</p> <p>[INSERT]</p> <p>Email</p> <p>[INSERT]</p> <p>Buyers Solicitor</p> <p>Firm Name [INSERT]</p> <p>Contact [INSERT]</p> <p>Post</p> <p>[INSERT]</p> <p>Email</p> <p>[INSERT]</p>
Item H	Sunset Date		[INSERT either: 3 months from the Date of this Agreement or a different timeframe for the specific sale]]
Item I	Supply Contracts		[INSERT e.g. Supply Contract – River for Water Supply Services / Supply Contract – Channel and Pipeline for Water Distribution Services] (being the relevant water supply contract/s required to be entered into by the Buyer)
Item J	Date of this Agreement		[INSERT] (or, if blank, the date this Agreement is executed by the Seller)

1 Sale and Purchase

- (a) The Seller agrees to sell and the Buyer agrees to buy the Water Allocation for the Purchase Price free from Encumbrances except the Accepted Encumbrances on the terms of this Agreement.
- (b) The Purchase Price must be paid by the Buyer to the Seller, or to any person the Seller directs, as follows:
 - (i) the Deposit must be paid in accordance with clause 3; and
 - (ii) the Balance Purchase Price must be paid by the Buyer to the Seller, or to any person the Seller directs, on the Completion Date.

2 Dealing with Water Allocations

2.1 ROL Zone

The Buyer acknowledges that the Seller may be required to do any or all of the following in order to sell the Water Allocation to the Buyer:

- (a) subdivide water allocations in the Regulated Area into smaller lots to equal the volume of the Water Allocation;
- (b) amalgamate one or more water allocations in the Regulated Area to equal the volume of the Water Allocation; or
- (c) move the location of water allocations in the Regulated Area to a different ROL zone, and the Buyer will be responsible for any associated costs and will promptly reimburse the Seller, or any entity which has incurred costs on behalf of the Seller, for any costs incurred in undertaking any subdivision, amalgamation or ROL zone change to create the Water Allocation upon demand.

2.2 Condition precedent

If the Seller is required to do any or all of the matters stated in clauses 2.1(a) to 2.1(c) to enable it to sell the Water Allocation to the Buyer then Completion of this Agreement is subject to and conditional upon the Seller effecting those matters.

2.3 Notification of satisfaction of condition precedent

The Seller will promptly notify the Buyer when the condition precedent in clause 2.2 has been satisfied.

2.4 Termination of Agreement

If the Seller is unable to satisfy the condition precedent in clause 2.2 by the Sunset Date (or any further extended period under clause 2.5), then either party may by notice in writing terminate this Agreement and the Buyer will be entitled to a refund of the Deposit.

2.5 Extension to date for condition precedent

The Seller may by notice in writing to the Buyer extend the Sunset Date by a period of up to 3 months.

3 Deposit

3.1 Payment of Deposit

- (a) The Buyer must pay the Deposit to the Deposit Holder on or prior to the Date of this Agreement.

- (b) The Deposit Holder will (once received) confirm receipt of the Deposit by written notice to the Buyer.
- (c) The Buyer will be in default of this Agreement if the Buyer does not pay the Deposit to the Deposit Holder when required by clause 3.1(a).
- (d) A failure by the Buyer to pay the Deposit when due (with time being of the essence) constitutes a breach of an essential term and entitles the Seller to terminate this Agreement immediately upon notice to the Buyer.

3.2 Entitlement to Deposit

- (a) If Completion occurs, the Seller is entitled to receive the Deposit from the Deposit Holder.
- (b) If this Agreement is terminated where the Buyer has not defaulted, the Buyer is entitled to a refund of the Deposit.
- (c) If this Agreement is terminated where the Buyer has defaulted, the Seller is entitled to receive the Deposit from the Deposit Holder.

3.3 Rights after refund of Deposit

Where this Agreement has been terminated and the Buyer has received the Deposit, the Buyer has no further claim against the Seller unless the termination is due to a default by the Seller.

