



# Fairbairn Irrigation Network Standard Customer Distribution and Drainage Contract for the Emerald Channel Scheme

Made under section 738I of the Water Act  
Standard Conditions: Version 1.0

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# Fairbairn Irrigation Network Standard Customer Distribution and Drainage Contract for the Emerald Channel Scheme

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# Background

## A What is this document?

- (a) This Agreement is an irrigation entity document and a Supply Contract for the Channel Scheme for the purposes of section 738I of the Water Act. It sets out the terms and conditions on which the Scheme Owner will provide the Distribution Services and other services, including Drainage Services to the Customer.
- (b) This Agreement takes effect as a contract between the Scheme Owner and the Customer either by operation of statute or by agreement in the circumstances outlined in paragraph B.1 below.
- (c) An entity may become a Customer for the purposes of this Agreement in the circumstances outlined in paragraph B.2 below.

*[Explanatory Notes: A list of defined terms used in this Agreement is set out in clause 32 of the Standard conditions starting on page 50. A summary of the key Channel Scheme specific details for this Agreement is set out in the Channel Scheme Specific Details Table starting on page 3.]*

## B Agreement may take effect by statute or agreement

### B.1 How this Agreement takes effect

An entity (the **Customer**) may become a party to, and bound by, this Agreement with the Scheme Owner in any of the following ways:

- (a) **(initial customers on the LMA Start Date)**: pursuant to section 738I(5) of the Water Act if the Customer is the holder of a water allocation to whom water:
  - (i) was supplied under the Resource Operations Licence immediately before the LMA Start Date; and
  - (ii) continues to be supplied under the Distribution Operations Licence after the LMA Start Date; or

*[Explanatory Notes: The LMA Start Date is the day on which local management arrangements commence for the Channel Scheme. The LMA Start Date for the Channel Scheme is set out in the Channel Scheme Specific Details Table starting on page 3.]*

- (b) **(new water allocation after the LMA Start Date)**: pursuant to section 738I(7) of the Water Act if:
  - (i) the Customer is the holder of a new water allocation which came into existence after the LMA Start Date; and
  - (ii) water is or is to be supplied to the holder of that new water allocation under the Distribution Operations Licence; or
- (c) **(lease or transfer of water allocation)**: pursuant to section 738I(9) of the Water Act if the holder of a water allocation the subject of a Standard

Distribution Contract transfers or leases the water allocation to the Customer; or

*[Explanatory Notes: This paragraph B.1(c) is relevant where an existing customer of the Channel Scheme transfers or leases its allocation to another person (who will be the 'Customer' for the purposes of this Agreement through the operation of section 738I(9) of the Water Act).]*

- (d) **(by agreement)**: if the Scheme Owner and the Customer otherwise agree and enter into this Agreement.

*[Explanatory Notes: It may be appropriate for the Scheme Owner and the Customer to agree and enter into this Agreement if, for example, an existing water allocation where the location for taking water under the allocation is outside the Channel Scheme is changed so that the location for taking water under the allocation is within the Channel Scheme.]*

## **B.2 Who is the Customer?**

The **Customer** is:

- (a) if this Agreement takes effect as contemplated in paragraph B.1(a), the registered holder of the relevant water allocation;
- (b) if this Agreement takes effect as contemplated in paragraph B.1(b), the registered holder of the new water allocation;
- (c) if this Agreement takes effect as contemplated in paragraph B.1(c), the registered transferee or registered lessee (as applicable) of the water allocation; or
- (d) if this Agreement takes effect as contemplated in paragraph B.1(d), the entity who entered into this Agreement as the Customer.

## **B.3 Statutory Contract vs Contract by Agreement**

- (a) This Agreement is a **Statutory Contract** if it takes effect as contemplated in paragraph B.1(a), B.1(b) or B.1(c).
- (b) This Agreement is a **Contract by Agreement** if it takes effect as contemplated in paragraph B.1(d).

## **C Drainage services**

- (a) Under section 738J of the Water Act, this Agreement may also provide that the Scheme Owner may charge the Customer a fee for providing Drainage Services under this Agreement.
- (b) Drainage Services are relevant if the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area.

*[Explanatory Notes: If a person receives drainage services but is not the holder of a water allocation, please refer to the separate 'Drainage Services Contract: Emerald Channel Scheme' published on the Scheme Owner's Website.]*

## Channel Scheme Specific Details Table

1	Channel Scheme	<p>(a) The Emerald channel scheme is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Nogoia Mackenzie water supply scheme.</p> <p>(b) For paragraph (a), the Nogoia Mackenzie water supply scheme is the irrigation infrastructure by which water is supplied from Fairbairn Dam to the customers.</p>
2	Scheme Owner	Fairbairn Irrigation Network Limited (ACN 615 973 754)
3	Declared Drainage Area	<p>The Emerald Valley drainage area, shown on AP4146 or such updated map defining the current Declared Drainage Area as may be published on the Scheme Owner's Website from time to time to reflect any agreement between the Scheme Owner and the owner of the relevant land within the Declared Drainage Area to exclude all or part of that land from the Declared Drainage Area.</p> <p><i>[Explanatory Notes: The relevant map of the drainage area is available on the Scheme Owner's Website.]</i></p> <p>The Declared Drainage Area may varied in accordance with clause 20.1.</p>
4	Drainage Network	The Emerald Valley drainage network provided to remove storm runoff from certain storm events.
5	Drainage Services	<p>Surface drainage via the drainage network as described below.</p> <p>The Emerald Valley drainage network has been provided to remove storm runoff from certain storm events. The Customer is required to discharge water from its farm block(s) through the drainage inlet provided. New drainage inlets are funded by the Customer but become the property of the Scheme Owner for ongoing maintenance.</p>
6	Water Plan	Water Plan (Fitzroy Basin) 2011
7	Water Year	The water year stated in the Water Plan from time to time or, if none is so stated, the year from time to time nominated by the Scheme Owner. As at the Commencement Date, the Water Year starts at 1 July.

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8	LMA Start Date	1 July 2019, being the day on which local management arrangements commence for the Channel Scheme and the declared transfer day for the Channel Scheme under section 722 of the Water Act.
9	Billing interval	Quarterly
10	Scheme Owner's Website	<a href="http://www.fairbairnirrigation.com.au">www.fairbairnirrigation.com.au</a>

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# Annexure A

## Details of current charges – 1 July 2019 – 30 June 2020

Name of charge	Charge
1 Minimum Charge	Not applicable
2 Distribution Fixed Charges	\$25.00 per ML of Medium Priority Water Allocation \$36.27 per ML of High Priority Water Allocation
3 Distribution Consumption Charges	\$6.71 per ML of water used
4 Drainage Charges	The following escalated in accordance with clause 9.3 prior to 1 July 2019: <ul style="list-style-type: none"> <li>• \$28.10 per hectare for Irrigable Land, and</li> <li>• \$6.85 per hectare for Non-irrigable Land, in the Declared Drainage Area.</li> </ul>
5 Other Distribution Charges (clauses 5.1(a) to 5.1(d))	For the <b>disconnection services</b> including the removal of meter outlet: Price varies depending on the costs of disconnection.  For <b>meter testing</b> the minimum charge is \$143 per hour.  For <b>new or additional meter application</b> \$778.00 (GST inclusive) (excluding costs for design, construction and installation which are charged separately)  Otherwise, as notified from time to time in accordance with this Agreement.
6 If there are services referred to in clause 5.1(e)	As notified from time to time in accordance with this Agreement.
7 Administration charge referred to in clause 6.10	As notified from time to time in accordance with this Agreement.
8 Additional Charges referred to in clause 15	As notified from time to time in accordance with this Agreement.

