



# Standard Supply Contract Groundwater for the Central Lockyer Valley Water Supply Scheme

**Contract Number:**

This **AGREEMENT** is made on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Between the following parties:

1	<b>QUEENSLAND BULK WATER SUPPLY AUTHORITY (ABN 75 450 239 876) TRADING AS SEQWATER</b> of Level 8, 117 Brisbane Street, Ipswich Queensland 4305 ( <b>Seqwater</b> )
2	..... ..... ..... ..... <b>(Customer)</b> (insert Customer's full name(s) and address(es), and ABN if applicable)

## BACKGROUND

- A. Seqwater is the holder of either an interim Resource Operations Licence or a Resource Operations Licence for water infrastructure in the Regulated Area.
- B. The Customer either:
  - (a) is the holder of an interest in a Water Entitlement under the Water Act for the taking of water from the Regulated Area;
  - (b) has made an agreement to acquire an interest (capable of registration) in a Water Entitlement under the Water Act for the taking of water from the Regulated Area; or
  - (c) has made an agreement that enables or will enable the Customer to access a volume of water from the Regulated Area.
- C. Seqwater and the Customer have agreed terms for Seqwater providing the Services to the Customer.
- D. The Customer's entitlement to water will arise from the holding of an interest in a Water Entitlement under the Water Act and not from this Agreement.

- E. Where item 9 of the Customer's Schedule requires a Guarantee and Indemnity, the Customer must obtain a Guarantee and Indemnity from the Guarantor on the terms contained in **Schedule 4**.

#### IT IS AGREED

1. This Agreement is made between Seqwater and the Customer under which Seqwater agrees to release water and the Customer agrees to accept the release of water by Seqwater on the terms of this Agreement.
2. This Agreement comprises the following parts:
  - (a) these terms ("Terms of this Agreement");
  - (b) the Customer's Schedule set out in **Schedule 1** ("Customer's Schedule");
  - (c) the Special Conditions set out in **Schedule 2** ("Special Conditions"); and
  - (d) the Standard Conditions set out in **Schedule 3** ("Standard Conditions").
3. Where there is any discrepancy or inconsistency between the parts of this Agreement listed in **clause 2(a) to 2(d)**, the descending order of precedence of the parts listed in **clause 2(a) to 2(d)** shall apply to resolve the discrepancy or inconsistency.
4. Terms defined in the Standard Conditions shall have the same meaning when used in other parts of this Agreement, except **Schedule 4**.
5. Seqwater's obligations under this Agreement are conditional upon:
  - (a) the Customer being granted or otherwise obtaining the Customer's Allocation;
  - (b) if a requirement for a Guarantee and Indemnity is set out in the Customer's Schedule, the Guarantor entering into the Deed of Guarantee and Indemnity in **Schedule 4**; and
  - (c) if a requirement for security is set out in the Customer's Schedule, the Customer obtaining the security in accordance with **clause 21** of the Standard Conditions.
6. If **clause 5** of the Terms of this Agreement are not fulfilled by the Customer or waived by Seqwater by the date that is six (6) months from the date of signing this Agreement, this Agreement will be at an end.
7. This Agreement supersedes any standard supply contract that applies to the Customer's Allocation under the Water Act.
8. The Customer warrants:
  - (a) that the Customer will make arrangements satisfactory to Seqwater for the meter of the Current Holder to be read at the time immediately prior to the Customer's taking any water under this Agreement and particulars provided to Seqwater promptly;
  - (b) that the Customer is aware or will make itself aware of the volume of water taken by the Current Holder during the Water Year in which the Commencement Date falls or by the counter party to the agreement that enables or will enable the Customer to access a volume of water; and
  - (c) that no representation or warranty is given by Seqwater about the volume of water which may be taken by the Customer during the balance of that Water Year.
9. The following provisions shall survive the termination of this Agreement:
  - (a) this clause;
  - (b) **clause 4(e)** of the Standard Conditions;
  - (c) **clause 8** of the Standard Conditions;
  - (d) **clause 14** of the Standard Conditions;
  - (e) **clause 17** of the Standard Conditions;
  - (f) **clause 18** of the Standard Conditions;

- (g) **clause 19** of the Standard Conditions;
- (h) **clause 23** of the Standard Conditions
- (i) **clause 24** of the Standard Conditions;
- (j) **clause 25** of the Standard Conditions; and
- (k) **clause 26** of the Standard Conditions.

**SIGNED AS AN AGREEMENT:**

**Signed** for and on behalf of **QUEENSLAND BULK WATER SUPPLY AUTHORITY TRADING AS SEQWATER (ABN 75 450 239 876)** by its duly authorised officer in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Name and Position of authorised officer (print)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

***\*Individual execution clause - delete if the Customer is not an individual***

**Signed** by [insert full name] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness (print)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

***\*Trustee execution clause (individual as trustee) - delete if the individual is not entering into the Contract as Trustee of a Trust***

**Signed** by [insert full name] as trustee for [insert name of trust] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness (print)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

***\*Trustee execution clause (Company as trustee) - delete if the Company is not entering into the Contract as Trustee of a Trust***

**Executed by [insert company name and ACN]**  
as trustee for **[insert name of trust]** in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of \*\*Director / \*\*Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Signature of \*\*Director / \*\*Secretary

\_\_\_\_\_  
Name of \*\*Director / \*\*Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Name of \*\*Director / \*\*Secretary

(\*\*Please delete the inapplicable)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

This \_\_\_\_\_ day of \_\_\_\_\_ 20

***\*Company execution clause - delete if the Customer is not a Company***

**Executed by [insert company name and ACN]**  
in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of \*\*Director / \*\*Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Signature of \*\*Director / \*\*Secretary

\_\_\_\_\_  
Name of \*\*Director / \*\*Sole Director and Sole  
Company Secretary

\_\_\_\_\_  
Name of \*\*Director / \*\*Secretary

(\*\*Please delete the inapplicable)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

This \_\_\_\_\_ day of \_\_\_\_\_ 20

***\*Power of attorney execution clause - delete if the Customer is not a company signing under a power of attorney***

**Signed** for and on behalf of **[insert company name and ACN]** by its attorney under power of attorney **[insert registration details]** dated **[insert date]** registered in **[insert jurisdiction]** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Full name of attorney

This \_\_\_\_\_ day of \_\_\_\_\_ 20

## Schedule 1 Customer's Schedule

### 1. Customer Details

Customer	:	[	]
ACN/ABN	:	[	]
Customer	:	[	]
ACN/ABN	:	[	]
Customer	:	[	]
ACN/ABN	:	[	]
Customer	:	[	]
ACN/ABN	:	[	]
Customer Account Number	:	[	]
Email Address for Invoices	:	[	]
Address for Notices	:	[	]
<i>(must be a physical address e.g. street or property address (PO Box not permitted))</i>			
Telephone Number	:	[	]
Facsimile Number	:	[	]
Email Address	:	[as above]	

### 2. Details of Customer's Acquisition

**\* (Delete as required)**

Current Holder	:	[	]
Type of Water Entitlement	:	Interim Water Allocation*/Water Allocation*	
Method of acquiring Customer's Allocation	:	Transfer*/Additional Contract*/Lease*/ other*-state	
Portion of interest to be acquired	:	Whole*/Part*/state amount	
Completion Date	:	[	]
Termination date for Additional Contract	:	[	]
Nature of Acquisition dealing	:	[	]
Land	:	[Lot      Plan    ]	
Location for taking Water	:	[	] AMTD

### 3. Customer Allocation Particulars

Regulated Area	:	[	]
Customer's Allocation Identifier	:	[	]
Customer's Interest	:	[	]
Amount of Allocation	:	[	] ML
Location for taking Water	:	[	] AMTD
Purpose	:	[	]
Operations Manual	:	Central Lockyer Valley Water Supply Scheme	

Water Management Protocol : Moreton  
 Resource Operations Licence : Central Lockyer Valley Water Supply Scheme  
 Priority Group : [ ]

**4. Customer’s Nominated Works – Seqwater Works**

---

Customer’s Nominated Works : \* **(Delete as required)**  
 as specified in:  
 Licence Number\* : issued under the:  
 [ ]  
 Subject to **clause 11.4** of the Standard Conditions  
 Meter Details : [ ]  
 Installation of Meter is subject to Seqwater’s prior written approval under the Standard Conditions refer to **clauses 11.4** and **12.2**.

**5. Commencement Date**

---

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

**6. Water and Other Charges at date of Commencement**

---

**\* (Delete as required)**

Fixed (commonly called Part A and/or Part C) : Regulated Charge\*/ \$ \_\_\_\_\_ per ML of Customer’s Allocation per year\*  
 Consumption (commonly called Part B and/or Part D) : Regulated Charge \*/ \$ \_\_\_\_\_ per ML\*  
 Minimum Charge : As made or amended under **clause 10.2(a)(ii)** of the Standard Conditions.  
 Billing Interval : Quarterly  
 Charges for Connection Services : As made or amended under **clause 10.2(a)(ii)** of the Standard Conditions.  
 Charges for Disconnection Services : As made or amended under **clause 10.2(a)(iii)** of the Standard Conditions.  
 Charges for Extra Meter Reading Services : As made or amended under **clause 10.2(a)(iii)** of the Standard Conditions.  
 Charges for Meter Testing Services : As made or amended under **clause 10.2(a)(iii)** of the Standard Conditions.  
 On-Supply Charge : \$[ \_\_\_\_\_ ] per ML of the Customer’s Allocation  
 Review Date : Not applicable.