4 Seller's obligations regarding the Water Allocation

4.1 Seller's warranties

- (a) The Seller warrants that, to the best of its knowledge and subject to the other conditions of this Agreement (including subject to satisfaction of the condition precedent set out in clause 2.2), at Completion:
 - (i) it will be capable of completing this Agreement;
 - (ii) there will be no claims, proceedings or notices affecting the Water Allocation; and/or
 - (iii) there will be no existing and unsatisfied judgments, writs or orders affecting the Water Allocation.
- (b) To the extent permitted by Law, the Seller gives no further warranty or condition (express or implied) as to any matter (past, present, future or anticipated) relevant to the Water Allocation, including, without limitation:
 - (i) the quality of any water the subject of or to which the Buyer may be entitled under the Water Allocation;
 - (ii) the purpose for which any water may be used;
 - (iii) that the Nominal Volume, or any part of it, will be delivered by the ROL Holder or any other persons responsible for its transportation to the Buyer; and/or
 - (iv) that the Nominal Volume, or any part of it, will be made available to the Buyer, and the Buyer bears the risk of any non-delivery or non-availability of the Nominal Volume in whole or in part.

4.2 Risk

The Water Allocation is at the Buyer's risk from 5pm on the Date of this Agreement.

4.3 Seller's Limitation of Liability

- (a) Subject to clause 4.3(b) and to the extent permitted by Law, the Seller's maximum aggregate liability to the Buyer and to any beneficially entitled third party, arising out of or in connection with either this Agreement or the sale of the Water Allocation, and whether for breach of contract, tort (including negligence), breach of Law, restitution, under an indemnity or on any other ground whatsoever, is limited to the Purchase Price received by the Seller as at the date the claim is first made against the Seller.
- (b) To the extent permitted by Law, the Seller will not be liable to the Buyer for:
 - (i) any Consequential Loss incurred by or awarded against the Buyer; or
 - (ii) any claim in connection with this Agreement (or the transfer of the Water Allocation under it) unless the Buyer gives notice to the Seller of the claim (with reasonable details of the claim and basis for it) within 3 months from Completion.

5 Acknowledgements by Buyer

5.1 Title

The Buyer acknowledges and agrees that:

- (a) title to the Water Allocation and all other rights and entitlements to the Water Allocation are subject to the provisions of the Act;
- (b) it has relied on its own enquiries and advice as to the rights and entitlements arising under the Water Allocation and, to the extent permitted by Law, assumes all risks associated with ownership of the Water Allocation from 5pm on the Date of this Agreement;
- (c) to the extent permitted by Law, it releases the Seller from all responsibility and liability in respect of the matters referred to in clauses 5.1(a) and 5.1(b); and
- (d) it may not deliver any requisition on title or otherwise to the Seller in respect of the Water Allocation.

5.2 Matters to which Buyer cannot object

The Buyer acknowledges and agrees that it is not entitled to make any objection, requisition or claim for compensation, or to delay Completion or payment of the Purchase Price, by reason of any minor variations, alterations or substitutions to the description of the Water Allocation or any other specification of the Water Allocation resulting from:

- (a) the requirements of the ROL, the Water Plan or any other Law;
- (b) the requirements of any Authority;
- (c) climatic changes (either short or long term); or
- (d) any other cause beyond the Seller's control,

which does not materially prejudice the Buyer.

5.3 Statutory obligations – ROL Holder

The Buyer:

- (a) acknowledges that the ROL Holder is obliged to carry out responsibilities under the Act in its capacity as the ROL holder in accordance with the terms of the Act and any other Law binding on it; and

- (b) waives and releases the ROL Holder from all claims, rights, actions, suits and liabilities that may arise under or in respect of this Agreement due to the ROL Holder carrying out its statutory obligations.