# Standard conditions

## 1 Distribution Services and Drainage Services

### 1.1 Distribution Services

- (a) The Scheme Owner must divert, on behalf of the Customer, such volume of water into the Distribution Network as the Scheme Owner reasonably estimates will satisfy the likely demand of the Customer from time to time.
- (b) The Customer accepts that the diversion of water by the Scheme Owner is subject to:
  - (i) the Water Instruments and the Water Legislation;
  - (ii) the water available under the Customer's Bulk Water Contract;
  - (iii) the capacity of the Distribution Network from time to time;
  - (iv) the Scheme Owner's estimate of the likely demand of other customers within the Distribution Network; and
  - (v) this Agreement.

### 1.2 Drainage Services

- (a) If the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area:
  - (i) the Scheme Owner must supply the Drainage Services in respect of the Customer's Drainage Services Land; and
  - (ii) the Customer must pay the Drainage Charges, in accordance with this Agreement.
- (b) The Customer accepts that the provision of Drainage Services by the Scheme Owner is subject to:
  - (i) the Water Instruments and the Water Legislation;
  - (ii) the Customer discharging water as set out in the description of the Drainage Services in item 5 of the Channel Scheme Specific Details Table; and
  - (iii) this Agreement.

## 2 Overall statutory framework for the Services

In the performance of this Agreement, the Scheme Owner and the Customer acknowledge that, under the Water Legislation, each party is required to comply with the Water Legislation (including the Water Instruments as applicable).

## 3 Customer's obligations

### 3.1 Taking water

The Customer:

- (a) may take only the water the Customer is entitled to take under the Customer's Bulk Water Contract through the Distribution Network and the Customer's Offtake Works;
- (b) in taking water, must comply with:
  - (i) the approval or any variation of that approval under clause 11.4, including the configuration, specifications of and maximum diversion rate from the Customer's Offtake Works;
  - (ii) this Agreement;
  - (iii) each State Direction; and
  - (iv) the Scheme Distribution Rules.
- (c) must not take more than the Customer's Maximum Allocation, except as allowed by this Agreement;
- (d) must not take water until the Customer's Bulk Water Contract has become unconditional;
- (e) where a system for the ordering of water is in place under the Scheme Distribution Rules:
  - (i) must take water only to the extent the Customer has complied with the ordering system;
  - (ii) must not take water at a rate or volume greater than the amount ordered;
  - (iii) must take reasonable measures to take all water that has been ordered by the Customer, unless:
    - (A) it is unreasonable for the Customer to take water; or
    - (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 purposes; or
    - (D) as provided for under the Scheme Distribution Rules;
  - (iv) agrees that all water ordered will be accounted for under:
    - (A) the water sharing rules administered under the Resource Operations Licence; and
    - (B) the water sharing rules administered under the Distribution Operations Licence; and

- (f) where access conditions for restricting the taking of water are in place under the Scheme Distribution Rules, must:
  - (i) take water only to the extent the Customer has complied with the access conditions;
  - (ii) take water only at the rate and times to which the Customer is entitled under the access conditions at the available pressure; and
  - (iii) not take more water than the amount to which the Customer is entitled under the access conditions.

### **3.2 Customer not to cause breach of Water Legislation or Water Instruments**

The Customer must not, by any act or omission, cause the Scheme Owner to breach any Law, including the Water Legislation, Water Instruments, *Environmental Protection Act 1994* (Qld) or *Environmental Protection Regulation 2008* (Qld).

### **3.3 Diversion and authority to release water**

The Customer:

- (a) exclusively authorises the Scheme Owner to divert, on the Customer's behalf, water available to the Customer under the Customer's Bulk Water Contract; and
- (b) irrevocably authorises the Scheme Owner to order on behalf of the Customer a release of water under the Customer's Bulk Water Contract.

## **4 Other agreements between the Customer and Scheme Owner**

Where the Customer and the Scheme Owner have made an agreement (including a Standard Distribution Contract which is deemed by statute to be in place), whether before or after the effective date of this Agreement, in addition to this Agreement, which relates to water within the DOL Area, then:

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

## 5 Other services

### 5.1 Other Distribution Services

If the Customer is not in breach of this Agreement and the Customer makes a request to the Scheme Owner to provide the relevant service under this clause 5.1, then the Scheme Owner must provide:

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

## 6 Charges

### 6.1 Charges and other money due

The Customer must pay the Scheme Owner:

- (a) for the Distribution Services, the Distribution Charges;
- (b) for the Drainage Services (if the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area), the Drainage Charges;
- (c) for the services referred to in clauses 5.1(a) to 5.1(d), the relevant Other Distribution Charges;
- (d) for the services referred to in clause 5.1(e), where:
  - (i) the Scheme Owner has indicated that it is prepared to offer the further service; and
  - (ii) the Scheme Owner has stated the terms of providing the further service, including the price and payment of a deposit;  
the price stated if it is a fixed price, otherwise a reasonable price (as determined by the Scheme Owner) having regard to the cost (including administration and overhead costs) to the Scheme Owner in undertaking the further service;
- (e) any administration charge referred to in clause 6.10;
- (f) the Additional Charges for any additional water taken as contemplated in clause 15; and

- (g) any money due by the Scheme Owner to the holder of the Resource Operations Licence where the Scheme Owner has diverted water that has been taken by the Customer.

## **6.2 Calculation and payment of Charges**

- (a) Distribution Fixed Charges are calculated and payable in advance for the relevant period in which the invoice is rendered.
- (b) Distribution Consumption Charges and Additional Charges are rendered in arrears for the period for which meter readings have been taken on behalf of the Scheme Owner.
- (c) The balance payable for Other Distribution Charges for Other Distribution Services are rendered in arrears after performance of the services.
- (d) Drainage Charges (if applicable) are calculated and payable in advance for the relevant period in which the invoice is rendered.

## **6.3 Invoicing**

The Scheme Owner may, unless otherwise required by Law, render an invoice to the Customer for:

- (a) Distribution Charges, Drainage Charges (if applicable) and Additional Charges:
  - (i) subject to clause 6.3(a)(ii), at approximately the Billing Interval or as published in the Scheme Distribution Rules;
  - (ii) to the extent the Distribution Charges are the Minimum Charge, annually in arrears (subject to clause 6.4); and
- (b) Other Distribution Charges, after performance of the Other Distribution Services.

## **6.4 Payment on account for Minimum Charge**

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

## **6.5 Re-invoicing after errors**

- (a) If an error is discovered in any invoice within 2 years from the date of the invoice, the Scheme Owner may issue a subsequent invoice, with an amount reflecting the error.
- (b) If the error is such that the Scheme Owner is to reimburse the Customer, reimbursement may be effected by carrying the reimbursable amount forward to be set off against amounts payable on the next invoice or by refunding the reimbursable amount on request by the Customer. Such a request may be made by telephone or in writing to the Scheme Owner.
- (c) If the error is such that the Customer is obliged to pay the Scheme Owner an additional amount, then the Scheme Owner must invoice the

Customer for the amount, with the amount becoming due as provided for in clause 6.6.

## **6.6 Payment**

- (a) The Customer must pay invoices within 30 days after the date of the invoice.
- (b) Where the Customer notified the Scheme Owner of a dispute about the invoice under clause 27, the Customer must pay to the Scheme Owner the undisputed amount in accordance with this clause 6.6. Once the dispute is resolved, the agreed amount outstanding must be paid within 30 days.

