



Seqwater have standard purchasing terms and conditions which apply when a contractor or supplier has been engaged to provide goods and/or services. The contract templates provided below are provided solely as an example of Seqwater's Contract terms which Seqwater may propose to enter into with a Supplier if a Supplier's offer is accepted by Seqwater. It should be used for a proposed Supplier's reference only to enable them to make an initial assessment of willingness and ability to comply with Seqwater's standard contractual terms. Seqwater reserves its rights to make further changes to the terms of this contract prior to the execution of any formal contract with a Supplier. This contract is not intended to be legally binding on any party without first being completed by Seqwater and signed by all parties. The template below is Seqwater's standard default contract.

Seqwater

[Supplier name to be inserted following award of contract]

Contract Number:

Project Name:

Supply Contract

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EXAMPLE

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Parties

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

The **Supplier** specified in the Contract Particulars (**Supplier**)

Background

- A The Supplier has offered to supply to Seqwater certain Goods on the terms of this Contract.
- B Seqwater agrees to purchase the Goods from the Supplier in accordance with this Contract.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Contract:

Business Day means a day that is not:

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

Capped Amount means the amount specified in the Contract Particulars that is the maximum amount Seqwater will be liable for under **clause 19.5(b)**.

Claim means any claim (including in tort), action, proceeding or investigation of any nature or kind and includes the allegation of a claim.

Confidential Information means information disclosed by (or obtained from), one Party (Discloser) to (or by) the other Party (Recipient) that:

- (a) is by its nature confidential;
- (b) is designated by the Discloser as confidential; or
- (c) the Recipient knows or ought reasonably to know is confidential,

and includes:

- (d) information comprised in or relating to any Intellectual Property Rights of the Discloser;
- (e) information relating to the business, affairs or financial position of the Discloser including information relating to the assets or liabilities of the Discloser and any

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other matter that does or may affect the financial position or reputation of the Discloser;

- (f) information relating to the internal management and structure of the Discloser, or the personnel, policies and strategies of the Discloser;
- (g) information of the Discloser to which the Recipient has access that has any actual or potential commercial value to the Discloser or to the person or corporation which supplied that information;
- (h) any information which may have come to a Party's knowledge in the course of negotiations or otherwise (including after the date of this Contract) concerning the operations, dealings, transactions, contracts, Intellectual Property Rights, commercial or financial arrangements or affairs of the other Party which the other Party has identified as confidential or which the first identified Party ought reasonably know should be treated as confidential; and
- (i) information relating to the officers, employees, contractors or suppliers of the Discloser, and like information, including any personal or sensitive information of individuals,

but does not include any such information that is in the public domain other than through a breach of an obligation of confidentiality.

Conflict of Interest means the Supplier having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with its obligations to Seqwater such that an independent observer might reasonably question whether the professional actions or decisions of the Supplier are or might be influenced by their own interests.

Contract means the agreement evidenced by this document and any other document incorporated by express reference.

Contractor Supply Affiliate means a related body corporate of the Supplier or a subcontractor.

Contract Material means all Material which is:

- (a) prepared, or required to be prepared, by or on behalf of the Supplier under this Contract; or
- (b) delivered, or required to be delivered, by or on behalf of the Supplier to Seqwater under this Contract.

Contract Particulars means the contract particulars set out in **Schedule 1**.

Contract Price means the amount set out in the Contract Particulars, as may be adjusted in accordance with this Contract.

Control:

- (a) has the same meaning given to that term in section 50AA of the Corporations Act 2001 (Cth); or
- (b) if the Supplier is not an entity within the meaning of the Corporations Act 2001 (Cth), a circumstance in which effective control is or may be exercised over the Supplier.

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Defect means any aspect of any Goods supplied under this Contract which is not in accordance with the requirements of this Contract.

Defects Liability Period means, in relation to each delivery of Goods under this Contract, the period which commences when the Goods have been Delivered and continues for the period set out in the Contract Particulars.

Delivery means when the Supplier has delivered the Goods complying in all respects with the requirements of this Contract to the Delivery Point and the Supplier has otherwise done everything required to be done under this Contract before or upon delivery of the Goods.

Delivery Date means the date for Delivery of Goods specified in the Contract Particulars.

Delivery Point in respect of an item of Goods means the place of Delivery for that item of Goods specified in the Contract Particulars.

Dispute means a difference, disagreement, or dispute between the Parties arising out of or relating to this Contract, or the breach, termination, validity or subject matter of it, or as to any Claim in tort, in equity or pursuant to any Law.

Ethical Supplier Mandate means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" (as that document may be updated, reviewed, amended or replaced from time to time).

Ethical Supplier Requirements means:

- (a) all requirements which must be satisfied to meet the Ethical Supplier Threshold;
- (b) the Supplier, or any Contractor Supply Affiliates, not, at any time after the Ethical Supplier Requirements Start Date:
 - (i) supplying, procuring, or using, dumped goods;
 - (ii) being sanctioned under the Ethical Supplier Mandate; or
 - (iii) accruing 20 demerit points under the Ethical Supplier Mandate.

Ethical Supplier Requirements Start Date means 1 August 2019.

Ethical Supplier Threshold means, the ethical supplier threshold referred to in Principle 2.3 of the Queensland Procurement Policy, as it may be updated or replaced from time to time.

Force Majeure Event means an event:

- (a) which is outside of the reasonable control of the Party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that Party by reasonable diligence or precautionary measures,

and includes natural disasters (including flood, earthquake, storm or cyclone), health pandemics, acts of terrorism, riots, civil disturbances, industrial disputes, lockouts and strikes (of any kind, other than lockouts or strikes involving that Party, its agents, employees or suppliers).

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Goods means those goods of the type generally set out in the menu of goods provided under the Contract Particulars and which are specifically identified in the Contract Particulars as Goods to be supplied by the Supplier under this Contract.

Government Agency means any government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Heavy Vehicle Law means all Laws relating to the regulation of the use of heavy vehicles on roads and all related road transport Laws.

Insolvency Event 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.

Intellectual Property Rights means all registered and unregistered rights in Australia and throughout the world in respect of copyright, trade or service marks, designs, patents, circuit layouts, indications of source or appellations of origin, trade secrets, know-how and confidential information.

KPIs means the key performance indicators set out in the Performance Measurement Framework.

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Laws means:

- (a) all laws including rules of common law and equity, statutes, regulations, determinations, by-laws, ministerial directions, subordinate legislation, ordinances, mandatory codes, standards and guidelines, writs, orders, injunctions and judgements; and
- (b) any Government Agency requirement or authorisation (including conditions in respect of any authorisation) with which the Supplier is legally required to comply.

Loss means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

Material includes plant, equipment, hardware, machinery, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, documentation and anything else which is in a material, including electronic, form.

Modern Slavery includes any conduct which constitutes modern slavery under any Modern Slavery Laws, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage.

Modern Slavery Laws means the Modern Slavery Act 2018 (Cth), the Modern Slavery Act 2018 (NSW), Divisions 270 and 271 of the Criminal Code 1995 (Cth), and any other anti-Modern Slavery laws or regulations in force in Australia.

Notice of Dispute means a written notice of a Dispute identifying and providing details of the Dispute.

Party means a party to this Contract.

Performance Measurement Framework means the performance measurement framework set out in **Schedule 2**.

Personal Information means information or an opinion (including where forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, regardless of whether such information or opinion is provided by Seqwater or a third party, or generated by the Supplier.

Privacy Laws means the Laws relating to the protection of Personal Information.

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act 2001 (Cth).

Related Entity means, in respect of a Party, a Related Body Corporate of the Party, and any present or future corporation or other business entity Controlled by that Party.