6 No registration of interest prior to Completion

Prior to Completion the Buyer will not lodge any application, and will not allow the lodgement of any application to register any dealing or interest (including but not limited to a caveat) over or in respect of either the Water Allocation, or any other existing water allocations that will either be amalgamated or subdivided to create the Water Allocation.

7 Stamping and registration

- (a) The Buyer will:
 - (i) prepare the Transfer Instrument (and other documents required for registration of the transfer of the Water Allocation) and provide them to the Seller no later than 15 Business Days prior to the Completion Date;
 - (ii) attend to assessment of duty on this Agreement and on the Transfer Instrument for the transfer of the Water Allocation;
 - (iii) attend to payment of the duty assessed as referred to in clause 7(a)(ii) and will otherwise indemnify the Seller for any duty payable on or in connection with this Agreement or the transfer of the Water Allocation;
 - (iv) attend to registration of the transfer of the Water Allocation at the Water Allocations Register promptly following Completion; and
 - (v) without limiting its obligations under clause 15.2, take all steps required to ensure any documentation required to be stamped in respect of the issue or transfer of the Water Allocation is appropriately lodged and stamped, unless alternative arrangements are agreed between the parties in writing.
- (b) The Seller will, upon request of the Buyer, review the documents as prepared and provided under clause 7(a) and provide the Buyer with any required Water Allocation details, including the water allocation number.
- (c) Subject to receipt of the Transfer Instrument from the Buyer under and in accordance with the timeframe in clause 7(a), and subject to the Buyer's solicitor giving an undertaking to use the Transfer Instrument for stamping purposes only (and to otherwise hold the Transfer Instrument in escrow pending Completion), the Seller must sign and return the Transfer Instrument to the Buyer's solicitor no later than 10 Business Days prior to the Completion Date.
- (d) To the extent permitted by Law the Buyer releases and indemnifies the Seller from and against all claims, losses, damages, costs and expenses suffered or incurred (including claims by third parties) in relation to the Seller's review of the documents (prepared by the Buyer) in accordance with clause 7(b).
- (e) Failure by the Buyer to comply with this clause 8 will entitle the Seller to terminate this Agreement in accordance with clause 10.

8 Completion

8.1 Time and place

Completion must take place between 9am and 4pm on the Completion Date, at the Place for Completion, subject to any extension of the Completion Date agreed in writing between the parties.

8.2 Completion obligations

Unless alternative arrangements have been made in accordance with clause 7(a), at Completion, unless previously provided:

- (a) the Buyer must:
 - (i) pay the Balance Purchase Price to the Seller (or as it directs); and
 - (ii) reimburse the Seller, or any entity which has incurred costs on behalf of the Seller, for any costs incurred in undertaking any subdivision, amalgamation or ROL zone change to create the Water Allocation pursuant to clause 2.1,

by way of bank cheque;
- (b) the Buyer must provide the Seller with:
 - (i) an original stamped copy of this Agreement and a copy of the stamped Transfer Instrument;
 - (ii) (if required by the Seller), the Supply Contracts executed by the Buyer, and the Buyer authorises the Seller to insert the date of the Supply Contracts with the Date of Completion;
 - (iii) a Bank Guarantee as required to be provided under the Supply Contracts; and
 - (iv) an authority to the Deposit Holder to release the Deposit to the Seller;
- (c) the Seller will provide the Buyer with:
 - (i) if not already provided, the Transfer Instrument signed by the Seller;
 - (ii) a Notice to Registrar executed by (or on behalf of) the ROL Holder; and
 - (iii) if requested by the Buyer not less than 15 Business Days prior to the Completion Date copies of any other documents to be signed by the Seller as necessary for registering the Transfer Instrument if required; and
- (d) for the avoidance of doubt and notwithstanding anything else to the contrary, the Seller will have no obligation to complete this Agreement (or deliver any items under this clause 8.2) unless the Supply Contracts have been executed and delivered by the Buyer to the Seller in accordance with clause 8.2(b)(ii).