## **6.7 Interest on arrears**

Any amounts charged to the Scheme Owner under clause 21.1, if not paid by the Customer when due, will accrue interest at either the rate applicable to such amount under any agreement between the Customer and the Scheme Owner or otherwise at the Overdue Rate, calculated on a daily basis and compounded at the end of each calendar month, from the due date for payment up to and including the date the unpaid amount is paid. The Scheme Owner may include interest payable under this clause 6.7 in an invoice subsequently forwarded to the Customer.

## **6.8 Charges for water ordered but not taken**

- (a) If, in the Scheme Owner's reasonable opinion, the failure to take water by the Customer in accordance with clause 3.1(e)(iii) represents a risk that:
  - (i) the Scheme Owner is in breach of its obligation under any Law; or
  - (ii) the Scheme Owner is in breach of the obligations under the Distribution Operations Licence; or
  - (iii) the rights and interests of other customers within the Distribution Network will be adversely affected,

then, the Scheme Owner may exercise a right to require the Customer to pay the Distribution Consumption Charges for all water ordered but not taken by the Customer. If the relevant charge is included in an invoice issued by the Scheme Owner within 3 months of the end of the Water Year, the Customer must pay the relevant charge.

- (b) However, nothing in this clause 6.8 limits any other rights of the Scheme Owner under this Agreement or otherwise against the Customer in relation to any such breach. In particular, the Scheme Owner may require the Customer to pay an amount equal to the costs reasonably incurred by the Scheme Owner in complying with the Customer's order, less the relevant charge for Distribution Consumption Charges.

## **6.9 Consequences for water ordered but not taken**

Where the Scheme Owner forms the opinion referred to in clause 6.8, and the sum of:

- (a) the water ordered but not taken; and
- (b) the water taken,

exceeds the total of the Customer's Maximum Allocation, the Customer is deemed to be in breach of clause 3.1(c).

#### **6.10 Administration charge for information or dealing with approval**

Where information or an approval is to be provided by the Scheme Owner under this Agreement or by Law, the Customer must pay to the Scheme Owner an administration charge for the information or dealing with the approval as published from time to time in accordance with clause 9.1, if any.

## **7 Term**

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

## **8 Changes to contract conditions**

### **8.1 Changes to contract conditions**

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

### **8.2 Notice and publication of New Contract Conditions**

- (a) Subject to clauses 8.2(b) and 8.4, where, after consultation with the Customer or a group representing customers within the Distribution Network, the Scheme Owner has determined new terms and conditions which should apply to the Distribution Services (**New Contract Conditions**), the Scheme Owner:
  - (i) must by written notice given to the Customer at least 3 months before the proposed date for when the New Contract Conditions will take effect (**New Contract Conditions Effective Date**), notify the Customer of:
    - (A) the New Contract Conditions; and
    - (B) the New Contract Conditions Effective Date; and
  - (ii) must publish:
    - (A) the New Contract Conditions; and
    - (B) the New Contract Conditions Effective Dateon the Scheme Owner's Website at least 3 months before the New Contract Conditions Effective Date.



- (b) If this Agreement has previously been amended as contemplated in this clause 8.2 and clause 8.3(b) (**previous amendment**), the Scheme Owner may not further amend this Agreement as contemplated in this clause 8.2 and clause 8.3(b) (**current amendment**) unless:
  - (i) the New Contract Conditions Effective Date for the previous amendment occurred at least five calendar years before the New Contract Conditions Effective Date for the current amendment; or
  - (ii) the Customer has consented to the current amendment.

### **8.3 Customer's response to New Contract Conditions**

- (a) The Customer may, before the relevant New Contract Conditions Effective Date, notify the Scheme Owner in writing that the Customer does not accept the New Contract Conditions (**New Contract Conditions Objection Notice**).
- (b) Unless a New Contract Conditions Objection Notice is given before the relevant New Contract Conditions Effective Date in accordance with clause 8.3(a), as and from the relevant New Contract Conditions Effective Date, this Agreement is deemed to be amended to reflect the New Contract Conditions.
- (c) If a New Contract Conditions Objection Notice is given before the relevant New Contract Conditions Effective Date in accordance with clause 8.3(a), then this Agreement will not be amended to reflect the New Contract Conditions and, as between the Scheme Owner and the Customer:
  - (i) the parties will continue to be bound by; and
  - (ii) the Scheme Owner will continue to supply Services to the Customer on,  
  
the terms of this Agreement without any amendment to reflect the New Contract Conditions.

### **8.4 Other amendments**

Notwithstanding clauses 8.1 to 8.4, this Agreement may be amended by:

- (a) another agreement executed by all parties; or
- (b) as reasonably required by the Scheme Owner, after consultation, where there has been a Change in Law.

### **8.5 Process for New Contract Conditions not limit changes to Charges**

Nothing in this clause 8 limits the ability of the Scheme Owner to make or amend from time to time all or any of the Charges in accordance with clause 9.

## 9 Changes to the Charges

### 9.1 Scheme Owner may make or amend Charges

- (a) Subject to clause 9.1(b), the Scheme Owner may make or amend any one or more of the Charges from time to time.
- (b) The Scheme Owner may not make or amend:
  - (i) the Distribution Consumption Charges; or
  - (ii) the Distribution Fixed Charges,unless:
  - (iii) the relevant Amended Charges Effect Date for that change is a Yearly Review Date; or
  - (iv) the Scheme Owner has determined that the change is required as a result of a Change in Law as described in paragraph (b) of that definition.

### 9.2 Process to make or amend Charges

- (a) If the Scheme Owner has determined that:
  - (i) a Charge should be amended; or
  - (ii) a new Charge should be introduced,**(Amended Charges)**, the Scheme Owner:
  - (iii) must, by written notice given to the Customer at least 6 months before the proposed date for when the Amended Charges will take effect (**Amended Charges Effective Date**), notify the Customer of the Amended Charges; and
    - [Explanatory Notes: If the Amended Charges is an amendment of the Distribution Consumption Charges or Distribution Fixed Charges, the Amended Charges Effective Date is subject to clause 9.1(b).]*
  - (iv) must publish:
    - (A) the Amended Charges; and
    - (B) the Amended Charges Effective Date,on the Scheme Owner's Website at least 6 months before the Amended Charges Effective Date.
- (b) In determining the Amended Charges, the Scheme Owner must:
  - (i) act reasonably; and
  - (ii) have regard to the pricing principles which would be taken into account under any statutory regime for prices oversight from time to time applying in Queensland.
- (c) The Scheme Owner's determination of the Amended Charges is final and binding on the parties unless the determination is manifestly unreasonable having regard to the criteria which would be taken into

account under any statutory regime for prices oversight from time to time applying in Queensland.

### **9.3 Index review of the Charges**

As and from each 1 July (**Indexation Date**), unless there has been an Amended Charges Effective Date in the 12 months period immediately before the Indexation Date, each of the Charges (including the Distribution Consumption Charges and Distribution Fixed Charges) will be increased by the proportion by which the Index Number last published for the quarter commencing the 1 April occurring immediately before the Indexation Date has increased, over the Index Number published for the quarter commencing on the later of:

- (a) 1 April immediately before the last Indexation Date (provided that, in the case of the first Indexation Date, the 1 April referred to in this clause 9.3(a) will be the 1 April immediately before the Commencement Date); or
- (b) the 1 January, 1 April, 1 July or 1 October immediately before the last Amended Charges Effective Date (if any).