**7. Security Required**

---

Is security required on execution from the Customer? **Yes/No**  
 (**clause 21** of the Standard Conditions)

Amount of security required : \$[ ] or N/A

**8. Insurance**

---

Amount of insurance required : \$[ ] or N/A

**9. Is the Guarantee and Indemnity Required?**

---

Is Guarantee and Indemnity required (Schedule 4) : Yes/No

**10. Guarantor Details**

---

*\* (Delete if item 9 indicates that a Guarantee and Indemnity is not required)*

Guarantor : [ ]

Address for Notices : [ ]

Facsimile Number : [ ]

Email Address : [ ]

## Schedule 2 Special Conditions

NIL

---

<b>Doc no.</b>	CON-00033	<b>Version date:</b>	13/06/2017	<b>Trim ID:</b>	
<b>Doc owner:</b>	W.Harpham	<b>Doc approver:</b>	Manager, Legal Counsel	<b>Rev no.</b>	2 Page 10 of 56

The controlled version of this document is registered. All other versions are uncontrolled

## Contents

### Schedule 3 Standard Conditions

<b>Schedule 1 Customer's Schedule</b>	<b>7</b>
<b>Schedule 2 Special Conditions</b>	<b>10</b>
<b>Contents</b>	<b>11</b>
<b>Schedule 3 Standard Conditions</b>	<b>11</b>
<b>Schedule 3 Standard Conditions</b>	<b>14</b>
<b>1. Water Services</b>	<b>14</b>
<b>2. Overall Statutory Framework for Services</b>	<b>14</b>
<b>3. Seqwater's Obligations</b>	<b>14</b>
<b>4. Customer's Obligations</b>	<b>15</b>
<b>5. Trustee Provisions</b>	<b>16</b>
5.1 Application of this clause	16
5.2 Liability of Customer	16
5.3 Warranties by Customer	16
5.4 Additional Obligations of Customer	17
<b>6. Separate Agreements</b>	<b>17</b>
<b>7. Other Services</b>	<b>17</b>
<b>8. Charges</b>	<b>18</b>
8.1 Water Charges	18
8.2 Invoicing	18
8.3 Payment on Account for Minimum Charge	18
8.4 Calculation and Payment of Charges	18
8.5 Re-invoicing after Errors	18
8.6 Payment	19
8.7 Interest on Arrears	19
8.8 Charges for Water Ordered but Not Taken	19
8.9 Consequences for Water Ordered but Not Taken	19
8.10 Charges in the Event of Force Majeure	19
<b>9. Term</b>	<b>20</b>
9.1 Term	20
9.2 Failure to hold Water Entitlement	20
<b>10. Variation of Charges</b>	<b>20</b>
10.1 Regulated Charges	20
10.2 Seqwater Charges	20
10.3 Process to amend the Consumption or Fixed Charges	20
10.4 Index Review of the Consumption, Fixed and On-Supply Charges	21
<b>11. Customer Obligations – Seqwater Property and Customer's Nominated Works</b>	<b>21</b>
11.1 Customer not to Damage	21
11.2 Customer to Notify Damage	21
11.3 Customer's Operation of Seqwater Property	21
11.4 Customer's Nominated Works to be Approved	21
11.5 Miscellaneous Provisions for this Clause 11	21
11.6 Operation and Maintenance of Customer's Nominated Works	22
11.7 Access by Customer	22
<b>12. Metering and Measurement</b>	<b>22</b>
12.1 Use of Meter	22
12.2 Meter Installation	22
12.3 No Actions Affecting Meter	23
12.4 If the Customer does not comply with Meter Installation obligations	23
12.5 Ownership of Meter	23
12.6 Meter Readings	23
12.7 Access to Read, Test, Repair, Calibrate	23
12.8 Disclosure of Records	23

12.9	Report Malfunctions, Damage	24
12.10	Removal of Meter on Termination	24
12.11	Estimate	24
12.12	Customer to Assist	24
12.13	Testing and Calibrating at Request of Customer	25
<b>13.</b>	<b>Non-release Authorisations</b>	<b>25</b>
13.1	Suspension or Restriction of Releases	25
13.2	Direction Not to Take Water	25
13.3	If Customer does Not Comply with Direction Not to Take Water	26
<b>14.</b>	<b>Water Quality</b>	<b>26</b>
14.1	No Warranty by Seqwater	26
14.2	Customer to Test	26
14.3	Customer to Indemnify	26
14.4	Release by Customer	27
14.5	Water Quality Notifications	27
<b>15.</b>	<b>Assignment/Subcontracting by Seqwater</b>	<b>27</b>
15.1	Assignment by Seqwater	27
15.2	Seqwater may Subcontract	27
<b>16.</b>	<b>Amendment, Transfer, Lease or Addition to Customer's Allocation</b>	<b>27</b>
16.1	Notice of Application	27
16.2	Effect of Approval	28
16.3	Amendment, Transfer, Lease, Dealing With, Change, or Additional Contract Outside the Regulated Area	28
16.4	Seqwater's Duty Unaffected	28
16.5	Temporary Transfer of Water	28
<b>17.</b>	<b>Power of Sale</b>	<b>28</b>
17.1	Interpretation of clause 17	28
17.2	Exercise of Power	28
17.3	Further Powers	28
17.4	Manner of Dealing	28
17.5	Application of Sale Proceeds	29
17.6	Power of Attorney	29
<b>18.</b>	<b>On-supply</b>	<b>30</b>
18.1	On-supply arrangement	30
18.2	Consent to on-supply arrangement	30
18.3	Review of Consumption and Fixed Charges	31
<b>19.</b>	<b>Limitation of Liability and Release</b>	<b>31</b>
19.1	Extent of Liability for Losses	31
19.2	Customer has Remedies under the Water Act	31
19.3	Seqwater Contribution to Loss or Claim	31
19.4	Releases by Customer	32
19.5	Limitation of Liability	32
19.6	Indemnity by Customer	32
19.7	Insurance	32
<b>20.</b>	<b>Default and Termination</b>	<b>33</b>
20.1	Termination by Seqwater	33
20.2	Termination by the Customer	33
20.3	Termination for Convenience	33
20.4	Substantial Destruction or Damage to Seqwater Property	33
<b>21.</b>	<b>Security</b>	<b>34</b>
21.1	Request for Security	34
21.2	Guarantee by corporation	34
21.3	Provision of Security	34
21.4	Form of Security	34
21.5	No Services without Security	34
21.6	Release of Security	35
<b>22.</b>	<b>Dispute Resolution</b>	<b>35</b>
22.1	Activation	35
22.2	Appointment of representative	35
22.3	Discussions	35

22.4	Negotiation of procedures	35
22.5	Methods of resolution	35
22.6	Exchange of information	35
22.7	Termination	35
22.8	Other remedies	36
22.9	Obligation to continue	36
<b>23.</b>	<b>GST</b>	<b>36</b>
<b>24.</b>	<b>Confidentiality and Public Announcements</b>	<b>36</b>
24.1	Confidentiality	36
24.2	Exceptions	36
24.3	Public Announcements	37
24.4	Right to information and disclosure	37
<b>25.</b>	<b>Miscellaneous</b>	<b>37</b>
25.1	Obligations for the benefit of third parties	37
25.2	Notices	37
25.3	Entire Agreement	38
25.4	Amendment	38
25.5	No Waiver	38
25.6	Duty and Costs	38
25.7	Further Assurances	38
25.8	Costs of Approval	39
25.9	Rights cumulative	39
25.10	Severance	39
25.11	Counterparts, facsimile and email	39
25.12	Governing law and jurisdiction	39
<b>26.</b>	<b>Definitions/Interpretation</b>	<b>40</b>
26.1	Definitions	40
26.2	Interpretation	44

## Schedule 3 Standard Conditions

### 1. Water Services

---

Seqwater must store, release or divert water from the Seqwater Works, as required by the Resource Operations Licence. The Customer accepts that the release of water by Seqwater is subject to:

- (a) the Operations Manual;
- (b) the Water Management Protocol;
- (c) the Water Use Plan;
- (d) the Water Plan;
- (e) the Resource Operations Licence;
- (f) the Customer's Allocation;
- (g) Seqwater's estimate of the likely demand of other customers within the Regulated Area;
- (h) the availability of water from the Seqwater Works;
- (i) the capacity of the Seqwater Works;
- (j) the provisions of the Water Act and the Water Supply Act; and
- (k) this Agreement.

### 2. Overall Statutory Framework for Services

---

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

- (a) the Water Act;
- (b) the Water Supply Act;
- (c) the Water Plan;
- (d) Water Management Protocol (including water allocation dealing rules);
- (e) Operations Manual;
- (f) Water Use Plan;
- (g) the Resource Operations Licence; and
- (h) the Strategic Asset Management Plan, if any.

### 3. Seqwater's Obligations

---

Seqwater shall:

- (a) store, supply and release water within the Regulated Area;
- (b) upon being notified by the Customer, repair any damage to or malfunction in the Meter at no cost to the Customer, unless **clause 11.1** or **12.3** apply;
- (c) where consultation is required:
  - (i) consult fairly and reasonably with the Customer or any entity representing customers of Seqwater within the Regulated Area; and

- (ii) allow the Customer a reasonable opportunity to participate in any such consultation.

## 4. Customer's Obligations

---

The Customer:

- (a) acknowledges that:
  - (i) Seqwater is not providing a "drinking water service" to the Customer as defined in the Water Supply Act;
  - (ii) the water being supplied under this Agreement is non-potable water that is not suitable for human consumption, domestic or household uses; and
  - (iii) the Customer uses the water supplied under this Agreement at the Customer's risk;
- (b) may take only the water the Customer is entitled to take under the Customer's Allocation through the Customer's Nominated Works;
- (c) may vary the maximum diversion rate under **clause 11.4** either for a fixed period of time or on a permanent basis, provided that:
  - (i) Seqwater agrees to the variation; and
  - (ii) the variation does not breach a Law or have the potential to adversely impact on another person;
- (d) in taking water, must comply with:
  - (i) the initial approval or any variation of that approval under **clause 11.4** including the configuration, specifications of and maximum diversion rate from the Customer's Nominated Works;
  - (ii) this Agreement;
  - (iii) each State Direction; and
  - (iv) all Laws applicable to the performance of its obligations under this Agreement;
- (e) must not, by any act or omission, cause Seqwater to breach the Resource Operations Licence or any Law;
- (f) must not take more than the Customer's Maximum Delivery Volume, except as allowed as a Statutory Right;
- (g) must not take water until approval under **clause 11.4** is granted and, if required, registration of the Customer as the holder of the Customer's Allocation;
- (h) where a system for the ordering of water is in place:
  - (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;

- (i) agrees that all water ordered will be accounted for under the water sharing rules administered under the Resource Operations Licence;
- (j) must ensure that the Customer's Nominated Works are appropriately positioned to take water under this Agreement, having regard to underlying hydrogeological attributes including strata, yield and water quality;
- (k) bears the risks of:
  - (i) destruction of or damage to the Customer's Nominated Works from an Event of Force Majeure or resulting from Seqwater's releasing water, under this Agreement or any other agreement or the Resource Operations Licence;
  - (ii) Supply Water Losses;
  - (iii) water being unavailable or unable to be taken for any reason from the aquifer;
  - (iv) the exercise of a Statutory Right; and
  - (v) any action taken under a State Direction;
- (l) during the Term must procure and maintain in full force and effect and comply with the terms of the Customer's Allocation, if any; and
- (m) will provide Seqwater with a copy of written confirmation from the relevant authority within five (5) Business Days of receiving written confirmation that the Water Allocation is recorded on the water allocations register in the name of the Customer.

## 5. Trustee Provisions

---

### 5.1 Application of this clause

This **clause 5** applies if the Customer has acquired or is acquiring the Water Entitlement in its capacity as trustee of a trust (**Trust**), whether on entering into this Agreement or at a later date, and whether or not Seqwater has notice of the Trust.

### 5.2 Liability of Customer

The Customer is liable under this Agreement in its personal capacity and as trustee of the Trust.