8.3 Post Completion obligations

- (a) Unless alternative arrangements have been made for registration of the Transfer Instrument in accordance with clause 7(a), the Buyer will attend to lodgement of the Transfer Instrument at the Water Allocations Register within 7 days of Completion.
- (b) Within 7 days of receiving written confirmation from the Water Allocations Register that the Water Allocation is registered in the name of the Buyer following lodgement of the Transfer Instrument under clause 8.3(a), the Buyer will provide the Seller with the written confirmation.

9 Completion Date

The Completion Date will be 30 days after the later of:

- (a) the Date of this Agreement; and
- (b) date the Seller notifies the Buyer under clause 2.3.

10 Rights to terminate

10.1 Seller's rights

If at any time prior to Completion:

- (a) any Law, plan or Government Directive has the effect of preventing Completion in accordance with clause 8 of this Agreement;
 - (b) an Insolvency Event occurs in respect of the Buyer;
 - (c) the Buyer fails to pay any moneys due and owing by it to the Seller under this Agreement; or
 - (d) (without limiting clause 10.1(c)), the Buyer breaches a condition of this Agreement,
- then the Seller may terminate this Agreement by notice in writing to the Buyer.

10.2 Seller entitled to Deposit

If this Agreement is terminated by the Seller under clause 10.1 (other than under clause 10.1(a)), the Seller will be entitled to receive the Deposit. If the Buyer has not paid any part of the Deposit in accordance with clause 3.1, the Seller will be entitled to recover the unpaid amount of the Deposit from the Buyer as a debt, and the Buyer will indemnify the Seller against any damages and expenses incurred by the Seller in recovering that debt (including but not limited to legal costs on an indemnity cost basis).

10.3 Buyer's rights

If the Seller breaches a condition of this Agreement and fails to remedy that breach within a reasonable time after receiving written notice from the Buyer, then the Buyer may terminate this Agreement by notice in writing to the Seller.

10.4 Cross default

Where the Buyer and the Seller have made an agreement, whether before or after the making of this Agreement which relates to the sale, supply, distribution or transportation of water or a water entitlement regulated by the Water Plan, then the Seller reserves the right to treat a default by the Buyer under that agreement as a default by the Buyer under this Agreement.

11 Remedies for Buyer default

11.1 Remedies available to the Seller

Where the Buyer defaults on any obligation under this Agreement or an Insolvency Event occurs in respect of the Buyer then, in addition to any of the Seller's other rights or powers at Law, the Seller may:

- (a) affirm this Agreement and sue the Buyer either for damages for breach or for specific performance or for damages in addition to specific performance; or
- (b) terminate this Agreement and:
 - (i) where termination occurs prior to Completion, declare the Deposit forfeited; and/or

- (ii) either:
 - (A) sue the Buyer for damages for breach; or
 - (B) resell the Water Allocation and if the resale is completed within 2 years from the date of termination, any deficiency in purchase price and any reasonable expenses connected with this Agreement from any unsuccessful attempts to resell the Water Allocation or from the resale (including costs of subdivision, zone changes, changes in priority and the Seller's legal and management costs), are recoverable by the Seller from the Buyer as liquidated damages.

11.2 Interest on overdue amounts

In addition to the other rights of the Seller, where the Buyer fails to make a payment under this Agreement when due, the Seller is entitled to receive interest on that money from the Buyer, calculated at the Overdue Rate for the period commencing on the date when payment is due and concluding when payment is made. Such interest may be recovered by the Seller as liquidated damages.

12 GST

12.1 GST-free

The parties acknowledge that the sale of the Water Allocation under this Agreement is GST-free.

12.2 GST to be added to amounts payable

- (a) If it is determined that the sale of the Water Allocation under this Agreement is not GST-free and is a Taxable Supply, then the parties acknowledges and agree that the Purchase Price is exclusive of GST, and the Buyer must also pay the GST Amount as additional Consideration.
- (b) If GST is payable on some other supply under this Agreement which is a Taxable Supply, the party providing the Consideration for the Taxable Supply must also pay the GST Amount as additional Consideration.