## **10 Changes to the Scheme Distribution Rules**

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

- (a) implementing the Scheme Owner's rights and obligations regarding the operation of the Distribution Network and Drainage Network;
- (b) setting out, clarifying or amending the rights and obligations of the Scheme Owner and the Customer under this Agreement; and
- (c) guidelines for the exercise of the Scheme Owner's discretion under this Agreement,

provided that the Scheme Distribution Rules:

- (d) are not inconsistent with any Law applying to the operation of the Distribution Network or Drainage Network; and
- (e) have been the subject of consultation with the Customer or any group representing customers within the Distribution Network (if such group exists).

## **11 Distribution Network and Customer's Offtake Works**

### **11.1 Customer not to damage**

The Customer must not damage, or by any act or omission permit damage to, the Distribution Network.

## **11.2 Customer to notify of damage**

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

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

## **11.3 Activities or services for operation of Distribution Network**

Where the Customer, at the Scheme Owner's request, carries out activities or performs services for the operation of the Distribution Network, the Customer must carry out such activities and services reasonably and promptly and with proper care and attention.

## **11.4 Customer's Offtake Works to be approved**

- (a) Before installing or altering the Customer's Offtake Works, the Customer must obtain the prior written approval of the Scheme Owner to the Customer's Offtake Works, including the configuration, specifications of and maximum diversion rates for any pump included in the Customer's Offtake Works, which approval may not be unreasonably withheld.
- (b) The maximum diversion rate under clause 11.4 may be varied from time to time:
  - (i) by agreement between the parties under this clause 11.4; and
  - (ii) either for a fixed period of time or on a permanent basis, provided the variation does not breach a Law or have the potential to adversely impact on another person.

## **11.5 Operation and maintenance of Customer's Offtake Works**

The Customer must:

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

## **11.6 Miscellaneous provisions for clause 11**

- (a) Nothing in clause 11.1 or 11.3 makes the Customer liable to the Scheme Owner for an Event of Force Majeure or for operating the Distribution Network in accordance with the Scheme Owner's instructions in clause 11.3.
- (b) An example of "omission", as used in clause 11.1, is the failure to maintain the Customer's Offtake Works.

### **11.7 Access by Customer to the Customer's Offtake Works**

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

## **12 Meter and measurement**

### **12.1 Meter installation**

- (a) Unless this requirement is waived by the Scheme Owner, a Meter acceptable to the Scheme Owner must be acquired and installed, at the cost of the Customer, within the Customer's Offtake Works or Distribution Network.
- (b) The Customer may:
  - (i) install the Meter itself;
  - (ii) arrange for a third party to install the Meter; or
  - (iii) request the Scheme Owner to install the Meter in accordance with clause 5.1.
- (c) Any party installing (or arranging for the installation of) a Meter must install the same correctly in accordance with the approval under clause 11.4.
- (d) The Scheme Owner's right under clause 12.1(a) includes the right to require the replacement or upgrade of a Meter already installed where such replacement or upgrading is necessary in the reasonable opinion of the Scheme Owner, but at the cost of the Scheme Owner or, where the Customer has breached clause 12.2, the Customer.

### **12.2 No actions affecting Meter**

The Customer must not:

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

An example of "omission", as used in this clause 12.2, is the failure to maintain the Meter.

### 12.3 Ownership of Meter

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

### 12.4 Meter readings

When directed by the Scheme Owner, or as required by the Scheme Distribution Rules (including where the Customer is taking water under a Statutory Right), the Customer must:

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

### 12.5 Access to read, test, repair, calibrate and determine compliance

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

### 12.6 Disclosure of records

- (a) **(By the Scheme Owner):** The Customer authorises the Scheme Owner to make available to:
  - (i) the Regulator;
  - (ii) a holder of a resource operations licence or distribution operations licence in the DOL Area;
  - (iii) any other person as required under any Law; and
  - (iv) with the consent of the Customer, any person proposing a dealing with the Customer's Allocation,

such information and records concerning the Customer, the Customer's Allocation, the Meter and the volumes of water taken, as is required by Law or to which the Customer consents or which may be required for a proposed dealing with the Customer's Allocation.

- (b) **(By the Regulator or other holder):** The Customer authorises the Regulator and a holder of a resource operations licence or distribution operations licence in the DOL Area, with whom the Customer has a contract for the supply or distribution of water, to make available to the Scheme Owner such information and records concerning the Customer, the water entitlement of the Customer under such other contract and a

copy of such other contract, as is required to enable the Scheme Owner to determine whether the Customer has complied with this Agreement or to enable the Scheme Owner to issue an invoice to the Customer.

- (c) **(By the electricity supplier):** The Customer authorises any electricity supplier to supply to the Scheme Owner, particulars of electricity consumption by the Customer for the taking of water.

## **12.7 Reporting malfunction or damage**

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

- (a) where the damage or malfunction is serious, verbally as soon as possible and subsequently in writing within seven days; and
- (b) where the damage is of a minor nature only, in a manner convenient to the Customer be that either in writing or verbally within seven days.

## **12.8 Damage or malfunction**

- (a) The Scheme Owner must promptly repair any damage to, or malfunction in, the Meter of which details are notified to the Scheme Owner.
- (b) The Scheme Owner must repair the Meter at the Scheme Owner's cost, unless clause 11.1 or 12.2 apply.

## **12.9 Removal of Meter on termination**

On termination of this Agreement, the Scheme Owner may remove the Meter and seal off all or any part of the Distribution Network at the cost of the Customer.

## **12.10 Estimate**

- (a) If, for any period during the current Water Year or the most recently completed Water Year only:
  - (i) the Scheme Owner 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) the Scheme Owner has reasonable grounds to believe the Customer has not strictly complied with the requirements of clause 12.2, 12.4 or 12.7,

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

- (b) In making such an estimate, the Scheme Owner 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 27 will apply to an estimate under this clause 12.10.
- (d) Examples of “reasonable grounds” under clause 12.10(a) include:
  - (i) testing of the Meter; or
  - (ii) timing of the Meter against a known discharge; or
  - (iii) where the Meter is not registering and water is being taken.

### **12.11 Customer to assist**

The Customer must:

- (a) upon request by the Scheme Owner, supply to the Scheme Owner any relevant document or information in the possession or control of the Customer, which would assist the Scheme Owner in making an estimate under clause 12.10;
- (b) permit the Scheme Owner or any person authorised by the Scheme Owner to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and
- (c) permit the Scheme Owner or any person authorised by the Scheme Owner to have access to the land of the Customer for any purpose reasonably associated with the performance of this Agreement or carrying out its responsibilities in connection with the management of the Distribution Network.

### **12.12 Testing and calibrating at Customer’s request**

- (a) The Customer may request the Scheme Owner to test and calibrate the Meter. Where the Meter is operating within the manufacturer’s specifications or the Customer has not complied with clause 12.2, the Customer must meet the cost of such testing and calibration, otherwise the cost must be met by the Scheme Owner.
- (b) The Charges payable by the Customer to the Scheme Owner must be adjusted for the current Water Year or the most recently completed Water Year, under clause 12.10, to the extent the Scheme Owner reasonably considers that the Meter has not been operating within the manufacturer’s specification.
- (c) Nothing in this clause 12.12 affects 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 the Scheme Owner to the testing and calibration. Such consent must not be unreasonably withheld by the Scheme Owner.