Reporting Periods means the reporting periods set out in the Performance Measurement Framework.

Schedule of Rates means the schedule of fees and prices referenced in the Contract Particulars.

Seqwater Representative means the Seqwater representative nominated in the Contract Particulars or any other person nominated by Seqwater from time to time.

Start Date means the date specified in the Contract Particulars.

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Supplier Personnel means employees and individual contractors engaged by the Supplier to assist the Supplier to provide the Goods.

Supplier Representative means the supplier representative specified in the Contract Particulars or as notified to Seqwater by the Supplier from time to time in writing.

Term means the term specified in the Contract Particulars subject to any earlier termination.

Unlawful Environmental Harm means unlawful environmental harm or unlawful environmental nuisance, as those terms are defined in the Environmental Protection Act 1994 (Qld).

Wilful Default means a default where the breach relates to an act or omission that is intended to cause harm, or involves recklessness in relation to an obligation not to cause harm.

Work Health and Safety Law means all Laws relating to work, health and safety.

1.2 Construction

In this Contract:

- (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 Contract) 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 Contract, and a reference to this Contract, 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;

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- (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; and
- (r) 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.

2 Term

Subject to any earlier termination, this Contract continues for the Term.

3 Supply of Goods

3.1 Supply

The Supplier agrees to supply:

- (a) the Goods; and
- (b) such Materials and other resources necessary to meet its obligations under this Contract,

to Seqwater on the terms of this Contract.

3.2 No guarantee

The Supplier acknowledges that its appointment by Seqwater under this Contract is non-exclusive and Seqwater may engage other persons to supply the Goods to Seqwater without notice to the Supplier.

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4 General obligations of the Supplier

4.1 Delivery

The Supplier must:

- (a) deliver the Goods to the Delivery Point on the Delivery Date;
- (b) provide full documentation identifying the contents of each package of Goods delivered; and
- (c) transport and store the Goods in a safe manner,

in accordance with the terms of this Contract and any other reasonable directions from Seqwater.

4.2 Performance obligations

Without limiting any other obligation of the Supplier under this Contract the Supplier must:

- (a) supply the Goods and perform its other obligations in a timely, diligent and professional manner;
- (b) supply Goods:
 - (i) free from all Defects and fit for the purpose for which they are being supplied;
 - (ii) in accordance with any specification provided by or approved by Seqwater;
 - (iii) of acceptable quality (where 'acceptable quality' is as defined in The Australian Consumer Law in schedule 2 of the *Competition and Consumer Act 2010* (Cth));
 - (iv) that correspond with any sample or demonstration models, provided or otherwise shown to Seqwater, in quality, state and condition; and
 - (v) in compliance with all statutory requirements and any other requirements referred to in **clause 9.3**;
- (c) comply with all reasonable directions given by Seqwater from time to time;
- (d) ensure that there is no damage to the Goods or any party's property at the Delivery Point;
- (e) not do or cause or allow to be done any thing that would materially or adversely affect Seqwater's business or any property of Seqwater;
- (f) in relation to this Contract and any supply of Goods, not cause Unlawful Environmental Harm;
- (g) in its supply of the Goods, not infringe any Intellectual Property Rights;
- (h) provide, manage and maintain sufficient resources, including human resources, equipment and facilities, to enable it to fulfil its obligations under this Contract; and
- (i) ensure that Supplier Personnel performing work necessary for the supply of Goods:
 - (i) comply with all reasonable directions given by Seqwater from time to time;

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- (ii) comply with any additional requirements set out in the Contract Particulars; and
- (iii) cooperate with other people performing work for Seqwater at the Delivery Point.

4.3 Compliance with Laws

The Supplier must:

- (a) comply with all Laws applicable to the performance of its obligations under this Contract (including, but not limited to, Heavy Vehicle Law); and
- (b) obtain and maintain, solely at the Supplier's own expense, any licences, accreditations, authorisations, consents, approvals and permits that the Supplier is or Supplier Personnel are required to possess by any applicable Laws in order to perform its obligations under this Contract.

4.4 Compliance with Modern Slavery Laws

- (a) The Supplier warrants and agrees that:
 - (i) it has not engaged, and will not engage, in any Modern Slavery practices;
 - (ii) it has taken all steps reasonably necessary to satisfy itself that its supply chains do not involve any Modern Slavery practices or risks; and
 - (iii) it complies with and will continue to comply with Modern Slavery Laws.
- (b) Without limiting any other provision of this Contract, the Supplier must provide to Seqwater, within 3 days of a request from Seqwater, all details in relation to potential Modern Slavery practices or risks, including without limitation details in relation to:
 - (i) the Supplier's structure, operations and supply chains;
 - (ii) risks of Modern Slavery practices in the Supplier's structure (including in respect of entities controlled by the Supplier) and supply chains;
 - (iii) actions taken by the Supplier to assess and address any Modern Slavery risks, including due diligence and remediation processes, and details of the Supplier's assessment as to the effectiveness of such actions;
 - (iv) policies, codes of conduct and training relating to Modern Slavery;
 - (v) if the Supplier is a 'reporting entity' for the purposes of any Modern Slavery Laws, any reports or other documents it is required to prepare under that legislation; and
 - (vi) any other matters relating to Modern Slavery risks as may be reasonably required by Seqwater.

4.5 Ethical Supplier Requirements

- (a) The Supplier:
 - (i) warrants that neither it nor any Contractor Supply Affiliate has, prior to the date of this Contract, breached the Ethical Supplier Requirements; and
 - (ii) must at all times after the date of this Contract comply, and ensure the Contractor Supply Affiliates comply, with the Ethical Supplier Requirements.

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- (b) The Supplier must notify Seqwater of any breach of the warranty or obligation in **subclause (a)** as soon as reasonably practicable after the Supplier becomes aware of the breach.
- (c) The Supplier must provide Seqwater with any information it reasonably requires at any time:
 - (i) in order for Seqwater to confirm the Supplier's compliance with **subclause (a)**; or
 - (ii) relating to any breach of **subclause (a)**.
- (d) The Supplier agrees that, if it breaches the Ethical Supplier Requirements:
 - (i) it will rectify the breach; and
 - (ii) if it fails to rectify the breach by the stated date and time, Seqwater may advise the Queensland Procurement Policy Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing and Public Works (or any body responsible for administration of the Queensland Procurement Policy) of the Supplier's failure to comply with the Ethical Supplier Requirements.
- (e) The Supplier acknowledges that if it or any of the Contractor Supply Affiliates (regardless of whether the conduct of the Supplier or the Contractor Supply Affiliate is in connection with the Contract) do or cause to be done anything which is a type of non-compliance under the Ethical Supplier Mandate (regardless of whether the non-compliance is connected with the Contract), the Supplier can be liable for the imposition of a demerit or sanction under the Ethical Supplier Mandate.

5 Access and security

5.1 Access

Seqwater will give the Supplier non-exclusive access to the relevant Delivery Point to the extent required to enable the Supplier to Deliver the Goods.

5.2 Security, policies and procedures

- (a) Subject to **clause 5.2(e)**, the Supplier must comply with, and must ensure that Supplier Personnel comply with:
 - (i) Seqwater's security requirements and Seqwater's other policies and procedures (notified or otherwise provided to the Supplier from time to time); and
 - (ii) all Laws including, but not limited to, Work Health and Safety Law and Heavy Vehicle Law,at all times when present at any premises of Seqwater (and any Delivery Point) as if the Supplier Personnel were employees of Seqwater.
- (b) The Supplier and Supplier Personnel must, prior to entering any premises of Seqwater (and any Delivery Point), successfully complete all inductions and sign all undertakings required by Seqwater.