12.3 Tax Invoice and Adjustment Note

No payment of any amount pursuant to clause 12.2 is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

12.4 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this Agreement.

13 Transfers, assignments and novations

13.1 Transfer of Water Allocation

The Seller may transfer the Water Allocation to any person who enters into a deed of covenant in favour of the Buyer to be bound by this Agreement in place of, and to the same extent as, the Seller. Upon execution by the assignee of the deed of covenant, the Seller will be released from any further obligation under this Agreement.

13.2 Assignment

The Buyer may not assign or novate its rights or obligations under this Agreement (and must not nominate a substitute or additional buyer under this Agreement) without the Seller's prior written consent.

14 Dispute Resolution

14.1 Activation

- (a) The objective of this clause is to provide an effective and equitable process for the resolution of disputes and to encourage the parties to discuss and resolve the matter.
- (b) 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.

14.2 Appointment of representative

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

14.3 Discussions

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

14.4 Negotiation procedures

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

14.5 Methods of resolution

A party receiving a request under clause 14.4 shall promptly discuss the following and other related subjects with the party making the request:

- (a) the mode of proceeding, whether by negotiation, mediation, conciliation, expert appraisal, expert determination or mini-trial;
- (b) the 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; and
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

14.6 Exchange of information

The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement under this clause 14 is to attempt to settle a dispute between the parties.

14.7 Termination

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

15 General Provisions

15.1 Further acts

Each party must do everything reasonably required by the other party to give effect to any provisions of this Agreement.

**Contract of Sale of Water Allocation
(Permanent Transfer) – Conditions of Sale**

15.2 Costs

The Seller and Buyer must each pay their own costs relating to this Agreement. However, the Buyer must pay all duty (including any penalties) on or arising out of this Agreement and any Associated Documents, and any duty (including any penalties) in respect of the transfer of the Water Allocation from the Seller to the Buyer. The Buyer will also be responsible for any registration fees (including any requisition fees) associated with this Agreement and the transfer from the Seller to the Buyer.

15.3 Notices

- (a) Notices under this Agreement may be:
 - (i) signed by a party or its lawyer; and
 - (ii) must be in writing; and
 - (iii) must be:
 - (A) sent by email to the address stated in Item G of the Item Schedule; or
 - (B) delivered, posted or sent by facsimile to the other party at the address stated in Item G of the Item Schedule or its lawyer.
- (b) Unless a later time is specified in it, a notice or other communication takes effect from the time it is received.
- (c) Notices will be treated as given:
 - (i) where posted, 6 Business Days after posting;
 - (ii) where delivered by hand, upon delivery;
 - (iii) where sent by facsimile, when a clear transmission report is received by the sender;
 - (iv) where sent by email, the earlier of:
 - (A) the time that the sender receives an automated message from the recipient's information system confirming delivery of the email;
 - (B) the time that the sender confirms recipient of the email by reply email; and
 - (C) 3 hours after the time the email is sent (as recorded on the device from which the email was sent) unless the sender receives, within that 3 hour period, an automated message that the email has not been delivered; and
 - (v) in any case, where given on a non-Business Day or after 5pm on a Business Day, on the next Business Day.
- (d) All written communications by a party's lawyer will be presumed to be given with the authority of the party.

15.4 Rights after Completion

Terms of this Agreement capable of taking effect following Completion will remain in force after those events have occurred.

15.5 Variations and waivers to be in writing

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by a party from any such provision, shall be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent shall be effective only to the extent to or for which it may be made or given.

15.6 Effect of void provisions

If a court holds that:

- (a) any part of this Agreement is void, voidable, illegal or unenforceable; or
- (b) this Agreement is void, voidable, illegal or unenforceable unless any part of the Agreement is severed from the Agreement,

that part will be severed from the Agreement unless to do so would change the underlying principal commercial purposes of this Agreement.