## 13 Non-diversion authorisations

### 13.1 Suspension or restriction of diversions

The Scheme Owner may suspend or restrict diversions of water by the Scheme Owner on behalf of the Customer and the taking of water by the Customer:

- (a) during maintenance or replacement of either the Distribution Network, or of the water infrastructure of the holder of the Resource Operations Licence in the DOL Area or the Scheme Owner;
- (b) where the holder of the Resource Operations Licence in the DOL Area or the Scheme Owner is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of the Scheme Owner, such diversion or taking:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including the Scheme Owner 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 the Scheme Owner of its obligations under any Law or an agreement;
  - (v) would be impractical considering the level of demand, performance of the Distribution Network (including potential water losses) and the requirements of other customers taking water from the Distribution Network or within the DOL Area at the time; or
  - (vi) would not be allowed under the Water Legislation or Water Instruments;
- (d) by reason of an Event of Force Majeure;
- (e) due to the non-availability or limited availability of water for diversion into the Distribution Network, for any reason;
- (f) where the Customer is not entitled to take water under the Customer's Bulk Water Contract and the holder of the Resource Operations Licence has given notice to the Scheme Owner;
- (g) where provided for under the Scheme Distribution Rules; or
- (h) as permitted under clause 13.5.

### 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 2 months;

- (iii) has breached this Agreement and has not reimbursed the Scheme Owner for costs incurred by the Scheme Owner in rectifying the breach;
- (iv) has not provided the security required under clause 26; or
- (v) has breached any of clause 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(f), 3.2, 12.2, 12.5 or 12.11,

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

- (b) The direction under this clause 13.2 must give a reasonable time within which:
  - (i) the Customer must object in writing to the direction; and
  - (ii) the Customer must take the remedial steps required, with examples of "reasonable times" being:
    - (A) 7 days, for the payment of outstanding debt; and
    - (B) 14 days, for the provision of security under clause 26.

### **13.3 Consequences of ordering and not taking water**

If, in the reasonable opinion of the Scheme Owner, the breach by the Customer of clause 3.1(e)(iii), either represents a risk that:

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

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

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

### **13.4 Act or inaction not limit other rights**

The parties acknowledge that action or inaction by the Scheme Owner under the provisions of this clause 13 does not prevent the Scheme Owner from taking action under another clause of this Agreement, the Water Legislation or Water Instruments.

### **13.5 If Customer does not comply with direction not to take water**

Where the Scheme Owner considers that the Customer, or a person to whom the direction is given, has not complied with or will not comply with a direction

under clause 13.2, the Scheme Owner may take all reasonable steps to ensure that the Customer or other person complies with the direction, including:

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

## **14 Water quality**

### **14.1 No warranty by Scheme Owner**

The Scheme Owner makes no representation and gives no warranty:

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

### **14.2 Acknowledgement by Customer**

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

### **14.3 Customer to test**

The Customer must satisfy itself about the quality of water by testing or other means before taking water from the Distribution Network or diverting water from the DOL Area by the Scheme Owner.

### **14.4 Customer to indemnify**

The Customer indemnifies the Scheme Owner against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Scheme Owner:

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

## **14.5 Release by Customer**

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

- (a) the quality of water within the Distribution Network or the DOL Area or water taken by the Customer; or
- (b) the addition of chemicals to water in the Distribution Network as acknowledged in clause 14.2.

## **15 Additional water taken by Customer**

- (a) The Customer acknowledges that the Scheme Owner may, in the circumstances stated in the Scheme Distribution Rules, from time to time:
  - (i) notify the Customer that additional water is available; and
  - (ii) divert such additional water to the Distribution Network.
- (b) The Customer may take such additional water in addition to the Customer's Maximum Allocation provided that the Customer:
  - (i) complies with the Scheme Distribution Rules;
  - (ii) complies with clause 12.4; and
  - (iii) pays the Additional Charges for the water taken by the Customer.

## **16 Other general obligations**

### **16.1 Consultation**

Where consultation is required under this Agreement, the Scheme Owner must:

- (a) consult fairly and reasonably with the Customer or any entity representing customers of the Scheme Owner within the Distribution Network; and
- (b) allow the Customer a reasonable opportunity to participate in any such consultation.

### **16.2 Annual reports and Service Targets**

- (a) The Scheme Owner may, at approximately annual intervals during this Agreement, make available a report comparing the performance of the Scheme Owner with the Service Targets.
- (b) The Scheme Owner must publish on the Scheme Owner's Website Service Targets for the Distribution Network and revise these from time to time after considering:

- (i) changes in customer needs determined through customer consultation; and
- (ii) changes in industry practice and procedures.

## **17 Assignment/subcontracting by the Scheme Owner**

### **17.1 Assignment by the Scheme Owner**

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

### **17.2 Scheme Owner may subcontract**

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

## **18 Customer's Bulk Water Contract and Customer's Allocation**

### **18.1 Customer to maintain in full force and effect**

During the term, the Customer must procure and maintain in full force and effect and comply with the terms of:

- (a) the Customer's Allocation; and
- (b) the Customer's Bulk Water Contract, including making all payments when due under the Customer's Bulk Water Contract,

and must immediately notify the Scheme Owner if any of the above ceases to be in full force and effect.

### **18.2 Failure to hold a Customer's Bulk Water Contract or Customer's Allocation**

The Customer must immediately notify the Scheme Operator if the Customer does not hold both:

- (a) a Customer's Bulk Water Contract; and
- (b) the Customer's Allocation (whether as a result of cancellation, surrender or forfeiture of the Customer's Allocation under section 162, 163 or 164 of the Water Act or for any other cause).

### **18.3 Termination if no Customer's Bulk Water Contract on Five Yearly Review Date**

If, on any Five Yearly Review Date, the Customer does not hold the Customer's Bulk Water Contract, this Agreement will automatically terminate as and from that Five Yearly Review Date.

#### **18.4 Further contract with holder of a Resource Operations Licence**

The Customer must not enter into a variation of the Customer's Bulk Water Contract or a new contract between the Customer and holder of a Resource Operations Licence unless:

- (a) it is as a consequence of an application referred to in clause 18.6; and
- (b) the Scheme Owner and the Customer have entered into a further Standard Distribution Contract or an amendment to this Agreement on terms acceptable to the Scheme Owner, in its absolute discretion.

#### **18.5 Acknowledgement of consequences of clause 18.4**

The Customer acknowledges that:

- (a) until this clause 18 has been complied with:
  - (i) all Charges payable under this Agreement remain payable to the Scheme Owner; and
  - (ii) the Scheme Owner is not obliged to take any action to deliver water as proposed by the Customer in the variation;
- (b) the Scheme Owner, in exercising its discretion in clause 18.4(b):
  - (i) will not act in a way that reduces the income of the Scheme Owner from the Distribution Network; and
  - (ii) may require a single payment to pay out the Customer's obligations under this Agreement.

#### **18.6 Notice of application**

If the Customer:

- (a) applies to amend, transfer, lease or deal with the Customer's Allocation in whole or in part; or
- (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 for the DOL Area,

then the Customer must give written notice of the application to the Scheme Owner promptly after the application is made.

#### **18.7 Scheme Owner's duty unaffected**

Where and to the extent (if any) that, under the Water Legislation or Water Instruments, the Scheme Owner is to approve the amendment, transfer, lease, dealing with or change referred to in this clause 18, the Customer acknowledges that the Scheme Owner is obliged to carry out its responsibility under the Water Legislation or Water Instruments (as applicable) strictly in accordance with the terms of the Water Legislation and Water Instruments and any other Law binding on it without regard to this Agreement.