### 5.3 Warranties by Customer

The Customer warrants and represents to Seqwater that:

- (a) the Customer has full power under the Trust to enter into and perform this Agreement;
- (b) the Trust is validly created and is in existence;
- (c) the Customer is the sole trustee of the Trust and is validly appointed as such;
- (d) the Customer has not been removed from office as trustee of the Trust and has not ceased for any other reason to act as trustee of the Trust;
- (e) the Customer has the right of indemnity under the Trust;
- (f) the Customer is not in breach of any of its obligations under the Trust;
- (g) the Customer's powers under the Trust have not been revoked; and
- (h) the Trust has not been determined, wound up or ceased to exist and will remain in force during the Term and the Customer has no knowledge of any event or circumstance which may give rise to the determination, winding up or cessation of the Trust.

#### 5.4 Additional Obligations of Customer

Until all liabilities of the Customer under this Agreement have been satisfied:

- (a) the Customer must not:
  - (i) do anything to prejudice the right of indemnity available to the Customer under the Trust;
  - (ii) breach the Trust; or
  - (iii) exercise in its own favour any right of indemnification, lien or charge to which it may be entitled under or in respect of the Trust;
- (b) if any of the assets of the Trust are at any time in the hands of the Customer free of their trust character by virtue of the exercise or purported exercise of any right of indemnity, lien or charge, the Customer must hold those assets on trust for Seqwater to the extent to which any liability of the Customer under this Agreement has not been satisfied;
- (c) if the Trust is determined, wound up or cease to exist, the Customer must immediately notify Seqwater in writing of that occurrence; and
- (d) if the Customer ceases for any reason to be the sole trustee of the Trust, the Customer must:
  - (i) immediately notify Seqwater in writing of that occurrence; and
  - (ii) procure any new or additional trustee of the Trust to execute in favour of Seqwater such covenants relating to the subject matter of this Agreement as Seqwater may reasonably require, including covenants in similar terms to those contained in this **clause 5**.

## 6. Separate Agreements

---

Where the Customer and Seqwater have made an agreement, whether before or after the making of this Agreement, in addition to this Agreement, then:

- (a) default by the Customer under any such agreement constitutes default by the Customer under each such agreement;
- (b) amounts owing by Seqwater 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 Seqwater as if given as security for obligations under all agreements and for all debts due by the Customer to Seqwater;
- (d) a failure to pay any debt due by the Customer to Seqwater when due, is a default under each such agreement.

## 7. Other Services

---

If the Customer is not in breach of this Agreement and the Customer requests Seqwater, under this clause, then Seqwater may arrange or provide:

- (a) connection services (including Seqwater procuring and installing a Meter);
- (b) disconnection services (including Seqwater arranging for the removal of a Meter);
- (c) extra meter reading services (involving Seqwater reading a meter in addition to a reading anticipated under this Agreement);
- (d) meter testing services (including Seqwater procuring testing of a Meter); or

- (e) further services (involving such other services as Seqwater may offer from time to time) on terms and conditions set by Seqwater, including the charges and payment requirements.

## 8. Charges

---

### 8.1 Water Charges

The Customer must pay Seqwater:

- (a) Water Charges for the Release Services;
- (b) for the services referred to in **clauses 7(a) to (d)**, the relevant Other Charges;
- (c) for the services referred to in **clause 7(e)**, the charges set by Seqwater under **clause 7(e)**, being the charge stated (if it is a fixed amount) or otherwise a reasonable price having regard to the cost (including administration and overhead costs) to Seqwater in undertaking the further service; and
- (d) the On-Supply Charge for any supply of water by the Customer in accordance with **clause 18**.

### 8.2 Invoicing

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

- (a) the Fixed Charges and Consumption Charges at approximately the Billing Interval;
- (b) Other Charges after performance of the Other Services;
- (c) the Minimum Charge (where the Water Charges are the Minimum Charge):
  - (i) annually in arrears; or
  - (ii) in accordance with **clause 8.3**; and
- (d) the On-Supply Charge at approximately the Billing Interval.

### 8.3 Payment on Account for Minimum Charge

Where, in Seqwater's reasonable opinion, the Minimum Charge will apply for the Water Charges in any Water Year, Seqwater 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.

### 8.4 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 Seqwater.
- (c) Other Charges shall be rendered in arrears after performance of the Other Services.
- (d) The On-Supply Charge shall be rendered in arrears for the period commencing from the date of Seqwater's consent (if any) under **clause 18.1(a)**.

### 8.5 Re-invoicing after Errors

- (a) If an error is discovered in any invoice, within two (2) years from the date of the invoice, Seqwater may render a subsequent invoice, with an amount reflecting the error.
- (b) If the error is such that Seqwater is to reimburse the Customer, Seqwater may:
  - (i) effect the reimbursement by carrying the reimbursable amount forward to be set off against amounts payable on the next invoice; or

- (ii) by refunding the reimbursable amount at the request (by telephone or in writing) of the Customer.
- (c) If the error is such that the Customer is obliged to pay Seqwater an additional amount, then Seqwater may render an invoice to the Customer for the additional amount, with the amount becoming due as provided for in **clause 8.6**.

#### 8.6 Payment

- (a) The Customer must pay the Charges set out in an invoice rendered under **clause 8.2, 8.5, 8.7(b)** or **8.8(b)** within thirty (30) days after the date of the invoice.
- (b) Where the Customer has notified Seqwater of a dispute about the invoice under **clause 22**, the Customer must pay to Seqwater the undisputed amount in accordance with **clause 8.6(a)**. Once the dispute is resolved, the agreed amount outstanding must be paid within thirty (30) days.

#### 8.7 Interest on Arrears

- (a) Any amounts not paid by the Customer when due under this Agreement, will accrue interest at:
  - (i) the rate applicable to such amount under any agreement between the Customer and Seqwater; or
  - (ii) 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.
- (b) Seqwater may include interest payable under this clause in an invoice subsequently rendered to the Customer.

#### 8.8 Charges for Water Ordered but Not Taken

- (a) If, in Seqwater's reasonable opinion, the failure to take water by the Customer in accordance with **clause 4(h)(iii)**, either represents a risk that:
  - (i) Seqwater is in breach of its obligations under the Resource Operations Licence; or
  - (ii) the rights and interests of other customers within the Regulated Area will be adversely affected,then Seqwater may require the Customer to pay the Consumption Charges for all water ordered but not taken by the Customer.
- (b) Seqwater may exercise its rights under **clause 8.8(a)** by including the charge the Customer is required to pay under **clause 8.8(a)** in an invoice rendered to the Customer within three (3) months of the end of the Water Year.
- (c) If an invoice is rendered under **clause 8.8(b)**, the Customer must pay the Charges set out in the invoice in accordance with **clause 8.6**.
- (d) For the avoidance of doubt, the parties acknowledge that nothing in this clause is intended to limit any other rights of Seqwater under this Agreement or otherwise against the Customer in relation to any breach of this Agreement.

#### 8.9 Consequences for Water Ordered but Not Taken

Where Seqwater forms the opinion referred to in **clause 8.8(a)**, 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(f)**.

#### 8.10 Charges in the Event of Force Majeure

- (a) Where Seqwater suspends releases of water from the Seqwater Works by reason of an Event of Force Majeure under **clause 13.1(d)**, the Customer is not required to pay the Consumption Charges for the period of the suspension.

Doc no.	CON-00033	Version date:	13/06/2017	Trim ID:	
Doc owner:	W.Harpham	Doc approver:	Manager, Legal Counsel	Rev no.	2 Page 19 of 56

- (b) The Customer acknowledges that the obligation to pay the Fixed Charges, Minimum Charge or Other Charges in accordance with **clause 8.6(a)** is not affected by any suspension by reason of an Event of Force Majeure under **clause 13.1(d)**.

## 9. Term

---

### 9.1 Term

This Agreement commences on the Commencement Date and ends on the date this Agreement is terminated.

### 9.2 Failure to hold Water Entitlement

- (a) If, on any anniversary of the Commencement 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 the anniversary of the Commencement Date.
- (b) 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 end, expiration or termination of the Additional Contract.

## 10. Variation of Charges

---

### 10.1 Regulated Charges

Regulated Charges are made and amended in accordance with the relevant Law.

### 10.2 Seqwater Charges

- (a) Subject to **clause 10.1**, the Charges are made and amended as follows:
- (i) in addition to any review of Consumption Charges and Fixed Charges under **clause 10.4**, the Consumption Charges and Fixed Charges may be amended by Seqwater in accordance with **clause 10.3**;
  - (ii) to make or amend the Minimum Charge, Seqwater must notify the Customer of the new or amended Minimum Charge and the date that the new or amended Minimum Charge takes effect;
  - (iii) to make or amend the Other Charges, Seqwater must publish particulars of the new or amended Other Charges.
- (b) Where the Charges are no longer Regulated Charges because of a change to the Law, the Charges will remain the same as before the change to the Law, until Seqwater notifies the customer of the new Charges and the date that the new Charges take effect.
- (c) To amend the On-Supply Charge Seqwater must notify the Customer of the amended On-Supply Charge and the date that the amended On-Supply Charge takes effect.

### 10.3 Process to amend the Consumption or Fixed Charges

- (a) During the period commencing six (6) months before any Review Date and expiring six (6) months after any Review Date Seqwater may notify the Customer of the amount of the Consumption Charges or the Fixed Charges as and from the relevant Review Date.
- (b) In determining the Consumption Charges or Fixed Charges Seqwater shall:
- (i) act reasonably; and

- (ii) have regard to any applicable Law regarding prices oversight from time to time applying in Queensland.
- (c) Seqwater's determination of the Fixed Charges or Consumption Charges shall be final and binding on the parties unless the Fixed Charges or Consumption Charges are manifestly unreasonable having regard to any applicable Law regarding prices oversight from time to time applying in Queensland.
- (d) Where the Customer has notified Seqwater of a dispute regarding the review of Fixed Charges or Consumption Charges under **clause 22**, the Customer must continue to pay the Charges that applied prior to the Review Date in accordance with **clause 8.6(a)**. Once the dispute is resolved, the amount outstanding must be paid within thirty (30) days.

#### 10.4 Index Review of the Consumption, Fixed and On-Supply Charges

Where the Consumption Charges, Fixed Charges or On-Supply Charge are not Regulated Charges, as and from each 1 July, the Consumption Charges and the Fixed Charges and the On-Supply Charge 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.

## 11. Customer Obligations – Seqwater Property and Customer's Nominated Works

---

### 11.1 Customer not to Damage

The Customer shall not damage or by any act or omission permit damage to Seqwater Property.

### 11.2 Customer to Notify Damage

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

- (a) where the damage or malfunction is serious, verbally and subsequently in writing; and
- (b) otherwise in accordance with **clause 25.2**.