15.7 Attorney

Each person signing this Agreement as attorney for a party warrants to the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

15.8 Counterparts

This Agreement may be signed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

15.9 Governing law

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

15.10 Provisions about time

Time is of the essence of this Agreement, except in respect of any agreement on a time of day between 9am and 4pm for Completion.

15.11 Business Days

Anything required to be done (including Completion) or condition satisfied on a non-Business Day must instead be done or satisfied on the next Business Day.

15.12 Foreign Persons

- (a) Where the Buyer is not a company, the Buyer or each Buyer (as the case may be) warrants that he or she ordinarily resides in Australia.
- (b) The Buyer warrants that the Buyer is not a “foreign person” as defined in the *Foreign Ownership of Land Register Act 1988*.

15.13 Information on financial capacity

The Buyer must (promptly after request by the Seller, provided such requests are not made more than once in each 3 month period) provide such information as the Seller reasonable requests to demonstrate and evidence that:

- (a) the Buyer does not have any unpaid statutory liabilities or expenses which are overdue for payment; and
- (b) the Buyer continues to have the financial capacity to fulfil its obligations under this Agreement and the Supply Contracts.

15.14 **Reinstatement of rights**

If a person claims under law relating to Insolvency Events that a transaction (including a payment) in connection with this Agreement is void or voidable and that claim is upheld, conceded or compromised, then:

- (a) the Seller is immediately entitled as against the Buyer to the rights in connection with this Agreement to which it was entitled immediately before the transaction; and
- (b) on request from the Seller, the Buyer agrees to do anything (including signing any document) to restore to the Seller any right, title or interest (including in respect of the Water Allocation) held by the Seller immediately before the transaction.

The Buyer's obligations under this clause are continuing obligations, independent of the Buyer's other obligations under this Agreement and continue after this Agreement ends.

16 Definitions and interpretation

16.1 **Definitions**

The following definitions apply to this Agreement unless the context requires otherwise.

Accepted Encumbrances means:

- (a) any conditions applicable to the Water Allocation as specified in Item E of the Item Schedule; and
- (b) the rights and interests to which the Water Allocation is subject under the Act.

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

Adjustment Note has the meaning given by the GST Law.

Agreement means the agreement comprised of:

- (a) the Instrument of Agreement;
- (b) the Item Schedule; and
- (c) these Conditions of Sale.

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

Authority means any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, chief executive officer or statutory corporation.

Associated Documents means:

- (a) any advertising brochures issued by the Seller; and
- (b) any other information provided in writing by the Seller to the Buyer, relating to the sale or lease of water allocations governed by the Water Plan.

Balance Purchase Price means the remainder of the Purchase Price after subtracting the Deposit.

Bank Guarantee means a bank guarantee for the amount required to be provided under the Supply Contracts, and which is on terms and from a bank reasonably acceptable to the Seller.

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

Completion means the things due to occur on the Completion Date under clause 8.

**Contract of Sale of Water Allocation
(Permanent Transfer) – Conditions of Sale**

Completion Date means the Completion Date specified in clause 9.

Consequential Loss means all consequential, indirect and special losses, loss of profits, loss of revenue, loss of opportunity, loss of right, loss of data, loss of contract, loss of use of any plant or facility, and loss of goodwill.

Consideration has the meaning given by the GST Law.

Date of this Agreement means the date specified in Item J of the Item Schedule.

Deposit means the deposit specified in Item B of the Item Schedule being 10% of the Purchase Price.

Deposit Holder means the person specified in Item C of the Item Schedule.