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- (c) Seqwater may, acting reasonably, direct the Supplier to remove any of the Supplier Personnel from its premises (and any Delivery Point).
- (d) When Delivering the Goods, the Supplier must:
 - (i) take all measures to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance or unreasonable disturbance or noise.
- (e) Nothing in this **clause 5.2** limits or restricts the duty of the Supplier to supply and Deliver the Goods to the highest standards of workplace safety applicable to the Delivery of the Goods.

5.3 Notification

If, in performing the Supplier's obligations, an event occurs which:

- (a) results in personal injury, death or damage to property of:
 - (i) the Supplier or the Supplier Personnel;
 - (ii) Seqwater or the personnel of Seqwater; or
 - (iii) a third party; or
 - (b) results in or may result in Unlawful Environmental Harm or an offence under the Heavy Vehicle Law; or
 - (c) results in or may result in a breach of any Modern Slavery Laws or the Supplier's obligations under **clause 4.4**,
- the Supplier must immediately inform Seqwater of the event and provide such details as Seqwater reasonably requires.

6 Time for performance and delay

6.1 Time for performance

- (a) The Supplier must deliver the Goods on the Delivery Date.
- (b) The Supplier must not deliver the Goods prior to the Delivery Date without Seqwater's prior written approval.

6.2 Delay

- (a) If a Delivery is delayed beyond the Delivery Date, or if the Supplier anticipates that a Delivery will be delayed beyond the Delivery Date, the Supplier must provide Seqwater with written notice in accordance with **clause 6.2(c)**.
- (b) The Supplier must take all reasonable steps to mitigate a delay and its effects.
- (c) The notice referred to in **clause 6.2(a)** must, to Seqwater's reasonable satisfaction:
 - (i) state the existence and cause of the delay;
 - (ii) state the extension of time to the Delivery Date claimed by the Supplier;
 - (iii) state the steps taken by the Supplier under **clause 6.2(b)**; and

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- (iv) be provided to Seqwater at a time that is:
 - (A) no later than the Delivery Date; and
 - (B) as soon as possible after the Supplier became aware of the delay or reasonably ought to have been aware of the delay.
- (d) If the Supplier provides a notice to Seqwater under **clause 6.2(a)**, Seqwater may, in its sole discretion, extend the Delivery Date by any period of time.
- (e) Seqwater is not liable to the Supplier for any delay or other costs incurred by the Supplier as a result of a delay.

7 Title and risk

7.1 Title

Title in the Goods passes to Seqwater on the earlier of Delivery or payment of the Contract Price.

7.2 Risk

The Supplier bears the risk of any Loss of or to the Goods until Delivery of those Goods has been completed at the relevant Delivery Point (or alternative place directed by Seqwater) in accordance with this Contract.

8 Acceptance and Defects

8.1 Acceptance

Seqwater's inspection, testing or acceptance of the Goods does not affect its rights to make a Claim for any Loss suffered because of the Supplier's breach of warranty or breach of any other obligations under this Contract.

8.2 Defects

- (a) If, before Delivery of any Goods has been completed, or within the Defects Liability Period, the Seqwater Representative discovers any Defect, the Seqwater Representative may:
 - (i) direct the Supplier to rectify the Defect, in which case the Supplier must carry out such rectification immediately at its cost;
 - (ii) reject the Goods; or
 - (iii) accept the Goods.
- (b) If the Seqwater Representative rejects any Goods in accordance with **clause 8.2(a)(ii)**:
 - (i) the Seqwater Representative may require the Supplier to:
 - (A) collect the rejected Goods at the Supplier's cost and risk; and/or
 - (B) provide a new supply of Goods in accordance with this Contract;
 - (ii) the Supplier will not be entitled to receive any payment from, or bring any Claim (whether at law or in equity or otherwise) against Seqwater arising out of or in connection with the Defect;

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- (iii) Seqwater is entitled to recover from the Supplier any Loss incurred by Seqwater arising out of or in connection with the Defect;
 - (iv) where the Seqwater Representative does not require a new supply of Goods in accordance with **clause 8.2(b)(i)(B)**, Seqwater is entitled to recover any payment for those Goods as a debt due and owing; and
 - (v) where the Seqwater Representative requires a new supply of Goods in accordance with **clause 8.2(b)(i)(B)**, Seqwater is not required to pay any amount for those Goods to the extent that it has already paid for those Goods.
- (c) If the Seqwater Representative accepts any Goods in accordance with **clause 8.2(a)(iii)**:
- (i) the reasonable cost of correcting the Defect will be a debt due and payable on demand by the Supplier to Seqwater; and
 - (ii) Seqwater is not bound to accept future Goods with a Defect.

9 Warranties

9.1 Supplier warranties relating to supply of the Goods

The Supplier represents and warrants that:

- (a) it has the skills, expertise, personnel and resources necessary to supply the Goods in accordance with this Contract;
- (b) all Goods (and any workmanship and Materials used in the Goods) will:
 - (i) be free from all Defects and fit for the purpose for which they are being supplied;
 - (ii) be in accordance with any specification provided by or approved by Seqwater;
 - (iii) be of acceptable quality (where 'acceptable quality' is as defined in The Australian Consumer Law in schedule 2 of the Competition and Consumer Act 2010 (Cth)); and
 - (iv) comply with all statutory and other requirements referred to in **clause 9.3**;
- (c) all Goods will be free and clear of all charges, securities, liens and encumbrances at Delivery;
- (d) if any Goods are supplied to Seqwater by description, each of those Goods will correspond with that description;
- (e) if any Goods are supplied to Seqwater by reference to a sample or demonstration model, each of those Goods will correspond to that sample or demonstration model in quality, state and condition;
- (f) facilities for the repair of the Goods and spare parts for the Goods are and will continue to be readily available and accessible to Seqwater;
- (g) without limiting any other obligations of the Supplier under this Contract, it will exercise the highest standard of skill, care and diligence in the supply of all

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Goods which would be expected of a competent, qualified and experienced provider of the Goods; and

- (h) it will, immediately before Delivery, have good and marketable title to all Goods.

9.2 Supplier warranties

The Supplier represents and warrants that:

- (a) the execution of this Contract has been properly authorised;
- (b) it has full corporate power to execute, deliver and perform its obligations under this Contract;
- (c) to its knowledge there are no Claims pending or threatened against it, or by it, which may have a material effect on the subject matter of this Contract;
- (d) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to perform its obligations under this Contract and will comply with any conditions imposed by such licences, authorisations, consents, approvals and permits; and
- (e) it will not represent that it is authorised to act on behalf of Seqwater, except where expressly authorised to do so in writing by Seqwater.

9.3 Warranties implied by Law

Nothing in this Contract excludes or limits the liability of the Supplier under any term, condition, guarantee, warranty or remedy implied by any applicable Laws.

9.4 No express representations or warranties by Seqwater

The Supplier represents and warrants that no representations or warranties were made or given to it by Seqwater or any other person in relation to this Contract.

10 Price

10.1 Contract Price

- (a) The Contract Price is the amount payable for the Goods supplied under this Contract.
- (b) The Supplier must allow in the Contract Price for the provision of all Materials and other work necessary for the supply of any Goods and Delivery (including any transportation costs). Any such Materials and other work must be undertaken and provided by the Supplier at its cost and will not entitle the Supplier to make any Claim against Seqwater other than for the Contract Price.
- (c) Except as set out in **clause 12** in respect of GST, all taxes, duties and charges imposed or levied in Australia or overseas in connection with the Goods will be borne by the Supplier and will not cause any increase to the Contract Price.
- (d) Currency fluctuations do not affect the Contract Price and any Losses associated with such fluctuations are borne by the Supplier.