### 11.3 Customer's Operation of Seqwater Property

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

### 11.4 Customer's Nominated Works to be Approved

Prior to installing or altering the Customer's Nominated Works or a Meter the Customer must obtain the prior written approval of Seqwater to the Customer's Nominated Works or the Meter, including the configuration, specifications of and maximum diversion rates for any pump included in the Customer's Nominated Works.

### 11.5 Miscellaneous Provisions for this Clause 11

Nothing in **clauses 11.1** or **11.3** makes the Customer liable to Seqwater for:

- (a) an Event of Force Majeure; or
- (b) operating Seqwater Property in accordance with Seqwater's instructions in **clause 11.3**.

### 11.6 Operation and Maintenance of Customer's Nominated Works

The Customer must:

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

### 11.7 Access by Customer

Seqwater authorises the Customer and any person nominated or authorised by the Customer to have access to 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.

## 12. Metering and Measurement

---

### 12.1 Use of Meter

Seqwater may, in its absolute discretion, rely on automated readings of a Meter, and any data produced as a result of automated readings of a Meter, for the purposes of this Agreement (or any other Agreement between Seqwater and the Customer).

### 12.2 Meter Installation

- (a) If a Meter has not already been installed within the Customer's Nominated Works or Seqwater Property, the Customer must, at its own cost, arrange for a Meter acceptable to Seqwater to be acquired and installed within the Customer's Nominated Works or Seqwater Property by the Commencement Date.
- (b) Unless otherwise agreed in writing by Seqwater, the Customer must, at its own cost:
  - (i) ensure the Meter that is installed within the Customer's Nominated Works or Seqwater Property is used to meter the taking of water under the Customer's Allocation; and
  - (ii) arrange for such Meter to be promptly repaired or maintained in order to ensure the operation of that Meter.
- (c) If a Meter is required to be replaced or upgraded, and it has not already been replaced during the Term of this Agreement, Seqwater will arrange for a new Meter to be acquired and installed within the Customer's Nominated Works or Seqwater Property. The replacement or upgrade will be at the cost of Seqwater, except where the Customer has breached **clause 11.1** or **12.3**, in which case the Customer must pay for the replacement or upgrade.
- (d) If, in the reasonable opinion of Seqwater, a Meter is required to be replaced or upgraded, for a second or subsequent time during the Term, Seqwater may require the Customer to arrange for a Meter acceptable to Seqwater to be acquired and installed at the cost of the Customer within the Customer's Nominated Works or Seqwater Property.
- (e) To comply with **clause 12.2(a)** and **clause 12.2(d)**, the Customer must:
  - (i) engage or procure an Appropriately Qualified person to install the Meter; or
  - (ii) request Seqwater to install the Meter in accordance with **clause 7** of this Agreement.
- (f) Where the Meter is installed under **clause 12.2(a)** or **clause 12.2(e)(i)**, the Customer must ensure the Meter is installed in accordance with the approval under **clause 11.4**.

### 12.3 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;
  - (ii) the operation of the Customer's Nominated Works or any Meter 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 12.3**, is the failure to maintain the Customer's Nominated Works.

### 12.4 If the Customer does not comply with Meter Installation obligations

- (a) Without limiting any of its rights under this Agreement or at Law, if the Customer has failed to comply with **clause 12.2(a)** or **12.2(d)**, Seqwater may issue a notice requiring the Customer to remedy its failure within a reasonable time period, to be specified in the notice (**Remedial Notice**).
- (b) If the Customer does not remedy its failure in accordance with the Remedial Notice, Seqwater may take any such action to remedy the failure.
- (c) The Customer acknowledges that Seqwater's reasonable costs under **clause 12.4(b)** will be recoverable as a debt due and payable from the Customer to Seqwater.

### 12.5 Ownership of Meter

- (a) A Meter acquired and installed by Seqwater remains the property of Seqwater despite any payment by the Customer.
- (b) Any Meter installed under **clause 12.2(a)** or **clause 12.2(e)(i)**, shall upon installation, become and remain the property of Seqwater.

### 12.6 Meter Readings

If reasonably directed by Seqwater, the Customer must:

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

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

The Customer must ensure that Seqwater, and any person nominated or authorised by Seqwater, has safe and convenient access to the Meter and the Customer's Nominated Works for the purposes of reading, testing, repairing and calibrating the Meter, determining if the Customer is complying with this Agreement and exercising its rights under **clause 12.4**.

### 12.8 Disclosure of Records

The Customer authorises Seqwater to make available to:

- (a) the Regulator;
- (b) a holder of a resource operations licence in the Regulated Area;
- (c) any other person as required under any Law; and
- (d) with 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.

### 12.9 Report Malfunctions, Damage

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

- (a) where the damage or malfunction is serious, verbally as soon as possible and subsequently in writing within seven (7) days; and
- (b) where the damage is of a minor nature only, in writing or verbally within seven (7) days.

### 12.10 Removal of Meter on Termination

On the termination of this Agreement, Seqwater may remove the Meter and seal off any connection to the Seqwater Works at the Customer's own cost.

### 12.11 Estimate

- (a) If, for any period during the current Water Year or the most recently completed Water Year only:
  - (i) Seqwater 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) Seqwater has reasonable grounds to believe the Customer has not strictly complied with the requirements of **clauses 12.3, 12.6 or 12.9**,

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

- (b) In making such an estimate, Seqwater 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 22** shall apply to an estimate made under this clause.
- (d) Examples of "reasonable grounds" under **clause 12.11(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.

### 12.12 Customer to Assist

The Customer shall:

- (a) upon request by Seqwater supply to Seqwater any relevant document or information in the possession or control of the Customer which would assist Seqwater in making an estimate under **clause 12.11**;
- (b) permit Seqwater or any person authorised by Seqwater to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and
- (c) permit Seqwater or any person authorised by Seqwater 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.

### 12.13 Testing and Calibrating at Request of Customer

- (a) The Customer may request Seqwater to test and calibrate the Meter.
- (b) The Customer is liable for the cost of testing and calibration where the Meter is operating within the manufacturer's specifications or the Customer has not complied with **clause 12.3**, otherwise Seqwater is liable for the cost of testing and calibration.
- (c) The Charges payable by the Customer to Seqwater must be adjusted for the current Water Year or the most recently completed Water Year, under **clause 12.11(b)**, to the extent Seqwater reasonably considers that the Meter has not been operating within the manufacturer's specification.
- (d) Nothing in this **clause 12.13** shall affect the right of the Customer to have the Meter tested and calibrated by a certified testing authority, where the Customer has obtained the prior consent of Seqwater to the testing and calibration. Such consent must not be unreasonably withheld by Seqwater.

## 13. Non-release Authorisations

---

### 13.1 Suspension or Restriction of Releases

Seqwater may suspend or restrict releases of water from the Seqwater Works:

- (a) during maintenance or replacement of Seqwater Property or of the water infrastructure of the holder of another resource operations licence in the Regulated Area;
- (b) where Seqwater or the holder of another resource operations licence in the Regulated Area is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of Seqwater, such release:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including Seqwater 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 Seqwater 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; or
- (d) by reason of an Event of Force Majeure.

### 13.2 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 two (2) months;
  - (iii) has breached this Agreement and has not reimbursed Seqwater for costs incurred by Seqwater in rectifying the breach;
  - (iv) has not provided the security required under **clause 21**; or
  - (v) has breached any of **clauses 4(b), (d), (e), (f), (g), 12.2(a), 12.2(b), 12.3, 12.7** or **12.12**,

Seqwater 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 (**Direction Notice**).

- (b) A Direction Notice given by Seqwater under **clause 13.2(a)** must give a reasonable time within which:
  - (i) the Customer may object in writing, to the direction;
  - (ii) the Customer must take the remedial steps required, with examples of “reasonable times” being:
    - (A) seven (7) days, for the payment of outstanding Charges; and
    - (B) fourteen (14) days, for the provision of security under **clause 21**; and
  - (iii) the date that the direction will take effect if the remedial steps are not taken.
- (c) If the remedial steps are not taken to the satisfaction of Seqwater, the direction will take effect on the day stated in the Direction Notice.
- (d) The Customer or any person diverting or taking the Customer's Allocation must not divert or take water under the Customer's Allocation once the direction has taken effect.

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

Without limiting any of its rights under this Agreement or at Law, where Seqwater considers that the Customer, or a person to whom the direction is given, has not complied with or will not comply with a Direction Notice under **clause 13.2**, Seqwater 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; or
- (b) stopping the Customer or other person taking water by making modifications to Seqwater Property, the Meter or the Customer's Nominated Works.

## 14. Water Quality

---

### 14.1 No Warranty by Seqwater

Seqwater makes no representation and gives no warranty:

- (a) about the quality of water within Seqwater Property (including the Seqwater Works), the aquifer from which the Customer takes water or the Regulated Area;
- (b) that any actions, measures or steps will be taken by Seqwater to prevent any adverse effects on the quality of water in the Regulated Area, within Seqwater Property (including the Seqwater Works) or after its release from Seqwater Works and prior to its diversion or taking by or on behalf of the Customer; or
- (c) that water within Seqwater Property (including the Seqwater Works), the aquifer from which the Customer takes water, 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 Seqwater knows the Customer may put the water).

### 14.2 Customer to Test

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

### 14.3 Customer to Indemnify

The Customer indemnifies Seqwater against all actions, suits, claims, demands, causes of action, costs and expenses (including any existing unsatisfied costs orders), legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them) incurred or suffered by or brought or made or recovered against Seqwater arising out of or in connection with:

Doc no.	CON-00033	Version date:	13/06/2017	Trim ID:	
Doc owner:	W.Harpham	Doc approver:	Manager, Legal Counsel	Rev no.	2 Page 26 of 56

- (a) the quality of water within Seqwater Property, the aquifer and the Regulated Area;
- (b) any person to whom the Customer has supplied water or who the Customer has allowed to take water.

#### 14.4 Release by Customer

The Customer releases and discharges Seqwater from all actions, suits, claims, demands, causes of action, costs and expenses (including any existing unsatisfied costs orders), legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which it now has, at any time had, may have or claim to have, or but for this release could or might have had against Seqwater arising out of or in connection with the matters set out in **clauses 14.3(a)** and **(b)**.

#### 14.5 Water Quality Notifications

- (a) Seqwater may, from time to time, notify the Customer of any relevant water quality matter; and
- (b) the Customer:
  - (i) acknowledges and accepts that Seqwater is under no obligation to notify the Customer of a relevant water quality matter; and
  - (ii) agrees to release and discharge Seqwater from any liability whatsoever (including in negligence) arising out of or in connection with:
    - (A) Seqwater's notification to the Customer in accordance with this **clause 14.5**; or
    - (B) Seqwater's failure to notify the Customer in accordance with this **clause 14.5**.