## 18.8 Further or amended Standard Distribution Contract

Where and to the extent (if any) that, under the Water Legislation or Water Instruments, the Scheme Owner is to approve the amendment, transfer, lease, dealing with, change or temporary transfer, then its statutory responsibility (if any) is not to affect or impede the exercise of its discretion in relation to making or amending a Standard Distribution Contract.

## 18.9 Transfer of Customer's Allocation

- (a) Without limiting clause 18.2, to the extent that the Customer has transferred the Customer's Allocation to another entity (**transferee**), the Customer must ensure that either:
- (i) the transferee becomes bound to a Standard Distribution Contract pursuant to section 738I of the Water Act; or
  - (ii) the transferee either:
    - (A) is a party to an existing Standard Distribution Contract with the Scheme Owner; or
    - (B) enters into a Standard Distribution Contract with the Scheme Owner,

in each case, which is effective on and from the date of the transfer,

and, on clause 18.9(a)(i) or 18.9(a)(ii) being satisfied, this Agreement will terminate as between the Customer and the Scheme Owner with effect on and from the effective date of the transfer.

- (b) For the avoidance of doubt, if the Customer has transferred part of the Customer's Allocation only to the transferee, this Agreement will immediately terminate as between the Customer and the Scheme Owner (in accordance with and subject to clause 18.9(a)) only to the extent to which the Customer's Allocation has been transferred but will remain in place to the extent that the Customer has retained part of the Customer's Allocation.

*[Explanatory Notes: The Customer should also note the disclosure requirements in section 155 of the Water Act.]*

## 18.10 Lease of Customer's Allocation

- (a) To the extent that the Customer has leased the Customer's Allocation to another entity (**lessee**), the Customer must ensure that either:
- (i) the lessee becomes bound to a Standard Distribution Contract pursuant to section 738I of the Water Act; or
  - (ii) the lessee either:
    - (A) is a party to an existing Standard Distribution Contract with the Scheme Owner; or
    - (B) enters into a Standard Distribution with the Scheme Owner,

in each case, which is effective on and from the date of the lease, and, on clause 18.10(a)(i) or 18.10(a)(ii) being satisfied, this Agreement will be suspended as between the Customer and the Scheme Owner for the duration of the lease. For the avoidance of doubt, any such suspension between the Customer and the Scheme Owner will not affect the rights and obligations as between the Scheme Owner and the lessee.

- (b) For the avoidance of doubt, if the Customer has leased part of the Customer's Allocation only to the lessee, this Agreement will only be suspended (in accordance with and subject to clause 18.10(a)) only to the extent to which the Customer's Allocation has been leased but will remain in place to the extent that the Customer has retained part of the Customer's Allocation.

*[Explanatory Notes: The Customer should also note the disclosure requirements in section 155 of the Water Act.]*

## **18.11 Temporary transfer of water**

- (a) The Customer may apply to reduce or increase the Customer's Maximum Allocation for a period within a single Water Year.
- (b) To the extent that the reduction or increase is not otherwise dealt with under clause 18.9 or 18.10 or a deemed Standard Distribution Contract pursuant to section 738I of the Water Act, the reduction or increase will be dealt with as a variation to this Agreement, on terms acceptable to both the Customer and the Scheme Owner, in their absolute discretion.

## **19 Location for Taking Water**

### **19.1 Location for Taking Water as at the Commencement Date**

- (a) **(Initial customers on the LMA Start Date):** If this Agreement takes effect as contemplated in paragraph B.1(a) of the Background, the Location for Taking Water as at the Commencement Date is the relevant location for the Customer as set out in the Starting Register of Customer's Location. If requested by the Customer, the Scheme Owner must promptly notify the Customer of its Location for Taking Water as set out in the Starting Register of Customer's Location.
- (b) **(New water allocation after the LMA Start Date):** If this Agreement takes effect as contemplated in paragraph B.1(b) of the Background, the Location for Taking Water as at the Commencement Date will be as determined by the Scheme Owner on or about the time the new water allocation came into existence.
- (c) **(Lease or transfer of water allocation):** If this Agreement takes effect as contemplated in paragraph B.1(c) of the Background, the Location for Taking Water as at the Commencement Date is the location for taking water of the lessor or transferor immediately before the effective date of the lease or transfer (as applicable).



- (d) **(Contract by Agreement)**: If this Agreement is a Contract by Agreement, the Location for Taking Water as at the Commencement Date is the location stated in schedule 1.

## 19.2 Notice to the Scheme Owner

If the Customer wishes to nominate an alternative Location for Taking Water for taking all or a part of the Customer's Maximum Allocation in the Water Year or for a number of Water Years, the Customer must obtain the prior written approval of the Scheme Owner.

## 19.3 On-supply to be lawful or approved

The Customer must not seek the approval of the Scheme Owner under clause 19.2 unless:

- (a) such dealing:
  - (i) is lawful;
  - (ii) may be effected without an approval under Law; or
  - (iii) if it may be effected after obtaining an approval under a Law, when the approval has been obtained; and
- (b) the alternative Location for Taking Water is within the DOL Area.

## 19.4 Further distribution contract

The Customer must not enter into any contract or arrangement for the purposes of clause 19.2, unless:

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

# 20 Declared Drainage Area

## 20.1 Variation to Declared Drainage Area

- (a) If the Customer is the owner of land all or part of which is located within the Declared Drainage Area, the Customer and the Scheme Owner may agree in writing that all or part of the relevant part of the land owned by the Customer which is located within the Declared Drainage Area (**Excluded Drainage Area**) is excluded from the Declared Drainage Area (**Excluded Drainage Area Agreement**).
- (b) If there is an Excluded Drainage Area Agreement:
  - (i) the Declared Drainage Area is deemed to exclude the Excluded Drainage Area and the Scheme Owner must promptly publish on the Scheme Owner's Website an updated map of the Declared

Drainage Area to reflect the exclusion of the Excluded Drainage Area;

- (ii) the Scheme Owner ceases to have any obligation to provide the Drainage Services to the extent they relate to the Excluded Drainage Area; and
- (iii) the Customer ceases to be obliged to pay the Drainage Charges in respect of the Excluded Drainage Area,

provided that nothing in this clause 20.1 limits or relieves the Customer from any obligation to pay any Drainage Charges which may be invoiced or incurred before the date on which the Excluded Drainage Area Agreement is made.

- (c) Unless otherwise agreed in the Excluded Drainage Area Agreement, an Excluded Drainage Area Agreement has the effect of permanently excluding the Excluded Drainage Area from the Declared Drainage Area.

## **20.2 Changes to Customer's Drainage Services Land**

- (a) The Customer must ensure that, if it:
  - (i) transfers (including a transfer by operation of law) any legal, beneficial or leasehold interest in all or part of the Customer's Drainage Services Land;
  - (ii) grants any beneficial or leasehold interest in all or part of the Customer's Drainage Services Land; or
  - (iii) grants or transfers any other rights of occupation in all or part of the Customer's Drainage Services Land,  
**(drainage transaction)** to another entity (**incoming entity**), the Customer must ensure that one of the following applies:
    - (iv) the incoming entity is or, on and from the effective date of the drainage transaction, will be a party to a Standard Distribution Contract with the Scheme Owner;
    - (v) the incoming entity is a party to an existing Drainage Contract with the Scheme Owner; or
    - (vi) if neither of the above applies, the incoming entity enters into a Drainage Contract with effect on and from the effective date of the drainage transaction.