Encumbrances means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, title retention arrangement, encumbrance, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

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

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in respect of a party:

- (a) an order is made or an effective resolution is passed for the winding up (otherwise than for the purposes of a reconstruction or amalgamation with the consent of the other party) and remains in effect for a continuous period of 7 days;
- (b) a receiver, receiver and manager, judicial manager, liquidator, voluntary administrator or like official is appointed over the whole or a substantial part or the undertaking or property of the party and the appointment remains in effect for a continuous period of 7 days;
- (c) a holder of a mortgage, charge, encumbrance or security interest of any kind takes possession of the whole or any substantial part of the undertaking and property of the party and remains in possession for a continuous period of 7 days;
- (d) the party is unable to pay its debts as and when they fall due;
- (e) the party ceases to carry on its business or notifies the other party that it is unable or unwilling to perform its obligations under this Agreement; or
- (f) being a natural person, that person dies, becomes bankrupt, is sentenced to imprisonment or committed to a psychiatric institution.

Instrument of Agreement means the 'Instrument of Agreement' accompanying these Conditions of Sale.

Item Schedule means the 'Item Schedule' accompanying these Conditions of Sale.

Law means:

- (a) Commonwealth, State or local government legislation including regulations, bylaws and other subordinate legislation;

Contract of Sale of Water Allocation (Permanent Transfer) – Conditions of Sale

- (b) common law, and
- (c) Approvals (including any conditional requirement under them).

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

Notice to Registrar means a 'Form W2F152 – Notice to registrar of water allocations of existence of supply contract', or any other form required to be provided by the ROL Holder to enable the registrar to register the Transfer Instrument.

Overdue Rate means a rate of interest equal to the Suncorp-Metway Limited 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 suitable replacement bank rate per annum as may be determined after request by the Seller by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch), or such other rate agreed between the parties.

Place for Completion means the place stated in Item F of the Item Schedule.

Purchase Price means the amount stated in Item A of the Item Schedule.

Regulated Area means the area to which the ROL relates.

ROL means the resource operations licence under the Act held by the ROL Holder and described in Item D of the Item Schedule.

ROL Holder means the entity described in Item D of the Item Schedule.

Sunset Date means the date specified in Item H of the Item Schedule.

Sunwater means the corporation established as a body corporate under the *Government Owned Corporations Regulation 2014* (Qld) known as Sunwater Limited ACN 131 034 985.

Supply Contracts means the supply contracts specified in Item I of the Item Schedule provided to the Buyer prior to the date of this Agreement, including the 'Application Form' and 'Customer Profile Form'.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Transfer Instrument means the form of transfer required to transfer title in the Water Allocation to the Buyer (and to avoid doubt, does not include 'Notice to registrar of water allocations of existence of supply contract' under the Act).

Tax Invoice has the meaning given by the GST Law.

Water Allocation means the proposed water allocation(s) in the Regulated Area to be sold under this Agreement, particulars of which are described in Item D of the Item Schedule.

Water Allocations Register means the water allocations register established under the Act.

Water Distribution Services means the services for the diversion of water by Sunwater into the distribution network described in the Supply Contracts.

Water Supply Services means the services for the release of water by Sunwater described in the Supply Contracts.

Water Plan means the water plan under the Act which applies to the Regulated Area and is specified in Item D of the Item Schedule.

16.2 Interpretation

In interpreting this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a party is a reference to either the Buyer or the Seller as the context requires;
- (c) a reference to the Buyer or Seller includes a reference to their respective successors and assigns;
- (d) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (e) a reference to any gender includes a reference to each other gender;
- (f) where any expression is defined in this Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) clause headings are inserted for convenience only and shall not affect the interpretation of this agreement;
- (h) references to “dollars” and “\$” are references to Australian dollars;
- (i) references to time are references to time in Queensland;
- (j) 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;
- (k) a reference to clauses and Schedules is a reference to clauses and Schedules of this Agreement;
- (l) 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;
- (m) a term used in the Act has the same meaning when used in this Agreement;
- (n) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (o) where the Seller or the Buyer comprises two or more persons the liability under this Agreement shall be joint and several; and
- (p) any disclaimers, releases or waivers of liability or responsibility contained in or arising out of, this Agreement (either express or implied) for the benefit of the Seller will be construed and will operate to confer that benefit on each of the Seller and its related bodies corporate.