### 15. Assignment/Subcontracting by Seqwater

---

#### 15.1 Assignment by Seqwater

Seqwater may assign or novate any of its rights and obligations under this Agreement to any person provided such person is or becomes the holder of the Resource Operations Licence or a new licence issued in lieu. The Customer must execute all documents necessary to give effect to any novation or assignment permitted under this **clause 15.1**.

#### 15.2 Seqwater may Subcontract

Seqwater may subcontract the performance of any of its obligations under this Agreement.

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

---

#### 16.1 Notice of Application

If the Customer:

- (a) applies to amend, subdivide, transfer or deal with the Customer's Allocation in whole or in part;
- (b) applies for a change to the Customer's Allocation in whole or in part; or
- (c) applies for or enters into a contract to acquire, lease or deal with a Water Entitlement from the Regulated Area;

then the Customer shall give written notice of the application to Seqwater promptly after the application or other contract is made.

## 16.2 Effect of Approval

Where the amalgamation, subdivision, transfer or dealing with the whole or part of the Customer's Allocation or of another Water Allocation or another contract for the Regulated Area is approved:

- (a) the Customer must pay all outstanding moneys and debts charged by and owing to Seqwater under this Agreement; and
- (b) Seqwater and the Customer must enter into either a further contract or an amendment to this Agreement on terms acceptable to Seqwater in its absolute discretion.

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

**Clauses 16.1** and **16.2** apply only to an amalgamation, subdivision, transfer or dealing with the Customer's Allocation or of another Water Allocation or another contract within the Regulated Area.

## 16.4 Seqwater's Duty Unaffected

Where, under the Water Act, Seqwater is to approve the amalgamation, subdivision, transfer or dealing with the Customer's Allocation or of another Water Allocation or another contract, the Customer acknowledges that Seqwater is obliged to carry out its responsibility under the Water Act in accordance with the terms of the Water Act and any other Law binding on it without regard to this Agreement.

## 16.5 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 Seqwater in their absolute discretion.

# 17. Power of Sale

---

## 17.1 Interpretation of clause 17

In this **clause 17**, the meaning of "Customer's Allocation" does not include an Additional Contract, Interim Water Allocation or water licence.

## 17.2 Exercise of Power

Seqwater may exercise a power of sale in relation to the Customer's Allocation if:

- (a) it is entitled to terminate this Agreement under **clause 20.1**; and
- (b) it has given notice as required under s.166(5) of the Water Act.

## 17.3 Further Powers

- (a) Where Seqwater is entitled to sell the Customer's Allocation, Seqwater may also, amend, transfer, lease or deal with the whole or part of the Customer's Allocation or enter into a contract in relation to the whole or part of the Customer's Allocation.
- (b) Where Seqwater exercises its power under this clause, then Seqwater must use reasonable endeavours to ascertain the amount of the Customer's Allocation that is required to be dealt with to recover moneys due to Seqwater.

## 17.4 Manner of Dealing

Without limitation, Seqwater's powers under **clause 17.2** and **clause 17.3** may be exercised:

- (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.

#### 17.5 Application of Sale Proceeds

Any amounts received by exercising Seqwater's powers under **clause 17.2** or **clause 17.3** shall be applied in the way required by the Water Act, and if there is no requirement, as follows:

- (a) first, in paying the costs of Seqwater exercising the power under **clause 17.2** or **clause 17.3**;
- (b) secondly, in discharging the Customer's liability under the Water Act ( if any) to the chief executive under the Water Act;
- (c) thirdly, in discharging the Customer's liability to Seqwater for the moneys, debts and amounts charged to Seqwater under this Agreement;
- (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.

#### 17.6 Power of Attorney

- (a) The Customer irrevocably appoints the Chief Executive Officer of Seqwater 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;
  - (ii) do anything which the Customer is entitled to do under the Water Act in relation to the Customer's Allocation; or
  - (iii) sell, amend, transfer, lease, deal with or enter into a contract concerning the whole or part of the Customer's Allocation and do and execute all acts, deeds, documents and things necessary or convenient to give effect to such sale, amendment, transfer, lease, dealing or contract.
- (b) Without limitation, the attorney appointed under **clause 17.6(a) (Attorney)** may at any time:
  - (i) do anything which (in the opinion of Seqwater or the Attorney) is necessary or convenient for Seqwater to exercise its powers under **clause 17.2** or **clause 17.3**, and for this purpose (without limitation) may execute any application, transfer, lease, contract or other document in relation to the Customer's Allocation; and
  - (ii) delegate its powers.
- (c) No Attorney may act under this clause:
  - (i) unless Seqwater is permitted to sell the Customer's Allocation under **clause 17.2**; 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); or
- (iii) for negligence of the Attorney, where the sale has been made after a public process (e.g. auction, tender, public notification of sale),  
except where the liability arises from the fraud or wilful misconduct of the Attorney.
- (e) Nothing in this Agreement limits the Customer's ability to obtain advice or engage another person to act on the Customer's behalf.
- (f) No party to any sale, transfer, lease, dealing or contract entered into under this **clause 17.6** and no person asked to register any sale, transfer, lease, dealing or contract 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 transaction.

## 18. On-supply

---

### 18.1 On-supply arrangement

- (a) The Customer must not enter into any contract, agreement or other arrangement for the sale, use, delivery or supply of water supplied under this Agreement to any person without the prior written consent of Seqwater (in its absolute direction).
- (b) The Customer must promptly provide Seqwater with all information reasonably requested and available to the Customer concerning the requirements for the water under any proposed on-supply arrangement.

### 18.2 Consent to on-supply arrangement

- (a) The Customer must not seek the consent of Seqwater under **clause 18.1** unless:
  - (i) such dealing is permitted by Law; and
  - (ii) the Customer has obtained, in respect of the dealing, all approvals, permits, licences and authorisations required by Law.
- (b) Any consent given by Seqwater under **clause 18.1(a)** may be given subject to such conditions as Seqwater may consider appropriate having regard to the regulatory or statutory functions, powers, duties or discretions under or pursuant to any legislative requirements (whether in relation to this Agreement or otherwise) of Seqwater, and may include conditions including but not limited to:
  - (i) the Customer obtaining an indemnity and release from the proposed recipient of any on-supply of water supplied to the Customer by Seqwater under this Agreement in a form that is satisfactory to Seqwater (in Seqwater's sole discretion) in respect of any claims, actions, proceedings, demands, costs, losses, damages and expenses which may be brought against or made upon Seqwater or any of its board members, employees, officer representatives arising out of or in connection with such on-supply of water by the Customer;
  - (ii) the Customer's compliance with all Laws, including the Customer taking all proper and appropriate steps to notify the recipient of the on-supplied water that:

- (A) the water is non-potable water that is not suitable for domestic or household uses for human consumption (including for drinking or for handling or preparing food);
- (B) it is the recipient's responsibility to warn persons coming onto their property of the characteristics of the water outlined in **clause 18.2(b)(ii)(A)**;
- (C) supply may stop without notice if the water is used for any purpose other than non-potable use; and
- (D) the supply may be interrupted from time to time;
- (iii) the Customer complying with **clause 12** in order to accurately determine the volume of water on-supplied to each recipient;
- (iv) the Customer providing Seqwater with a report setting out the total volume of water on-supplied to the recipient in the preceding 12 months (timing to be set by Seqwater).

### 18.3 Review of Consumption and Fixed Charges

- (a) Where Seqwater consents to an on-supply arrangement in accordance with **clause 18.1**, the Customer agrees to pay Seqwater the On-Supply Charge on the terms set out in this Agreement.
- (b) Seqwater reserves the right to charge the Customer other reasonable charges relevant to administering the on-supply arrangement at its sole discretion and acting reasonably.

## 19. Limitation of Liability and Release

---

### 19.1 Extent of Liability for Losses

To the extent permitted by Law, Seqwater shall not be liable to the Customer under or in connection with this Agreement for any actions, claims (including in tort), proceedings, judgments, demands, costs, losses, damages and expenses, legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them) incurred or suffered by the Customer or by anyone claiming through the Customer for:

- (a) any breach of this Agreement by Seqwater;
- (b) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator;
- (c) Consequential Loss, whether under the law of contract, tort (including negligence), statute, equity or otherwise; or
- (d) complying with a State Direction.

### 19.2 Customer has Remedies under the Water Act

Seqwater and the Customer acknowledge and agree that **clause 19** is not intended to limit or affect action which the Customer may take against Seqwater under the Water Act or Water Supply Act.

### 19.3 Seqwater Contribution to Loss or Claim

- (a) Seqwater and the Customer acknowledge and agree that **clause 19** is not intended to limit or affect action which the Customer may take against Seqwater for any wilfully negligent acts of Seqwater.

- (b) To the extent that any wilful negligence of Seqwater directly contributes to any loss or claim, the Customer's liability under **clause 19** will be reduced in proportion to that contribution.

#### **19.4 Releases by Customer**

The Customer releases Seqwater from all actions, suits, claims, demands, causes of action, costs and expenses (including any existing unsatisfied costs orders), legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which it now has, at any time had, may have or claim to have, or but for this release could or might have had against Seqwater in any way related to:

- (a) death or personal injury, damage to the Customer's Nominated Works, other property, livestock, crops or assets as a consequence of any action or inaction by Seqwater in relation to the Services, including , the storing, diversion or releasing of water;
- (b) death or personal injury, damage to the Customer's Nominated Works, other property, livestock, crops or assets as a consequence of actions or inactions of Seqwater in relation to this Agreement, including remedying or failure to remedy a breach of this Agreement by the Customer or a breach of an agreement by another customer in the Regulated Area;
- (c) alterations to storage levels or stream and bank conditions however caused including as a consequence of releases or diversions of water by Seqwater 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) alternations to the attributes of the aquifer including hydrogeological features, strata yield and water quality caused or contributed to by any act or omission of Seqwater in either providing the Release Services or in carrying out its obligations under the Resource Operation Licence;
- (e) the circumstances in which the Customer bears the risk as stated in **clause 4(k)**.

#### **19.5 Limitation of Liability**

- (a) Without limiting **clause 19.1**, the liability of Seqwater for any actions, suits, claims, demands, causes of action, costs and expenses (including any existing unsatisfied costs orders) under or in connection with this Agreement is limited in aggregate to the amount equivalent to the annual Water Charges paid by the Customer to Seqwater in the Water Year preceding the occurrence of the event from which the liability arises.
- (b) To the extent that s.54, s.55, s.60 or s.61 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) apply to the provision to the Customer of the Services, Seqwater's liability to the Customer for a breach of s.54, s.55, s.60 or s.61 is limited to the supply of the Services again or the payment of the costs of having the Services supplied again.

#### **19.6 Indemnity by Customer**

The Customer indemnifies Seqwater against all actions, suits, claims, demands, causes of action, costs and expenses (including any existing unsatisfied costs orders), legal, equitable, under statute and otherwise, and all other liabilities of any nature (whether or not the parties were or could have been aware of them) incurred or suffered by or brought or made or recovered against Seqwater arising out of the circumstances in which the Customer releases Seqwater under **clause 19.4**.