10.2 No other charges

Except as otherwise expressly set out in this Contract:

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- (a) the Contract Price is the only amount payable by Seqwater to the Supplier in relation to the subject matter of this Contract; and
- (b) no other costs, fees, charges or other payments will become payable by Seqwater to the Supplier unless Seqwater has given its prior written approval of those amounts.

11 Payment and invoices

11.1 Contract Price payable

- (a) Subject to this **clause 11** and **clause 12** and any other right to set-off which Seqwater may have, Seqwater must pay to the Supplier the Contract Price for any Goods supplied by the Supplier in accordance with this Contract.
- (b) Seqwater will only be liable to the Supplier for the Contract Price in relation to the supply of Goods that meet the requirements of this Contract.

11.2 Payment

- (a) Unless otherwise agreed by the Parties, Seqwater must pay any correctly rendered undisputed invoices within 30 days after the date of receipt of that invoice.
- (b) Despite any other provisions of this Contract, payment under this **clause 11.2** is not:
 - (i) evidence of the value of any Goods;
 - (ii) evidence that any Goods have been satisfactorily supplied or Delivered in accordance with this Contract;
 - (iii) evidence of acceptance of Delivery;
 - (iv) an admission of Seqwater's liability;
 - (v) acceptance or approval of the Supplier's performance; or
 - (vi) an admission that the Contract Price invoiced was properly incurred in accordance with this Contract.

11.3 Content of invoices

An invoice will be correctly rendered for the purposes of **clause 11.2(a)** if:

- (a) the amount claimed in the invoice is correctly calculated and due for payment in accordance with this Contract;
- (b) the invoice specifies:
 - (i) the Goods to which the invoice relates;
 - (ii) the relevant Seqwater Representative;
 - (iii) that the invoice has been rendered under this Contract; and
 - (iv) the manner in which the Contract Price has been calculated;
- (c) the invoice contains appropriate reductions for any sums required to be reduced or offset in accordance with this Contract;

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- (d) the invoice is a “GST Invoice” within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (e) the invoice complies with all applicable Laws.

11.4 Disputed invoices

- (a) Where Seqwater considers that an invoice has not been correctly rendered, Seqwater may notify the Supplier setting out the reasons and identifying any amounts in dispute within 30 days of receiving the disputed invoice.
- (b) If Seqwater disputes the amount of any invoice, Seqwater may withhold or suspend payment of any disputed part of the disputed invoice until the dispute is resolved.
- (c) In the event of a dispute about an invoice, the Supplier must:
 - (i) cancel the invoice and issue a new invoice for the undisputed amount; and
 - (ii) continue to perform its obligations under this Contract while the dispute is being resolved.
- (d) In the event that any amounts in dispute under a disputed invoice are found to be payable by Seqwater, the Supplier must add the amount agreed between the Parties to the next correctly rendered invoice.
- (e) Seqwater must:
 - (i) pay any non-disputed amounts in accordance with this Contract; and
 - (ii) promptly pay the amounts invoiced under **clause 11.4(d)**.

11.5 Underpayments and overpayments

- (a) If any part of an invoice is found to have been rendered incorrectly after payment has been made by Seqwater, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be from the next correctly rendered invoice issued by the Supplier.
- (b) Without limiting recourse to other available means, any overpayments by Seqwater may be offset against any amount subsequently due by Seqwater to the Supplier.

11.6 Set-off

Seqwater may, acting reasonably, set-off money due to Seqwater from the Supplier, or damages, costs or expenses recoverable by Seqwater from the Supplier, against money due to the Supplier under this Contract.

12 GST

12.1 Construction

In this **clause 12**:

- (a) words and expressions which are not defined in this Contract but which have a defined meaning in GST Law have the same meaning as in the GST Law;

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- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

12.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Contract are exclusive of GST.

12.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**supplier**) under or in connection with this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

12.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 12.3** in addition to and at the same time that the consideration for the supply is to be provided.

12.5 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 12.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

12.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier, the amount payable by the recipient under **clause 12.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

12.7 Reimbursements

Where a Party is required under this Contract to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

13 Conflict of Interest, commissions and collusion

13.1 Conflict of Interest

- (a) The Supplier warrants that, to the best of its knowledge, as at the Start Date, neither the Supplier nor any of its officers, employees, agents or subcontractors have, or are likely to have a Conflict of Interest in the performance of the Supplier's obligations under this Contract.
- (b) If a Conflict of Interest or risk of Conflict of Interest arises during the Term, the Supplier must immediately give notice of the Conflict of Interest, or the risk of it, to Seqwater.

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13.2 Commissions and incentives

- (a) The Supplier must ensure that none of:
- (i) the Supplier;
 - (ii) a Related Entity of the Supplier; or
 - (iii) the Supplier Personnel or the personnel of a Related Entity of the Supplier, receives any money, payment or thing of value (including any disclosed or undisclosed commission, rebate, allowance or other benefit) relating in any way to the performance of the Supplier's obligations under this Contract unless approved in writing by Seqwater, other than payment of salaries, wages and entitlements in the ordinary course of business by an employer to its employees.
- (b) The Supplier must not, and must ensure that its officers, employees, agents and subcontractors do not, give or offer anything to Seqwater or any officer or employee of Seqwater, or to a parent, spouse, child or associate of an officer or employee of Seqwater, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence Seqwater's actions in relation to this Contract.
- (c) If Seqwater discovers at any time during the Term that the Supplier has breached **clause 13.2(a)**, Seqwater may, in addition to any other action, elect to terminate this Contract in accordance with **clause 19.2**.

13.3 Collusion

- (a) Except as expressly disclosed to Seqwater in writing, the Supplier represents and warrants to Seqwater:
- (i) that no offer to Seqwater was or will be prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract);
 - (ii) it has not provided or received any benefit (including money) nor entered into any contract, arrangement or understanding to provide or receive any benefit from any competitor relating in any way to this Contract; and
 - (iii) at the time of entering this Contract, the Supplier and all corporations and persons associated with the Supplier, including directors and senior management, are not and have never been subject to proceedings relating to anticompetitive conduct in Australia.
- (b) The Supplier acknowledges that Seqwater enters into this Contract in reliance on the representations and warranties in **clause 13.3(a)**.
- (c) If the Supplier breaches **clause 13.3(a)**, Seqwater may, in addition to any other action, elect to terminate this Contract in accordance with **clause 19.2**.

14 Intellectual Property

14.1 Intellectual Property Rights

The Supplier assigns to Seqwater all present and future Intellectual Property Rights in any Contract Material created in the course of performing its obligations under this

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Contract, except to the extent the Contract Material is pre-existing Contract Material of the Supplier at the date of this Contract.

14.2 Licence to use Contract Material

To the extent that any Contract Material is not assigned to Seqwater in accordance with **clause 14.1**, the Supplier grants to Seqwater a perpetual, irrevocable, non-exclusive, worldwide, royalty-free and transferable licence (with right to sub-license without notice to or consent of the Supplier) to use any Contract Material to enable Seqwater to receive the full benefit and use of the Goods.

14.3 Intellectual property warranties

The Supplier represents and warrants that:

- (a) the Contract Material will not infringe the Intellectual Property Rights or other rights of any third party;
- (b) it has the right and authority to grant the rights granted under **clauses 14.1** and **14.2**; and
- (c) the exercise of the rights granted by the Supplier under **clauses 14.1** and **14.2** by Seqwater will not infringe the Intellectual Property Rights or other rights of any third party.

15 Confidentiality

15.1 Confidentiality

Subject to **clauses 15.2** to **15.5**:

- (a) each Party must keep the terms of this Contract confidential;
- (b) each Party must not, during or after the Term, disclose Confidential Information directly or indirectly to any third party; and
- (c) the Supplier must not use the Confidential Information of Seqwater other than for the purpose of fulfilling its obligations to Seqwater.