*[Explanatory Notes: There is no equivalent to section 738I(9) in relation to the Drainage Contract. This clause 20.2(a) therefore imposes a contractual obligation to ensure that there is either a Supply Contract With Drainage or a Drainage Contract in place with the incoming entity.]*

- (b) Without limiting clause 20.2(a), unless and until there is a valid and effective Standard Distribution Contract or Drainage Contract (as applicable) in place with the incoming entity, the Customer remains liable to the Scheme Owner in respect of all Drainage Charges as if the Customer is the owner of all of the Customer's Drainage Services Land.

## 20.3 Provision if multiple rights to recover Drainage Charge

- (a) If, in respect of any part of the Customer's Drainage Services Land (**Relevant Area**), the Scheme Owner has a right to recover the Drainage Charge for that relevant area from more than one entity (**Liable Entities**) under a Standard Distribution Contract or Drainage Contract then, subject to clause 20.3(b), the Scheme Owner agree that it will seek to first recover the Drainage Charge for the Relevant Area from the entity which is the owner of the Relevant Area.
- (b) The owner of the Relevant Area may, by notice to the Scheme Owner and with the relevant Liable Entity's consent, direct the Scheme Owner to seek to first recover the Drainage Charge for the Relevant Area from the Liable Entity nominated in the notice. A notice under this clause 20.3(b) must include a copy of the consent signed by the relevant Liable Entity nominated in the notice.
- (c) Nothing in this clause 20.3 adversely impacts the Scheme Owner's right to recover the Drainage Charge for the Relevant Area from the Customer if a Liable Entity has failed to pay, or the Scheme Owner has failed to recover, the Drainage Charge for the Relevant Area from a Liable Entity.

*[Explanatory Notes: This clause 20.3 seeks to clarify the arrangements if the Scheme Owner has a right to recover the Drainage Charge for the same area from multiple parties under separate Standard Distribution Contract(s) and/or Drainage Contract(s). For example, the Scheme Owner may have a Standard Distribution Contract with each of Customer A and Customer B. If Customer A leases part of its land within the Declared Drainage Area to Customer B, the Scheme Owner will have a right to cover the Drainage Charge for that land from Customer A (on the basis that Customer A is the owner of the land) and from Customer B (on the basis that Customer B is the lessee of the land). In such a case, clause 20.3(a) sets out the default position that the Scheme Owner will first seek to recover the Drainage Charge from Customer A unless Customer A (with the consent of Customer B) notifies the Scheme Owner in accordance with clause 20.3(b) that the Scheme Owner should first seek to recover the Drainage Charge from Customer B.]*

## 21 Power of sale

### 21.1 Security Interest in the Customer's Allocation

The Customer grants a Security Interest in the Customer's Allocation in favour of the Scheme Owner to secure the due and punctual payment by the Customer of:

- (a) all moneys payable under this Agreement;
- (b) all moneys payable under the additional agreements referred to in clause 4;
- (c) all debts (including amounts which become a debt due to the Scheme Owner under the Water Legislation or Water Instruments) from time to time due by the Customer to the Scheme Owner;
- (d) the Termination Amount payable by the Customer under clause 25.4, (collectively, the **Secured Amounts**).

## **21.2 Discharge of the Security Interest**

Upon the later of termination of this Agreement and the payment of the Secured Amounts (whether or not then due or owing contingently or prospectively or in respect of any money which may be refundable under any law including the law of insolvency), the Scheme Owner must release the Security Interest provided under clause 21.1 to the Customer.

## **21.3 Exercise of power**

Where the Customer is in breach of this Agreement or if the Scheme Owner is entitled to terminate this Agreement under clause 25.1, the Scheme Owner may, subject to giving notice as required by the Water Legislation or Water Instruments, and the Scheme Owner giving the Customer notice of the breach or the existence of the Scheme Owners rights under clause 25.1, sell the Customer's Allocation.

## **21.4 Further powers**

- (a) Subject to clause 21.4(b), where the Scheme Owner is entitled to sell the Customer's Allocation, the Scheme Owner may also, amend, transfer, lease or deal with the Customer's Allocation, in whole or part, so as to discharge the Secured Amount.
- (b) Where the Scheme Owner exercises its power under this clause 21, then the Scheme Owner must use reasonable endeavours to ascertain the amount of the Customer's Allocation that is required to be dealt with to recover the Secured Amounts.
- (c) The Customer must take all action required by the Scheme Owner to assist them in exercising any power under clause 21.4(a), including executing all transfers, conveyances, assignments and assurances of any of the Customer's Allocation and giving all notices, orders, directions and consents which the Scheme Owner thinks expedient.

## **21.5 Manner of Dealing by Attorney**

Without limitation, any Dealing by Attorney may be made:

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

## **21.6 Application of sale proceeds**

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

- (a) firstly, in paying the costs of the Dealing by Attorney;
- (b) secondly, in discharging the Customer's liability under the Water Act to the chief executive under the Water Act;
- (c) thirdly, in discharging the Secured Amounts;
- (d) fourthly, in discharging the Customer's liability for any outstanding debt owing to the holder of the Resource Operations Licence under the Customer's distribution contract with the holder of the Resource Operations Licence;
- (e) fifthly, 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; and
- (f) sixthly, in payment of the balance (if any) to the Customer.

## 21.7 Power of attorney

- (a) The Customer irrevocably appoints, severally:
  - (i) each director of the Scheme Owner; and
  - (ii) the chief executive officer (if any) of the Scheme Owner,
 (each an **Attorney**) as the Customer's attorney to:
  - (iii) do anything which the Customer is obliged to do under or in relation to this Agreement but has failed to do so;
  - (iv) do anything which the Customer is entitled to do under the Water Legislation or Water Instruments in relation to the Customer's Allocation; or
  - (v) amend, transfer, lease or deal with the Customer's Allocation and do and execute all acts, deeds, documents and things as may be necessary to give effect to such amendment, change, lease or sale.
- (b) Without limitation, the Attorney may at any time:
  - (i) do anything which in the opinion of the Scheme Owner or the Attorney is necessary or expedient to perform, secure, preserve, perfect or give effect to the terms of this Agreement and for this purpose may, without limitation, execute any application, transfer, lease, or other assurance of any of the Customer's Allocation in favour of any purchaser, assignee, lessee or any nominee; and
  - (ii) delegate his powers (including the power to delegate).
- (c) No Attorney may act under this clause:
  - (i) unless notice required by clause 21.3 has been given; or
  - (ii) inconsistently with this Agreement.

- (d) Nothing in this Agreement limits the Customer's ability to obtain advice or engage another person to act on the Customer's behalf.
- (e) No party to any sale or lease and no person asked to register a Dealing by Attorney is bound to enquire:
  - (i) whether the Customer has breached this Agreement or whether this Agreement has become enforceable;
  - (ii) whether a person who is, or purports or is purported to be, an Attorney is duly appointed;
  - (iii) as to the amount of any moneys and whether such moneys are due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing by Attorney.

## 22 Receivers

### 22.1 Appointment of Receivers

While an Event of Default is continuing, the Scheme Owner may:

- (a)
  - (i) either before or after it has taken possession of the Customer's Allocation appoint any one or more persons to be a receiver or receiver and manager of the Customer's Allocation or a part of it; and
  - (ii) appoint a different receiver or receiver and manager for different parts of the Customer's Allocation;
- (b) if more than one person is appointed as Receiver of any property, empower them to act jointly or jointly and severally;
- (c) remove the Receiver, appoint another in his or her place if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and
- (d) fix the remuneration of the Receiver, and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of the realisation of the Customer's Allocation of the Customer.