#### **19.7 Insurance**

- (a) The Customer must effect and maintain during the Term public liability insurance in the amount stated in Item 8 of the Customer's Schedule.
- (b) If requested by Seqwater, the Customer must provide Seqwater with a certificate of currency for the insurance referred to in **clause 19.7(a)**.

## 20. Default and Termination

---

### 20.1 Termination by Seqwater

- (a) Seqwater may provide the Customer with a notice to remedy breach (**Customer Breach Notice**) where:
- (i) an Event of Insolvency occurs in relation to the Customer;
  - (ii) the Trust has been determined, wound up or ceases to exist or steps have been taken to cause the determination, winding up or cessation of the Trust, without the prior written consent of Seqwater; or
  - (iii) the Customer breaches a provision of this Agreement.
- (b) The Customer Breach Notice must specify:
- (i) details of the breach;
  - (ii) the action required to remedy the breach (if possible); and
  - (iii) the reasonable time within which the breach must be remedied, having regard to the nature of the breach.
- (c) If the Customer fails to remedy the breach within the time specified in the Customer Breach Notice, then Seqwater may terminate this Agreement by notice to the Customer.

### 20.2 Termination by the Customer

- (a) The Customer may provide Seqwater with a notice to remedy breach (**Seqwater Breach Notice**) where Seqwater breaches a provision of this Agreement.
- (b) The Seqwater Breach Notice must specify:
- (i) details of the breach;
  - (ii) the action required to remedy the breach (if possible); and
  - (iii) the reasonable time within which the breach must be remedied, having regard to the nature of the breach.
- (c) If Seqwater fails to remedy the breach within the time specified in the Seqwater Breach Notice, then the Customer may terminate this Agreement by notice to Seqwater.

### 20.3 Termination for Convenience

Either party may terminate this Agreement at any time at its convenience by providing the other party with not less than 6 (six) months' prior written notice.

### 20.4 Substantial Destruction or Damage to Seqwater Property

- (a) Seqwater may terminate this Agreement where, in Seqwater's reasonable opinion, Seqwater is no longer able to control the level of water in or the rate of release from the relevant water infrastructure because Seqwater Property or water infrastructure of the holder of another resource operations licence are substantially destroyed or damaged.
- (b) As soon as is reasonably practicable after Seqwater has formed the opinion, Seqwater shall notify the Customer of its opinion and its intention to terminate this Agreement on a specified date.
- (c) This Agreement shall terminate from the date stated by Seqwater in the notice to the Customer given under **clause 20.4(b)**.

## 21. Security

### 21.1 Request for Security

In accordance with s.149 of the Water Act, Seqwater may require the Customer to provide reasonable security for supplying and storing the Customer's Allocation. Without limiting its rights under s.149 of the Water Act, Seqwater may request security from the Customer, in the following circumstances:

- (a) if the Customer commits a material breach of this Agreement; or
- (b) Seqwater is not satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement.

### 21.2 Guarantee by corporation

The Customer must:

- (a) if it is a wholly owned subsidiary of a public company listed on the ASX Limited, procure that public company to complete and execute the Guarantee and Indemnity; and
- (b) in any other case, procure each of its directors to complete and execute the Guarantee and Indemnity,

which completion and execution must occur contemporaneously with the execution of this Agreement by the Customer.

### 21.3 Provision of Security

If:

- (a) a requirement for security is set out in the Customer's Schedule; or
- (b) Seqwater makes a request under **clause 21.1**,

the Customer must at its cost promptly provide Seqwater with a security in accordance with **clause 21.4**.

### 21.4 Form of Security

The security must be:

- (a) for the amount:
  - (i) set out in the Customer's Schedule; or
  - (ii) if no amount is set out in the Customer's Schedule:
    - (A) an amount equal to the Water Charges invoiced by Seqwater to the Customer for the previous Water Year; or
    - (B) if this Agreement has been in place for less than a Water Year, an amount equal to the Water Charges invoiced for the first month of the Water Year multiplied by twelve (12);
- (b) in the form of an irrevocable and unconditional guarantee; and
- (c) on terms and from a financial institution reasonably acceptable to Seqwater.

### 21.5 No Services without Security

If Seqwater uses the security to pay amounts owing by the Customer under this Agreement, the Customer must:

- (a) provide further security so that the total security is for an amount not less than the amount calculated under **clause 21.4**; and
- (b) Seqwater is not obliged to provide any services under this Agreement until the further security (in an acceptable form) is provided to Seqwater.

### 21.6 Release of Security

Seqwater shall release the security to the Customer upon the later of:

- (a) the termination of this Agreement;
- (b) the payment of all moneys owing (whether or not then due or owing contingently or prospectively).

## 22. Dispute Resolution

---

### 22.1 Activation

- (a) If a dispute arises out of or in connection with this Agreement, either party may give written notice to the other party with whom the dispute exists (**Notice of Dispute**).
- (b) The Notice of Dispute shall designate a representative with the appropriate authority to negotiate the dispute.

### 22.2 Appointment of representative

Within five (5) Business Days of receipt of the Notice of Dispute, the recipient shall designate a representative with similar authority.

### 22.3 Discussions

The representatives shall promptly seek to resolve the dispute in good faith, following whatever investigation each considers appropriate.

### 22.4 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.

### 22.5 Methods of resolution

A party receiving a request under **clause 22.4** 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 or expert determination;
- (b) the responsibility for payment of the costs of the mode agreed under **clause 22.5(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.

### 22.6 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 22** is to attempt to settle a dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this **clause 22** for any purpose other than an attempt to settle a dispute between the parties.

### 22.7 Termination

Any party may terminate the dispute resolution procedure provided by this **clause 22** at any time and pursue other available remedies.

## 22.8 Other remedies

This **clause 22** does not prevent a party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

## 22.9 Obligation to continue

Subject to any express terms to the contrary, notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement, including payment by the Customer of any money payable in accordance with **clause 8**.

## 23. GST

---

The parties agree that:

- (a) all Payments have been calculated without regard to GST;
- (b) 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;
- (c) 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
- (d) the payee will provide to the payer a Tax Invoice if **clause 23(b)** applies.

## 24. Confidentiality and Public Announcements

---

### 24.1 Confidentiality

Subject to **clauses 24.2** and **24.3**, each party must keep the terms of this Agreement confidential.

### 24.2 Exceptions

- (a) Either party may make any disclosure in relation to this Agreement:
  - (i) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
  - (ii) to comply with the Law, or a requirement of a regulatory body (including any relevant stock exchange);
  - (iii) to any of its employees to whom it is necessary to disclose the information;
  - (iv) to obtain the consent of a third party to a term of, or to an act under, this Agreement;
  - (v) to enforce its rights or to defend a claim or action under this Agreement;
  - (vi) to a related body corporate, on receipt of its undertaking to keep the information disclosed confidential;
  - (vii) if the information disclosed has come into the public domain through no fault of the party making the disclosure.
- (b) Seqwater may make any disclosure in relation to this Agreement:
  - (i) where disclosure is authorised under **clause 12.8** of this Agreement;
  - (ii) to the Regulator, the Registrar, its responsible Ministers or any other governmental authority responsible for the administration of Seqwater.

### 24.3 Public Announcements

Except as required by Law or a regulatory body (including a relevant stock exchange), all press releases and other public announcements in connection with this Agreement must be in terms agreed by Seqwater.

### 24.4 Right to information and disclosure

- (a) If disclosure of any information provided by the Customer in connection with this Agreement under the *Right to Information Act 2009* (Qld) would be of concern to the Customer, the Customer should inform Seqwater.
- (b) The Customer acknowledges that Seqwater cannot guarantee that any information provided by the Customer will be protected from disclosure under the *Right to Information Act 2009* (Qld).

## 25. Miscellaneous

---

### 25.1 Obligations for the benefit of third parties

The Customer acknowledges and agrees 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.

### 25.2 Notices

Any notice given under this Agreement:

- (a) must be in writing, in English, addressed to the intended recipient:
  - (i) for Seqwater, at the address stated on the cover page of this Agreement (page 1);
  - (ii) for the Customer:
    - (A) for an invoice under **clause 8** at the Email Address for Invoices in the Customer's Schedule or, if there is no address listed in the Customer's Schedule, at the address last known to Seqwater;
    - (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 Email Address in the Customer's Schedule;
      - (4) at the address last known to Seqwater; or
      - (5) 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) may be delivered by hand or posted by prepaid post to the address, sent by email, or sent by fax to the number, of the addressee, in accordance with **clause 25.2(a)** except that communications pursuant to **clause 20** or **clause 25.2(f)** cannot be sent by email;
- (d) is taken to be received by the addressee:
  - (i) (in the case of priority post sent to an address in the same country) on the third Business Day after the date of posting;
  - (ii) (in the case of priority post sent to an address in another country) on the fifth Business Day after the date of posting by airmail;

- (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (iv) (in the case of delivery by hand) on delivery;
- (e) for notices received:
  - (i) after 5.00pm in the place of receipt; or
  - (ii) on a day which is not a Business Day at the place of receipt, it is taken as having been received at 9.00am on the next Business Day;
- (f) any process, notice or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 25.2** (except **clause 25.2(a)(ii)(B)(3)**) or in accordance with any applicable Law.

### 25.3 Entire Agreement

This Agreement contains the entire agreement of the parties concerning its subject matter namely the Services of Seqwater to the Customer, and supersedes all previous agreements.

### 25.4 Amendment

This Agreement may be amended:

- (a) by a written agreement executed by the parties;
- (b) under **clause 16.2(b)**; or
- (c) subject to consultation with the Customer, by Seqwater and notified to the Customer, where there has been a change in any Law or the Resource Operations Licence.

### 25.5 No Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.
- (d) A party is not liable for any loss, damage, expense, outgoing or cost of any nature or kind incurred by any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 25.6 Duty and Costs

- (a) Each party must pay its own costs and expenses arising out of preparing, executing and performing its obligations under this Agreement.
- (b) The Customer is liable for and must pay any duty (including any fine, interest or penalty except where it arises from default by Seqwater) on or relating to this Agreement, any document executed under this Agreement, or any dutiable transaction evidenced or effected by this Agreement and shall indemnify Seqwater for the amount of such duty and associated costs.

### 25.7 Further Assurances

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Agreement.

Doc no.	CON-00033	Version date:	13/06/2017	Trim ID:	
Doc owner:	W.Harpham	Doc approver:	Manager, Legal Counsel	Rev no.	2 Page 38 of 56

### 25.8 Costs of Approval

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

- (a) as set out in the Regulated Charge; or
- (b) if there is no such Regulated Charge, the charge published from time to time in accordance with **clause 10.2**, if any.