15.2 Exceptions

A Party may make any disclosure in relation to this Contract:

- (a) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (b) to comply with the Law, or a requirement of a regulatory body (including any relevant stock exchange);
- (c) to any of its employees to whom it is necessary to disclose the information;
- (d) to obtain the consent of a third party to a term of, or to an act under, this Contract;
- (e) to enforce its rights or to defend a Claim or action under this Contract;
- (f) to a Related Entity, on receipt of its undertaking to keep the information disclosed confidential; or
- (g) if the information disclosed has come into the public domain through no fault of the Party making the disclosure.

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15.3 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 Contract may only be disclosed in terms agreed by the Parties.

15.4 Disclosure by Seqwater

The Supplier acknowledges that Seqwater, its officers, employees, agents and subcontractors may use and disclose any of the information provided by the Supplier, about the Supplier, this arrangement, or the Goods to its responsible Ministers and Government Agencies for any purpose in connection with this arrangement.

15.5 Right to information and disclosure

- (a) If disclosure under the *Right to Information Act 2009* (Qld) or general disclosure of information provided by the Supplier in connection with this Contract, would be of concern to the Supplier because it would disclose Confidential Information, the Supplier should inform Seqwater.
- (b) The Supplier acknowledges that Seqwater cannot guarantee that any information provided by the Supplier will be protected from disclosure under the *Right to Information Act 2009* (Qld).
- (c) Despite any other provision of this Contract, Seqwater is entitled to publish on the Queensland Government Chief Procurement Office website under QTenders, or by any other means, the following details:
 - (i) name and address of Seqwater;
 - (ii) a description of the Goods;
 - (iii) commencement date or award date;
 - (iv) value of the Contract;
 - (v) name and address of the Supplier;
 - (vi) procurement method used; and
 - (vii) where the total value of the Goods is \$10 million or more, Seqwater is entitled to publish the following additional information:
 - (A) invitation details;
 - (B) contract overview; and
 - (C) reasons for non-disclosure of procurement results (if applicable).

15.6 Confidentiality deed

Upon request by Seqwater, the Supplier must obtain from its Supplier Personnel or subcontractors engaged for the purposes of this Contract a confidentiality deed in a form acceptable to Seqwater.

15.7 Return or destruction of Material

The Supplier must:

- (a) where requested to do so by Seqwater;
- (b) when the Supplier has completed performance of its obligations under this Contract; or

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(c) upon expiry or termination of this Contract,
promptly:

(d) return to Seqwater; or

(e) destroy, if requested to do so by Seqwater,
any Material:

(f) supplied by Seqwater to the Supplier; or

(g) created by the Supplier for Seqwater,

containing any Confidential Information of Seqwater, except where Laws require its retention by the Supplier.

16 Privacy

16.1 Obligations of Supplier

The Supplier must:

(a) if:

(i) the Supplier will in any way deal with Personal Information for Seqwater; or

(ii) the activities of the Supplier under this Contract will involve:

(A) the transfer of Personal Information to or from Seqwater; or

(B) the provision of services to a third party for Seqwater,

comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) as if the Supplier was Seqwater and the Supplier acknowledges that it is a bound contracted service provider for the purposes of the *Information Privacy Act 2009* (Qld);

(b) ensure that Personal Information obtained from or on behalf of Seqwater is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;

(c) not use Personal Information obtained from or on behalf of Seqwater other than for the purpose of performing its obligations to Seqwater, unless required or authorised by Law;

(d) not disclose Personal Information obtained from or on behalf of Seqwater without the prior written consent of Seqwater, unless required or authorised by Law;

(e) not transfer any Personal Information obtained from or on behalf of Seqwater outside of Australia without the prior written consent of Seqwater;

(f) ensure that access to Personal Information obtained from or on behalf of Seqwater is restricted to those of its employees and officers who require access in order to perform their duties;

(g) ensure that its officers, employees and subcontractors do not access, use or disclose Personal Information obtained from or on behalf of Seqwater other than in the performance of their duties and that they are aware of the Supplier's

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obligations under this **clause 16.1** and comply with the same obligations imposed on the Supplier under this **clause 16.1**;

- (h) ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Supplier has under this **clause 16.1**, including these requirements in relation to subcontracts;
- (i) fully cooperate with Seqwater to enable Seqwater to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (j) immediately notify Seqwater if the Supplier becomes aware that a disclosure of Personal Information obtained from or on behalf of Seqwater is or may be required or authorised by Law; and
- (k) comply with any reasonable directions, guidelines, determinations or recommendations of Seqwater in relation to privacy issues, to the extent that they are not inconsistent with the requirements of Privacy Laws.

16.2 Deed of privacy

Upon request by Seqwater, the Supplier must obtain from its officers, employees and subcontractors a deed of privacy in a form acceptable to Seqwater.

16.3 Notification of breach

The Supplier must immediately notify Seqwater upon becoming aware of any breach of this **clause 16**.

16.4 Legislation

Nothing in this **clause 16** is intended to limit any obligation of a Party under the *Privacy Act 1988* (Cth) or the *Information Privacy Act 2009* (Qld) (as applicable), that the Party may have as an organisation with respect to Personal Information.

17 Variation

17.1 Notice to vary

If a Party wishes to vary the terms of this Contract that Party must give notice of the variation to the other Party and must include in the notice:

- (a) details of the proposed variation; and
- (b) proposed consequential variations (if any) to the Schedule of Rates or the Contract Price.

17.2 Agreed variations

- (a) This Contract may only be varied by a letter or deed of variation signed by each Party, with such letter or deed to be prepared by Seqwater.
- (b) Unless otherwise agreed by the Parties, any variation made in accordance with **clause 17.2(a)** will commence once it has been signed by both Parties. The Supplier must not supply new or varied Goods until there is evidence of the agreed variation in writing which is acceptable to both Parties.

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18 Dispute resolution

18.1 Notice of Dispute

- (a) Subject to **clause 18.3**, the Supplier and Seqwater will adhere to the following procedure in respect of any Dispute prior to either of them commencing litigation.
- (b) If a Dispute between the Parties arises, then either Party may give the other Party a Notice of Dispute.
- (c) The Seqwater Representative and Supplier Representative will meet within 7 days after receipt by a Party of the Notice of Dispute at a mutually convenient time and place or by telephone conference.
- (d) If the Seqwater Representative and Supplier Representative cannot resolve the Dispute to their satisfaction in writing within 14 days after receipt by a Party of the Notice of Dispute, then either of them may give notice of the inability to resolve the Dispute to that Party's most senior executive or his or her delegate (**Nominated Executive**). Within 14 days (or other period agreed between the Parties) after receipt of the notice of the inability to resolve the Dispute, the Nominated Executives of both Parties will meet at a mutually convenient place or by telephone conference and attempt to resolve the Dispute.
- (e) Each Party must ensure that its Nominated Executive has the authority to negotiate and agree (even if such agreement is subject to conditions such as the approval of the Party's board or governing body) to a resolution of the Dispute on behalf of the Party.
- (f) If the Nominated Executives cannot resolve the Dispute to their satisfaction in writing within 30 days after a notice is issued under **clause 18.1(d)**, then either Party may proceed in accordance with its remedies at law.
- (g) Notwithstanding the existence of a Dispute, each Party will, subject to this Contract, continue to perform its obligations under this Contract.

18.2 Exchange of information

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this **clause 18** is to attempt to settle the Dispute between the Parties. No Party may use any information or documents obtained through the dispute resolution process established by this **clause 18** for any purpose other than an attempt to settle a Dispute between the Parties.