### 25.9 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party are cumulative and are in addition to any other rights of that party.

### 25.10 Severance

- (a) Any provision of this Agreement that is or becomes illegal is severed from this Agreement.
- (b) If at any time a provision of this Agreement is severed, or is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

### 25.11 Counterparts, facsimile and email

- (a) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this Agreement may exchange that counterpart with another party by faxing it or emailing it in “.pdf” format to that other party and, if that other party requests it, promptly delivering that executed counterpart by hand or post to that other party. However, the validity of this Agreement is not affected if the party who has faxed or emailed the counterpart delays in delivering or does not deliver it by hand or by post.

### 25.12 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed according to the law applying in Queensland.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 25.12(b)(i)**.

## 26. Definitions/Interpretation

### 26.1 Definitions

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

**Agreement** means this agreement 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.

**Appropriately Qualified** means having the qualifications required by Law (including any necessary licence) and any relevant or suitable experience (including any experience required by Law) to perform the work.

**Billing Interval** means the billing interval referred to in item 6 of the Customer's Schedule.

**Business Day** means a day that is not:

- (a) a Saturday or Sunday;
- (b) a public holiday or special holiday in either or both of Ipswich or Brisbane, Queensland.

**Charges** means Water Charges and Other Charges.

**Commencement Date** means the date stated in item 5 of the Customer's Schedule.

**Consequential Loss** includes any loss of anticipated or actual revenue or profits, loss of or inability to use equipment, a failure to realise anticipated savings, loss of data, down time costs, loss of goodwill or wasted overheads, loss or reduction of productivity, punitive or exemplary damages, and any special, indirect or consequential loss or damage.

**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 10.3** or **clause 10.4**.

**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 item 1 of the Customer's Schedule.

**Customer's Allocation** means the interest in a Water Entitlement for the Regulated Area or an Additional Contract, the particulars of which are stated in item 2 and 3 of the Customer's Schedule.

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

**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 11.4**.

**Customer's Schedule** means the schedule described as such which is included at Schedule 1 of this Agreement.

**Event of Force Majeure** means any event or circumstance or combination of events or circumstances which is outside of the reasonable control of the party claiming that the event has occurred and the adverse effects of which could not have been prevented or mitigated against by that party by reasonable diligence or precautionary measures, and includes (but is not limited to) the following:

- (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 Seqwater Property or the Customer's Nominated Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of Seqwater Property, the Meter or the Customer's Nominated Works caused by any of the events set out above.

**Event of Insolvency** means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

**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 10.3** or **clause 10.4**.

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

**Guarantor** means the person or entity set out in item 10 of the Customer's Schedule.

**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.

**Interim Water Allocation** has the meaning given to that term by the Unamended Act.

**Law** means:

- (a) the rules of common 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 (including ministerial directions), a corporation or authority constituted for a public purpose or a local authority; and
- (c) requirements made or arising 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 Seqwater.

**Minimum Charge** means either:

- (a) any Regulated Charge that mandates a minimum amount payable for the Release Services; or
- (b) where there is no applicable Regulated Charge, the Minimum Charge as made by Seqwater under **clause 10.2(a)(ii)**.

**ML** means megalitre.

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

**On-Supply Charge** means the On-Supply Charge described as such in the Customer's Schedule as varied under **clause 10.2**.

**Operations Manual** means:

- (a) those parts of a resource operations plan taken to be an operations manual under section 1261 of the Water Act that applies in the Regulated Area; or
- (b) the operations manual, if any, approved by the chief executive under the Water Act from time to time that applies to the Regulated Area.

**Other Charges** means either:

- (a) the Regulated Charge for the Other Services applicable to the Regulated Area; or
- (b) if there is no applicable Regulated Charge, the Other Charges made by Seqwater under **clause 10.2(a)(iii)**.

**Other Services** means the services identified in **clause 7** and any services (other than Release Services), which Seqwater indicates that it will provide to the Customer.

**Overdue Rate** means a rate of interest equal to the Suncorp 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 Seqwater 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 Water Act.

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

**Regulated Charge** means a charge payable to Seqwater under this Agreement, where the amount of the charge is mandated under any Law.

**Regulator** means the chief executive under the Water Supply 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 Water Act held by Seqwater and described in item 3 of the Customer's Schedule.

**Review Date** means the date described in item 6 of the Customer's Schedule (if any).

**Seqwater Property** means the Seqwater Works and any other property of Seqwater.

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

**Services** means Release Services and Other Services.

**State Direction** means the requirements of any declaration or notice published or any regulation made under the Water Act or the Water Supply 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 Seqwater Property 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 Water Act, for example, a water permit issued by the chief executive.

**Strategic Asset Management Plan** means the Strategic Asset Management Plan identified in the Water Supply Act, if any.

**Supply Water Losses** means the water lost after release from the Seqwater 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, and a customer has:
  - (i) taken more water than has been ordered by the customer; or
  - (ii) has not taken all of the water that has been ordered by the customer; or

- (g) breaches of the Water Plan, Operations Manual or Water Management Protocol by other persons.

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

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

**Term** means the term of this Agreement as set out in **clause 9**.

**Termination Date** means the date of termination of the Additional Contract specified in item 2 of the Customer's Schedule (if applicable).

**Transfer** has the meaning given to that term by the Water Act.

**Unamended Act** has the meaning given to that term in section 1250 of the Water Act.

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

**Water Allocation** has the meaning given to that term by the Water Act.

**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 Entitlement** has the meaning given to that term by the Water Act.

**Water Management Protocol** means:

- (a) those parts of a resource operations plan taken to be an water management protocol under section 1259 of the Water Act that applies in the Regulated Area; or
- (b) a water management protocol (or protocols) to implement a Water Plan, if any, approved by the chief executive under the Water Act from time to time that applies to the Regulated Area.

**Water Plan** means:

- (a) a water resource plan that is taken to be a water plan under section 1256 of the Water Act that applies in the Regulated Area; or
- (b) the water plan, if any, made by the Minister under the Water Act from time to time that applies to the Regulated Area.

**Water Use Plan** has the meaning given in the Water Act.

**Water Supply Act** means the *Water Supply (Safety and Reliability) Act 2008* (Qld).

**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 Seqwater.

## 26.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
  - (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;

Doc no.	CON-00033	Version date:	13/06/2017	Trim ID:	
Doc owner:	W.Harpham	Doc approver:	Manager, Legal Counsel	Rev no.	2 Page 44 of 56

The controlled version of this document is registered. All other versions are uncontrolled

- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement, includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (l) a reference to a right includes a benefit, remedy, discretion or power;
- (m) a reference to time is to Australian Eastern Standard Time (AEST);
- (n) a reference to writing includes:
  - (i) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
  - (ii) words created or stored in any electronic medium and retrievable in perceivable form;
- (o) where this document contemplates that a person may elect, determine, approve, nominate, decide or consider any matter or thing, that person may make such election, determination, approval, nomination, decision or consideration in its absolute discretion and without being required to act reasonably or to give reasons, unless this document expressly requires otherwise;
- (p) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (q) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (r) measurements of physical quantities shall be in legal units of measurement in the location of the Regulated Area and references to time are references to time in the location of the Regulated Area;
- (s) a reference to a governmental authority includes any successor authority;
- (t) a term used in the Water Act has the same meaning when used in this Agreement;
- (u) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing; and
- (v) where a party is constituted by two or more persons, then:
  - (i) the obligations of that party bind each of those persons jointly and severally;
  - (ii) any liability of that party is borne by each of those persons jointly and severally; and
  - (iii) a right of that party may be exercised by those persons jointly.

## Schedule 4

### Deed of Guarantee and Indemnity

---

**IMPORTANT: Seqwater recommends that all Guarantors seek independent legal and financial advice before signing the Deed of Guarantee and Indemnity.**

Guarantee and indemnity dated \_\_\_\_\_

**Parties**                      Queensland Bulk Water Supply Authority trading as Seqwater ABN 75 450  
239 876 of Level 8, 117 Brisbane Street, Ipswich, Queensland 4305 (**Seqwater**)  
  
\_\_\_\_\_(Guarantor)

### Background

- A.        At the request of the Guarantor, Seqwater has agreed to enter into the Agreement with the Customer.
- B.        It is a condition precedent to the performance by Seqwater of its obligations under the Agreement that the Guarantor enters into this deed.
- C.        The Guarantor has fully informed itself of the obligations and liabilities of the Customer under the Agreement and agrees to provide the guarantees and indemnities stated below.

### Operative provisions

#### 1. Definitions and interpretation

---

##### 1.1 Definitions

In this deed:

**Agreement** means the agreement titled "Supply Contract Groundwater" between Seqwater and the Customer to which this deed is **Schedule 4**.

**Business Day** means a day that is not:

- (a)        a Saturday or Sunday;
- (b)        a public holiday or special holiday in either or both of Ipswich or Brisbane, Queensland.

**Constitution** means, in relation to any person, the replaceable rules, constitution or combination of both (as those terms are used in section 134 of the Corporations Act) of that person (if any).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cost** means any cost, expense, charge, liability or disbursement.

**Customer** has the meaning given to that term in the Agreement.

**Event of Insolvency** means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

**Obligations** means all the liabilities and obligations of the Customer to Seqwater under or in connection with the Agreement and includes any liabilities or obligations which are liquidated or unliquidated, are present, prospective or contingent, are in existence before or come into existence on or after the date of this deed or relate to the payment of money or the performance or omission of any act.

**Obligor** means the Customer or the Guarantor.

**Overdue Rate** means a rate of interest equal to the Suncorp 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 Seqwater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

**Unpaid Sum** means any sum due and payable by the Guarantor under this deed but unpaid.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed or the Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed, includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (l) a reference to a right includes a benefit, remedy, discretion or power;
- (m) a reference to time is to Australian Eastern Standard Time (AEST);
- (n) a reference to writing includes:
  - (i) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
  - (ii) words created or stored in any electronic medium and retrievable in perceivable form;
- (o) where this document contemplates that a person may elect, determine, approve, nominate, decide or consider any matter or thing, that person may make such election, determination, approval, nomination, decision or consideration in its absolute discretion and without being required to act reasonably or to give reasons, unless this document expressly requires otherwise;
- (p) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (q) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

### **1.3 Principal Obligation**

Each Obligation of the Guarantor under this deed constitutes a principal, not a secondary or ancillary Obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co indemnifier, is negated.

## 2. Consideration

---

The Guarantor:

- (a) has entered into this deed in consideration of Seqwater agreeing, at the request of the Guarantor (evidenced by the Guarantor's execution of this deed), to enter into the Agreement with the Customer; and
- (b) acknowledges the receipt of valuable consideration from the Customer for the Guarantor incurring Obligations under this deed.