18.3 Court proceedings

A Party must not start court proceedings unless they have first complied with this **clause 18**. Nothing in this **clause 18.3** will be construed to prevent a Party from starting court proceedings earlier to avoid the expiry of any applicable limitations period, to preserve a superior position with respect to other creditors, or to obtain urgent interlocutory relief.

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19 Termination

19.1 Termination by Seqwater for convenience

Seqwater may at any time terminate this Contract for its convenience and in its absolute discretion by giving the Supplier at least ten Business Days' written notice.

19.2 Termination by Seqwater for cause

Without limiting any other right of Seqwater at Law, if the Supplier:

- (a) suffers an Insolvency Event;
- (b) fails to carry out an instruction or direction by or on behalf of Seqwater within the time specified or, if no time is specified, within a reasonable time; or
- (c) breaches any of its obligations under this Contract and, where the failure is capable of remedy, fails to remedy that breach within the time, which must be reasonable, as specified in a notice to remedy from Seqwater,

Seqwater may, by written notice to the Supplier, immediately terminate this Contract.

19.3 Ipso Facto Laws

The Parties agree:

- (a) the rights of a Party under this Contract (including **clause 19.2(a)**) are subject to the operation of sections 415D to 415G, 434J to 434M and 451E to 451H of the Corporations Act 2001 (Cth) (**Ipso Facto Laws**); and
- (b) to the extent of any inconsistency between any provision of this Contract and the Ipso Facto Laws, the relevant provision of this Contract will be read down or severed from this Contract, so as to maintain as far as possible, the original effect and intent of this Contract.

19.4 Consequences of termination or expiry of this Contract

- (a) The expiry or termination of this Contract does not affect any accrued rights or liabilities of either Party, including perpetual licences granted to Seqwater.
- (b) Any obligations which are expressed to or, by their nature, survive expiry or termination of this Contract, will survive expiry or termination of this Contract and are enforceable at any time at law or in equity.
- (c) On expiry or termination of this Contract, the Supplier must promptly refund any amounts paid by Seqwater in respect of any Goods not Delivered by the date of expiry or termination.
- (d) If this Contract is terminated for any reason Seqwater may reject any Goods that have not been accepted by the effective date of termination and the Supplier must promptly refund any amounts paid by Seqwater for those Goods.
- (e) If this Contract is terminated in accordance with **clauses 19.2 or 20** or Seqwater's rights at Law:
 - (i) Seqwater will not be obliged to make any further payments to the Supplier under this Contract; and
 - (ii) the Supplier is liable for and indemnifies Seqwater against any Loss suffered by Seqwater as a result of the termination, including any additional

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costs incurred by Seqwater in obtaining the relevant Goods (or similar goods) from an alternative supplier.

19.5 Payments on termination of Contract

If this Contract is terminated, other than in accordance with **clauses 19.2 or 20** or pursuant to Seqwater's rights at Law, Seqwater will be liable for:

- (a) payments payable under this Contract for Goods delivered before the date the termination takes effect; and
- (b) any reasonable costs actually and unavoidably incurred by the Supplier that:
 - (i) are, in Seqwater's reasonable opinion, directly attributable to the termination; and
 - (ii) do not exceed in aggregate the Capped Amount.

20 Change in Control

20.1 Change in Control or transfer of ownership

- (a) The Supplier must promptly notify Seqwater in writing of any:
 - (i) change in Control or proposed change in Control; or
 - (ii) action to reconstruct or amalgamate itself or a holding company or proposed action to reconstruct or amalgamate itself or a holding company; during the Term.
- (b) If the Supplier gives a notice under **clause 20.1(a)**, Seqwater may:
 - (i) require that the Supplier promptly provide Seqwater with reasonable assurance about its ability to continue to meet its obligations under this Contract, including requiring that the Supplier or a Related Entity of the Supplier provide security or additional security; or
 - (ii) if Seqwater considers, in its absolute discretion that the change in Control or relevant reconstruction or amalgamation action prejudices or is likely to prejudice Seqwater's interests, including its reputation, immediately terminate this Contract by giving the Supplier notice.
- (c) If the Supplier:
 - (i) fails to provide notice in accordance with **clause 20.1(a)**; or
 - (ii) fails to comply with a requirement under **clause 20.1(b)(i)**,Seqwater may immediately terminate this Contract by giving the Supplier notice.

21 Indemnities

21.1 Supplier's indemnities

The Supplier indemnifies and will defend Seqwater and its employees, agents and contractors (**Those Indemnified**), against all Claims, liabilities, Losses, damages, costs and expenses (including legal fees, costs and disbursements) made or awarded against, or suffered or incurred by, Those Indemnified arising from or incurred in relation to:

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- (a) performance or breach of this Contract (including breach of any warranty or guarantee) by the Supplier, including Delivery of any Goods;
- (b) any breach of Law by the Supplier or any breach of Law arising out of any breach of contract by the Supplier;
- (c) any negligent or fraudulent act or omission of the Supplier or Supplier Personnel;
- (d) personal injury to or the death of any person arising out of or in relation to the supply and Delivery of Goods by the Supplier to Seqwater;
- (e) Loss of or to any property, or Unlawful Environmental Harm, arising out of or in relation to the supply of Goods by the Supplier to Seqwater (including Loss of or to the property of Seqwater and any third party); and
- (f) any actual or alleged infringement of Intellectual Property Rights arising out of or in relation to the supply of Goods by the Supplier to Seqwater,

except to the extent that a breach of Law or the gross negligence of Seqwater directly contributed to the Loss or Claim, in which case, the Supplier's liability to indemnify Seqwater will be reduced in proportion to that contribution.

21.2 Conduct of indemnified Claims

- (a) If a Claim to which **clause 21.1** applies is made against Seqwater, the following procedures apply:
 - (i) Seqwater must give the Supplier written notice of the Claim;
 - (ii) Seqwater must provide the Supplier with such assistance as it reasonably requests in conducting the defence of the Claim at the Supplier's expense; and
 - (iii) the Supplier may elect to have control of the defence of proceedings relating to the Claim and all negotiations for its settlement.
- (b) Failure by Seqwater to comply with the indemnification procedures in this **clause 21.2** does not relieve the Supplier of any obligation to indemnify Seqwater in respect of any Loss or Claim.
- (c) If the Supplier exercises its option under **clause 21.2(a)(iii)**, the Supplier must:
 - (i) conduct the defence of any proceedings relating to the Claim diligently using competent counsel and in such a way as not to bring the reputation of Seqwater into disrepute;
 - (ii) consult with Seqwater and keep Seqwater informed of all material matters;
 - (iii) obtain Seqwater's prior written approval before any settlement is made in respect of the Claim; and
 - (iv) comply at all times with any reasonable direction given by Seqwater, at the Supplier's expense.
- (d) If the Supplier fails to promptly exercise its option under **clause 21.2(a)(iii)**, Seqwater may defend the Claim at the Supplier's expense, in such manner as it may deem appropriate.

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21.3 No Claims in respect of employee entitlements

The Supplier and the Supplier Personnel have no Claim upon Seqwater in respect of:

- (a) remuneration to employees (if any) including superannuation, leave, other entitlements, taxes or duties;
- (b) Claims under workers' compensation, industrial relations or anti-discrimination legislation; and
- (c) Claims under any other law affecting or relating to the relationship between an employer and employee.

22 Insurance

22.1 Insurance obligations

The Supplier must, from the Start Date and for the duration of the Term (or for such longer period as specified in the Contract Particulars), effect and have in place the following insurance with insurers authorised and licensed to operate in Australia:

- (a) public and product liability insurance for at least the amount, and for the period, referred to in the Contract Particulars;
- (b) workers compensation insurance as required by Law; and
- (c) any other insurance specified in the Contract Particulars.