## 3. Guarantee

---

### 3.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to Seqwater:

- (a) the strict and punctual performance and observance by the Customer of all of its Obligations under the Agreement irrespective of when those Obligations are to be performed and observed;
- (b) the accuracy and fulfilment of all warranties and representations made by or on behalf of the Customer either in the Agreement or to induce Seqwater to enter into or to complete the Agreement; and
- (c) the satisfaction and payment in full of the Obligations.

### 3.2 Satisfaction of Obligations

If the Customer does not pay or satisfy any Obligation in full on the due date, the Guarantor will immediately on demand by Seqwater satisfy or pay that Obligation in full.

## 4. Indemnity

---

The Guarantor as a separate additional and primary liability irrevocably and unconditionally agrees to indemnify Seqwater and keep Seqwater indemnified against any Cost, loss, damage, claim, demand or action suffered by Seqwater arising from:

- (a) any failure by the Customer to satisfy the Obligations; or
- (b) any Obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Customer for any reason, whether or not Seqwater knew or ought to have known of that reason,

except to the extent that the Cost, loss, damage, claim, demand or action was directly contributed to by Seqwater, in which case, the Guarantor's liability to indemnify Seqwater will be reduced in proportion to that contribution.

## 5. Nature and preservation of liability

---

### 5.1 Absolute and unconditional liability

The liability of the Guarantor under this deed:

- (a) is absolute and is not subject to the performance of any condition precedent or subsequent;
- (b) will not be affected by any act, omission, matter or thing which, but for this **clause 5.1(b)**, might release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this deed) including any of the following:

- (i) the occurrence before, on or at any time after, the date of this deed of any Event of Insolvency in relation to any Obligor or death or incapacity of any Obligor;
- (ii) the Agreement or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (iii) any variation to the Agreement or any Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Obligor;
- (iv) the full, partial or conditional release or discharge by Seqwater or by operation of law of any other Obligor from the Agreement or any Obligation;
- (v) the transfer, assignment or novation by Seqwater or any Obligor of all or any of its rights or Obligations under the Agreement; or
- (vi) any failure by Seqwater to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, Seqwater relating to or affecting any Obligor at any time before or during the currency of this deed or the Agreement, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not Seqwater was under a duty to disclose that fact, circumstance, event or thing to any Obligor.

## **5.2 Settlement conditional**

If a claim that a payment to Seqwater in connection with this deed or the Agreement is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then Seqwater is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this deed if the payment had not occurred.

## **5.3 No third party rights**

The Guarantor's liability under this deed will not be reduced or avoided by any defence, set off or counterclaim available to the Customer against Seqwater.

## **5.4 Restriction on Guarantor's dealings**

The Guarantor irrevocably appoints Seqwater as its attorney to prove in the insolvency of the Customer for all money to which the Guarantor may be entitled from the Customer up to an amount which does not exceed the amount which may be payable by the Guarantor under this deed. The Guarantor acknowledges that Seqwater may, subject to the terms of this deed, retain any money which Seqwater may receive from any proof on account of the Guarantor's liability under this deed.

## **5.5 Claim on the Guarantor**

The Guarantor agrees that Seqwater is not required to make any claim or demand on the Customer, or to enforce the Agreement or any other right, power or remedy against the Customer, before making any demand or claim on the Guarantor.

## **5.6 Waiver of rights**

The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of the Customer and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have.

## 6. Representations and warranties

---

### 6.1 General representations and warranties

The Guarantor represents and warrants to Seqwater that:

- (a) this deed constitutes its valid and legally binding Obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
- (b) the execution, delivery and performance of this deed and each transaction contemplated by this deed does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) where the Guarantor is a company:
  - (i) it is duly registered and remains in existence;
  - (ii) its execution, delivery and performance of this deed does not (and the transactions contemplated by this deed do not) violate its Constitution;
  - (iii) it has the power to enter into, deliver and perform this deed and to carry out the transactions contemplated by this deed;
  - (iv) it has taken all corporate action required to enter into, deliver and perform this deed and to carry out the transactions contemplated by this deed; and
  - (v) the entry into and the performance of its Obligations under this deed is for its corporate benefit.

### 6.2 Representations and warranties repeated

Each representation and warranty in **clause 6.1** will be repeated on each day while any of the Obligations remain outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.

## 7. Payments

---

### 7.1 Payments on demand

All payments by the Guarantor under this deed are to be made to Seqwater in dollars in immediately available funds on the due date or if no due date is specified, on the date of demand by Seqwater.

### 7.2 Payment of interest on Unpaid Sums

- (a) The Guarantor will pay default interest on all Unpaid Sums in accordance with this **clause 7.2**. Default interest will accrue on all Unpaid Sums:
  - (i) from the due date up to the date of actual payment, before and (as a separate and independent Obligation) after judgment; and
  - (ii) 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 that the Unpaid Sum is paid.
- (b) Default interest accruing under this **clause 7.2** will be immediately payable by the Guarantor on demand.

### 7.3 No set-off or counterclaim

All payments by the Guarantor under this deed will be without any set off or counterclaim, and the Guarantor irrevocably waives any rights of set-off or counterclaim which it may have against Seqwater.

#### **7.4 Merger**

If the liability of the Guarantor to make any payment under this deed becomes merged in any judgment or order, the Guarantor will as an independent Obligation pay to Seqwater interest at the rate which is the higher of that payable under **clause 7.2** and that fixed by or payable under the judgment or order.

#### **7.5 No deduction for taxes**

- (a) All payments by the Guarantor under this deed will be without deduction or withholding for any present or future taxes, unless the Guarantor is compelled by law to deduct or withhold the same.
- (b) If the Guarantor is compelled by law to make any deduction or withholding from any payment under this deed on account of taxes then the Guarantor will on demand by Seqwater pay to Seqwater any additional amounts necessary to ensure that Seqwater receives (after all deductions and withholdings for taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made.

### **8. Expenses**

---

The Guarantor must reimburse Seqwater on demand for, and indemnifies Seqwater against, all Costs, including legal fees, costs and disbursements (on a full indemnity basis and determined without taxation, assessment or similar process) incurred in connection with:

- (a) negotiating, preparing and executing this deed; and
- (b) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any rights under this deed.

### **9. Governing law and jurisdiction**

---

#### **9.1 Governing law and jurisdiction**

- (a) This deed is governed by and must be construed according to the law applying in Queensland.
- (b) The Guarantor irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 9.1(b)(i)**.

### **10. Miscellaneous**

---

#### **10.1 Certificate of Seqwater**

A certificate or determination in writing signed by Seqwater or a director, company secretary or attorney of Seqwater certifying an amount payable by any Obligor to Seqwater is sufficient evidence of the matters to which it relates.

## 10.2 Notices

Any notice, consent or other communication given under this deed:

- (a) must be in writing, in English, addressed to the intended recipient:
  - (i) for Seqwater, as provided in **clause 25.2(a)(i)** of the Agreement;
  - (ii) for the Guarantor, either:
    - (A) to the Facsimile Number in item 10 of the Customer's Schedule of the Agreement;
    - (B) at the Address for Notices in item 10 of the Customer's Schedule of the Agreement; or
    - (C) at the Email Address in item 10 of the Customer's Schedule of the Agreement;
- (b) must be signed by a person duly authorised by the sender;
- (c) may be delivered by hand or posted by prepaid post to the address, sent by email, or sent by fax to the number, of the addressee, in accordance with **clause 10.2(a)**;
- (d) is taken to be received by the addressee:
  - (i) (in the case of priority post sent to an address in the same country) on the third Business Day after the date of posting;
  - (ii) (in the case of priority post sent to an address in another country) on the fifth Business Day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery;
- (e) for notices, consents or communications received:
  - (i) after 5.00pm in the place of receipt; or
  - (ii) on a day which is not a Business Day at the place of receipt,  
it is taken as having been received at 9.00am on the next Business Day.

## 10.3 Severance

- (a) Any provision of this deed that is or becomes illegal is severed from this deed.
- (b) If at any time a provision of this deed is severed, or is or becomes illegal, invalid, void or unenforceable in any respect under the law of any jurisdiction, it will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

## 10.4 Counterparts, facsimile and email

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one deed.
- (b) A party who has executed a counterpart of this deed may exchange that counterpart with another party by faxing it or emailing it in ".pdf" format to that other party and, if that other party requests it, promptly delivering that executed counterpart by hand or post to that other party. However, the validity of this deed is not affected if the party who has faxed or emailed the counterpart delays in delivering or does not deliver it by hand or by post.

**10.5 Parties**

- (a) If a party consists of more than one person, this deed binds each of them separately and any two more of them jointly.
- (b) An agreement, covenant, Obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, Obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.
- (d) A party which is an undisclosed trustee is bound both personally and in its capacity as trustee.

## EXECUTION BY THE GUARANTOR

### EXECUTED AS A DEED

**Signed, sealed and delivered** by [insert full name] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness (print)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

**Signed, sealed and delivered** by [insert full name] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness (print)

This \_\_\_\_\_ day of \_\_\_\_\_ 20

## Form of Acknowledgement

### **IMPORTANT INFORMATION REGARDING THE GUARANTEE AND INDEMNITY**

Seqwater recommends that all Guarantors seek independent legal and financial advice before signing the Guarantee and Indemnity. This Form of Acknowledgement must be completed by the Guarantor to confirm that they understand the nature and effect of the financial and legal risks imposed on them.

If the Guarantor has received financial or legal advice, then paragraphs 1 and 2 must be completed. If the Guarantor has elected not to receive financial or legal advice, then by signing this Form of Acknowledgment, the Guarantor only makes the declarations in paragraph 3 and 4 below.

**To:** QUEENSLAND BULK WATER SUPPLY AUTHORITY (ABN 75 450 239 876) trading as Seqwater of Level 8, 117 Brisbane Street, Ipswich, Queensland 4305 (**Seqwater**)

**From:** \_\_\_\_\_ of \_\_\_\_\_

**Date:**

I, \_\_\_\_\_, declare that:

1. on \_\_\_ / \_\_\_ / 20\_\_\_ the nature and effect of the financial risk which each of the following documents will impose on me was explained to me by

\_\_\_\_\_ :

*(Insert name of Financial Advisor)*

- (a) Supply Contract Groundwater; and  
(b) Guarantee and Indemnity (Schedule 4 to the Supply Contract Groundwater)  
(collectively the **Documents**);

2. on \_\_\_ / \_\_\_ / 20\_\_\_ the nature and effect of the legal risk which each of the Documents will impose on me was explained to me by

\_\_\_\_\_ :

*(Insert name of Australian Legal Practitioner)*

3. I understand the nature and effect of the financial and legal risk which the Documents place on me; and  
4. I have relied on my own inquiries as to the nature and effect of the financial and legal risk which the Documents place on me and am not executing this declaration as a result of any representation, promise, statement, conduct or inducement by or on behalf of the Seqwater or any other person.

**Signed by:**

.....

**Name:**