22.2 Insurance policies

The Supplier must ensure that its insurance policies provide that insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured.

22.3 Workers compensation insurance

The Supplier must ensure that each of its subcontractors has workers compensation insurance as required by any Laws.

22.4 Supplier to provide evidence of cover

- (a) The Supplier will provide Seqwater with certificates of currency outlining policy inclusions, exclusions, endorsements and limits that are relevant to the supply of Goods under this Contract and advise Seqwater of the applicable deductible (or excess) amount, for each of the insurance policies the Supplier is required to effect under this Contract within 7 days after:
 - (i) the date of this Contract;
 - (ii) a renewal or amendment of a policy; or
 - (iii) a request by Seqwater.
- (b) If the Supplier fails to produce evidence of insurance, Seqwater may withhold payment to the Supplier until the Supplier produces evidence of compliance with its insurance obligations.

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22.5 Warranty

The Supplier warrants that any exclusions and deductibles that may apply to the insurance policies it holds in accordance with this Contract, will not impact on the Supplier's ability to meet any claim or otherwise prejudice Seqwater's rights under this Contract.

22.6 Supplier to keep Seqwater informed

The Supplier must promptly inform Seqwater in writing:

- (a) if any insurance policy required by this Contract is materially modified or cancelled; and
- (b) on becoming aware of any occurrence relevant to the Goods or this Contract which may give rise to a claim under any insurance policy required by this Contract and must keep Seqwater fully informed of subsequent developments concerning any such claim.

22.7 Supplier acts or omissions

The Supplier must not do or permit anything to be done (including any omission) which:

- (a) may result in any insurance being vitiated or rendered void or voidable; or
- (b) would give rise to an entitlement by an insurer to avoid payment of part or all of any claim.

23 Force majeure

23.1 No liability for breach during Force Majeure Event

Subject to **clauses 23.2** and **23.3**, a Party will not be liable for any delay in or for any failure to perform its obligations under this Contract to the extent that the Party is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.

23.2 Obligations on Party claiming Force Majeure

A Party prevented from performing any of its obligations under this Contract by a Force Majeure Event must:

- (a) continue to perform all unaffected obligations;
- (b) use reasonable endeavours to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the other Party;
- (c) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as possible; and
- (d) notify the other Party as soon as it is no longer affected by the Force Majeure Event.

23.3 Option to terminate

If a Force Majeure Event substantially prevents, hinders or delays performance of this Contract for a period in excess of five Business Days then Seqwater may, at its option, immediately terminate this Contract in whole or in part by written notice to the Supplier.

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23.4 No relief for Supplier from performance

The Supplier will not be relieved from performance of its obligations under this Contract following the occurrence of a Force Majeure Event if such obligations could have been performed by invoking disaster recovery procedures reasonably expected of a competent, qualified and experienced provider of the Goods.

23.5 Priority

In the event of any shortage of the Goods or the Materials or other resources necessary for the Supplier to meet its obligations under this agreement caused by a Force Majeure Event, the Supplier warrants that it will supply the Goods, Materials or other resources on a pro rata basis among its customers, including Seqwater.

24 Subcontracting

24.1 Restriction on subcontracting

- (a) The Supplier must not subcontract the whole or any part of the performance of its obligations under this Contract unless Seqwater has given its prior written approval to the proposed subcontracting and the proposed subcontractor.
- (b) Seqwater may provide written approval of the proposed subcontracting and the proposed subcontractor at its discretion and subject to such conditions as Seqwater determines.
- (c) Any subcontract entered into by the Supplier must be in writing and duly executed by the Supplier and the approved subcontractor.

24.2 Subcontracts to be provided to Seqwater

The Supplier must provide a copy of any subcontract it enters into, or proposes to enter into, with any subcontractor where under that subcontract it is proposed or contemplated that any of the Goods will be supplied by the subcontractor.

24.3 Supplier remains liable for subcontractors

The Supplier will not be relieved of any of its liabilities or obligations under this Contract by virtue of any subcontract or any approval to a subcontractor given by Seqwater. The Supplier acknowledges and agrees that it will be liable to Seqwater for all acts and omissions of a subcontractor, or any employee or agent of a subcontractor, as fully as if they were the acts or omissions of the Supplier.

24.4 Supplier responsible for subcontractors

The Supplier is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for supervising and managing the subcontractor to ensure that the work performed by the subcontractor meets the requirements of Seqwater and all applicable Laws, including Work Health and Safety Law and Heavy Vehicle Law.

25 Assignment

25.1 Assignment by Seqwater

Seqwater may assign any of its rights, or may novate its rights and obligations, under this Contract without the consent of the Supplier. The Supplier must execute all

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documents necessary to give effect to any novation or assignment permitted under this **clause 25.1**.

25.2 Restriction on assignment by the Supplier

- (a) The Supplier must not assign any of its rights, or novate any of its rights and obligations, under this Contract without the prior written consent of Seqwater.
- (b) Seqwater's consent under **clause 25.2(a)** must not be unreasonably withheld.
- (c) Any purported dealing in breach of this **clause 25.2** is void and of no effect.

26 Notices

26.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract:

- (a) must be in writing, expressed in the English language;
- (b) must be addressed as set out in the Contract Particulars;
- (c) must be signed by (or in the case of email, sent by) the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party;
- (d) must 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 26.1(b)**, except that communications pursuant to **clause 19** cannot be sent by email; and
- (e) 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;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email) on the day and at the time the delivery receipt confirmation is received (provided there is no out of office or delivery failure notice),

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

26.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Contract may be served by any method contemplated by

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this **clause 26** or in accordance with any applicable Law, except for an initiating process or document which must not be sent by email.

27 Performance measurement

27.1 Application

Clauses 27.2 to 27.4 only apply if stated in **Schedule 2**.

27.2 Performance measurement

- (a) The Supplier must:
- (i) make and keep accurate records of its performance against the KPIs; and
 - (ii) provide Seqwater with reports of the Supplier's performance against the KPIs for the relevant Reporting Period (**Performance Report**).
- (b) Each Performance Report must be:
- (i) provided within 10 Business Days of the end of the relevant Reporting Period; and
 - (ii) in a format reasonably acceptable to Seqwater.
- (c) Seqwater may, in accordance with **clause 28.1** require an audit or inspection of the Supplier's records in order to verify the accuracy of the Performance Report.

27.3 Amendment of KPIs and Reporting Periods

The Parties may agree in writing to vary the KPIs or Reporting Periods.

27.4 Purpose of KPIs

- (a) Seqwater may use the Performance Reports for any purpose, including in connection with any decision to contract with the Supplier for any goods or services.
- (b) The Parties agree that:
- (i) a failure by the Supplier to meet any KPI:
 - (A) will not be a breach of this Contract unless such failure is a breach of another provision of this Contract; and
 - (B) is not a precondition to Seqwater becoming entitled to exercise, and the KPIs in no way limit, Seqwater's rights under or in relation to this Contract; and
 - (ii) the Supplier will not be entitled to any abatement, incentive or other benefit by meeting or exceeding, or otherwise by reference to, the KPIs.

28 General

28.1 Audit and inspection

- (a) Upon Seqwater giving no less than seven days' notice to the Supplier, the Supplier must, during normal business hours or as otherwise agreed between the Parties, permit and provide persons nominated by Seqwater (**Auditors**) access to the Supplier's premises, books, records, documents, computer systems,

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equipment and other property and Materials to verify compliance by the Supplier with its obligations under this Contract and the capacity of the Supplier to continue to comply with its obligations in the future.

- (b) The Auditors may inspect and make copies of books, records, documents and other Materials, and the Supplier will provide the Auditors with the necessary facilities and resources to enable them to do so.

28.2 No authority to bind Seqwater

The Supplier does not have the authority to bind Seqwater by contract or otherwise. The Supplier will not represent to any party that the Supplier is an employee or agent of Seqwater.

28.3 Seqwater may act

Seqwater may, either itself or by a third party, perform an obligation which the Supplier was obliged to perform but which it failed to perform. The reasonable costs, expenses and damages suffered or incurred by Seqwater in performing such an obligation will be a debt due from the Supplier to Seqwater.

28.4 Duty

- (a) The Supplier as between the Parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Seqwater) on or relating to this Contract, any document executed under them or any dutiable transaction evidenced or effected by them.
- (b) If Seqwater pays any such duty, the Supplier must pay that amount to Seqwater on demand.

28.5 Legal costs

Each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Contract.

28.6 Waiver and exercise of rights

- (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 Contract 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 Contract.
- (b) A waiver or consent given by a Party under this Contract 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 Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.
- (d) A Party is not liable for any Loss 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.
- (e) This **clause 28.6** survives expiry or termination of this Contract.

28.7 Rights cumulative

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

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28.8 Consents

A consent required under this Contract from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its absolute discretion) thinks fit, unless this Contract expressly provides otherwise.

28.9 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Contract.

28.10 Severance

- (a) Any provision of this Contract that is or becomes illegal is severed from this Contract.
- (b) If at any time a provision of this Contract 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 Contract; or
 - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

28.11 International Sale of Goods Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

28.12 Governing law and jurisdiction

- (a) This Contract 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 Contract; 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 28.12(b)(i)**.

28.13 Counterparts, facsimile and email

- (a) This Contract may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.
- (b) A Party who has executed a counterpart of this Contract 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

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Contract 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.

28.14 Entire Agreement

This Contract supersedes all previous agreements for its subject matter and embodies the entire agreement between the Parties.

28.15 Relationship of the Parties

Nothing in this Contract is intended to create a partnership, joint venture or agency relationship between the Parties.

28.16 Disclaimers in documents

The Supplier must not, and must ensure that its subcontractors and sub-consultants (including the Supplier Personnel) do not, in relation to any design, document, report, drawing or diagram relating to the Goods:

- (a) include within any such design, document, report, drawing, or diagram; or
- (b) otherwise seek to assert or enforce (excluding **clause 15**),

any kind of limitation of liability, disclaimer, restriction as to use or reliance or any provision relating to Intellectual Property Rights (**Disclaimer**) that is inconsistent with a provision of this Contract and any such Disclaimer will be void and of no effect for the purposes of this Contract.

28.17 Survival

Termination or expiry of this Contract will not affect the operation of **clauses 9, 12, 14, 15, 16, 19, 21** and **22** or any rights or remedies already accrued to either Party under, or in respect of any breach of, this Contract.

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Schedule 1 - Contract Particulars

This schedule is subject to the terms and conditions of the Contract and should be read in conjunction with those terms and conditions.

| | |
|--|--|
| Seqwater Representative | Name: (insert name) Position: (insert position) Address: (insert address) Telephone number: (insert number) Email: (insert address) |
| Supplier | Name: (insert Supplier name) ABN: (insert ABN) Address: (insert address) |
| Supplier Representative | Name: (insert name) Position: (insert position) Address: (insert address) Telephone number: (insert number) Email: (insert address) |
| Start Date | (insert Start Date) OR The last date of execution of this Contract by both Parties |
| Term (clause 2) | (insert Term) |
| Menu of Goods | (insert Menu of Goods) OR The Menu of Goods set out in Annexure A to Schedule 1. |
| Schedule of Rates | (insert Schedule of Rates) OR The Schedule of Rates set out in Annexure B to Schedule 1 |
| Particulars for delivery of notices (clause 26.1) | <p>Seqwater</p> <p>Delivery address: Level 8, 117 Brisbane Street, Ipswich, QLD 4305</p> <p>Postal address: PO Box 328, Ipswich QLD 4305</p> <p>Email: (insert address)</p> <p>Fax: (insert number)</p> <p>Attention: (insert name of Seqwater Representative)</p> <p>Supplier</p> <p>Delivery address: (insert address)</p> <p>Postal address: (insert address)</p> |

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| | | | | |
|--|--|-------------|-------------------------------|-------------------------------------|
| | Email: (insert address) Fax: (insert number) Attention: (insert name of Supplier Representative) | | | |
| Insurance (clause 22) Public and Product Liability Insurance Workers Compensation Other | Amount: \$(insert amount) for each occurrence <i>[Minimum is \$10,000,000. If nothing stated, \$10,000,000.]</i> Period: From the Start Date until the expiry of the Defects Liability Period As required by Law. Cover: (insert type of insurance) Amount: \$(insert amount) for each occurrence Period: From the Start Date until the expiry of the Defects Liability Period <i>[If nothing stated, Nil.]</i> | | | |
| Contract Price (clause 10.1) | \$(insert amount) GST inclusive OR refer to amounts in the Schedule of Rates | | | |
| Delivery Date | (insert Delivery Date) | | | |
| Delivery Point | (insert Delivery Point) | | | |
| Defects Liability Period (clause 8.2) | (insert Defects Liability Period) <i>[If nothing stated, 52 weeks.]</i> | | | |
| Capped Amount (clause 19.5(b)) | The lower amount of: (i) (insert percentage)% of the Contract Price; or (ii) \$(insert fixed amount). | | | |
| Additional Requirements | (insert any additional requirements) | | | |
| Goods to be supplied under this Contract | Unit | Quantity | Unit Price \$ (GST inclusive) | Total Unit Price \$ (GST inclusive) |
| | | | | |
| | | | | |
| | Item | Each | \$XX | \$XX |

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**Tax invoice details
(clause 12.5)**

Payee: Queensland Bulk Water Supply Authority trading as
Seqwater ABN 75 450 239 876

Attention: payables@seqwater.com.au

CC: (insert name)@seqwater.com.au

Contract number: (insert contract number)

Please quote the contract order number (which will be provided to
you post contract execution) on all invoices to ensure prompt
payment.

Example

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Annexure A to Schedule 1 - Menu of Goods

Example

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Annexure B to Schedule 1 - Schedule of Rates

Example

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Schedule 2 - Performance Measurement Framework

| | |
|--|---|
| Application of Performance Management Framework | <input type="checkbox"/> Clauses 27.2 to 27.4 apply. <input type="checkbox"/> Clauses 27.2 to 27.4 do not apply. <i>[If neither box is checked, clauses 27.2 to 27.4 do not apply.]</i> |
| KPIs | (Insert relevant KPIs / examples) OR To be determined by the Parties after the Start Date. |
| Reporting Periods | The Supplier must report its performance against the KPIs [annually / quarterly / monthly] starting on the date that is [the first anniversary of / three months after / one month after] the Start Date. OR The Supplier must report its performance against the KPIs for the following periods: <ul style="list-style-type: none"> • (insert date) to (insert date) • (insert date) to (insert date) • (insert date) to (insert date) • (insert date) to (insert date) |

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Executed as an agreement.

Executed by **QUEENSLAND BULK WATER SUPPLY AUTHORITY TRADING AS SEQWATER ABN 75 450 239 876** by its duly authorised officer in the presence of:

Signature witness

Signature of authorised officer

Name of witness in full (print)

Name and position of authorised officer in full (print)

Date:

[Note: If the Supplier is a corporation use the execution clause below]

Executed by **[Insert Supplier Name] ACN [insert 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)

Date:

[Note: If the Supplier is an individual use the execution clause below]

Signed by **[NAME]** in the presence of:

Witness

Signature of **[NAME]**

Name of Witness

Date:

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