### 22.2 Agent

- (a) Subject to clauses 22.2(c) and 22.2(d), a Receiver is the agent of the Customer who alone is responsible for the Receiver's acts and omissions and remuneration.
- (b) The Customer is responsible for the acts, defaults and remuneration of the Receiver which has been appointed in respect of its Customer's Allocation.

- (c) A Receiver is the agent of the Scheme Owner if the Customer is being wound up when the Receiver is appointed.
- (d) A Receiver who is the agent of the Customer becomes the agent of the Scheme Owner on:
  - (i) the Scheme Owner giving notice to that effect to the Customer and the Receiver; or
  - (ii) a resolution being passed or order being made for the winding up of the Customer.
- (e) If a Receiver becomes the agent of the Scheme Owner under clause 22.2(d)(i), the Receiver will revert to being the agent of the Customer on the Scheme Owner giving notice to that effect to the Customer and the Receiver.
- (f) If a Receiver becomes the agent of the Scheme Owner under clause 22.2(d)(ii), the Receiver will revert to being the agent of the Customer on an approval of the liquidator of the Customer or of the Court being given under section 420C(1) of the *Corporations Act 2001* (Cth) but only to the extent contemplated under section 420C(3) of the *Corporations Act 2001* (Cth) in consequence of that approval.

### 22.3 Powers

Subject to any express exclusion by the terms of the Receiver's appointment, a Receiver appointed in respect of the Customer's Allocation has, in addition to any powers conferred on the Receiver by applicable law, the following powers:

- (a) **(manage, possession or control)**: to manage, enter into possession or assume control of any of the Customer's Allocation;
- (b) **(lease or licence)**: to accept the surrender of, determine, grant or renew any lease or licence in respect of the use or occupation of any of the Customer's Allocation:
  - (i) on any terms or special conditions that the Scheme Owner or Receiver thinks fit; and
  - (ii) in conjunction with the sale, lease or licence of any other property by any person;
- (c) **(sale)**: to sell or concur in selling any of the Customer's Allocation to any person:
  - (i) by auction, private treaty or tender;
  - (ii) on such terms and special conditions as the Scheme Owner or the Receiver thinks fit;
  - (iii) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (iv) in conjunction with the sale of any property by any other person; and

- (v) in one lot or in separate parcels;
- (d) **(grant options to purchase)**: to grant to any person an option to purchase any of the Customer's Allocation;
- (e) **(carry on business)**: to carry on or concur in carrying on any business of the Customer in respect of the Customer's Allocation;
- (f) **(borrowings and security)**:
  - (i) to raise or borrow any money, in its name or the name or on behalf of the Customer, from the Scheme Owner or any person approved by the Scheme Owner in writing; and
  - (ii) to secure money raised or borrowed under clause 22.3(f)(i) by an Encumbrance over any of the Customer's Allocation, ranking in priority to, equal with, or after, the Security of the Customer or any Collateral Security;
- (g) **(income and bank accounts)**: to do anything to maintain, protect or improve the Customer's Allocation, including opening or operating a new bank account;
- (h) **(access to Customer's Allocation)**: to have access to any of the Customer's Allocation, the premises at which the business of the Customer is conducted and any of the administrative services of the business of the Customer;
- (i) **(insure Customer's Allocation)**: to insure any of the Customer's Allocation;
- (j) **(compromise)**: to make or accept any compromise or arrangement;
- (k) **(surrender Customer's Allocation)**: to surrender or transfer any of the Customer's Allocation to any person;
- (l) **(exchange Customer's Allocation)**: to exchange with any person any of the Customer's Allocation for any other property whether of equal value or not;
- (m) **(employ or discharge)**: to employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this document;
- (n) **(delegate)**: to delegate to any person any power of the Receiver;
- (o) **(perform or enforce documents)**: to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of that Customer under, or otherwise obtain the benefit of:
  - (i) any document, agreement or right which attaches to or forms part of the Customer's Allocation; and
  - (ii) any document or agreement entered into in exercise of any power by the Receiver;



- (p) **(receipts)**: to give effectual receipts for all moneys and other assets which may come into the hands of the Receiver;
- (q) **(take proceedings)**: to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of the Customer, any proceedings including proceedings in relation to any insurance in respect of any of the Customer's Allocation;
- (r) **(insolvency proceedings)**: to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (s) **(execute documents)**: to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of the Customer including bills of exchange, cheques or promissory notes for any of the purposes of this document;
- (t) **(ability of Customer)**: to do anything the Customer could do in relation to its Customer's Allocation; and
- (u) **(incidental power)**: to do anything necessary or incidental to the exercise of any power of the Receiver.

#### **22.4 Nature of Receiver's Powers**

The powers of the Receiver must be construed independently and no one power limits the generality of any other power. Any dealing under any power of the Receiver will be on the terms and conditions the Receiver thinks fit.

#### **22.5 Powers exercisable by the Scheme Owner**

- (a) Whether or not a Receiver is appointed under clause 22.1, the Scheme Owner may, while an Event of Default is continuing and (subject to clause 22.6) without giving notice to any person, exercise any power of the Receiver under clause 22.3 in addition to any power of the Scheme Owner.
- (b) The exercise of any power by the Scheme Owner or any Receiver or Attorney does not cause or deem the Scheme Owner, Receiver or Attorney:
  - (i) to be a mortgagee in possession;
  - (ii) to account as a mortgagee in possession; or
  - (iii) to be answerable for any act or omission for which a mortgagee in possession is liable.
- (c) If the Scheme Owner has taken possession of the Customer's Allocation, the Scheme Owner may give up possession of the Customer's Allocation at any time.

- (d) The obligations of the Customer under this Agreement relating to the Customer's Allocation are not affected by the Scheme Owner, a Receiver or an Attorney taking possession of the Customer's Allocation.

## 22.6 Default notice

- (a) None of the Scheme Owner, any Receiver or any Attorney is required:
  - (i) to give notice of a Security or any Collateral Security to any debtor or creditor of the Customer or to any other person (and a reference to a notice under this clause includes any notice under the PPSA, including a notice of a verification statement);
  - (ii) to enforce payment of any money payable to the Customer including any of the debts or monetary liabilities secured by this document or by any Collateral Security; or
  - (iii) to obtain the consent of the Customer to any exercise of a power.
- (b) The Scheme Owner and each Receiver and Attorney may, to the extent that any applicable law permits, exercise any right under this document in relation to an Event of Default without first giving notice to the Customer or allowing the lapse of any period of time.
- (c) To the extent that any applicable law permits, the Customer and the Scheme Owner, Receiver or Attorney dispense with any requirement under any statute that:
  - (i) notice be given by the Scheme Owner, a Receiver or an Attorney; and
  - (ii) the Scheme Owner, a Receiver or an Attorney allow the lapse of any period of timebefore exercising a right in respect of an Event of Default;
- (d) If an applicable law requires that a notice be given or a lapse of time occur before any right can be exercised, and if no particular period of notice or lapse of time is required, or can be shortened by agreement, the period of notice or lapse of time is one day.

## 22.7 Termination of Receivership

The Scheme Owner may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times as the Scheme Owner thinks fit give to, or remove from, a Receiver all or any of the rights referred to in **clause 22.3**.

## 23 Protection of Scheme Owner, Receiver and Attorney

- (a) To the extent permitted by Law, no Scheme Owner, Receiver or Attorney will be liable:
  - (i) for any conduct or delay in the exercise or non-exercise of any power;

- (ii) for any loss (including consequential loss) which results; or
- (iii) for negligence of the attorney, where the sale has been made after a public process (eg auction, tender, public notification of sale),  
except where the liability arises from the fraud or wilful misconduct of the Scheme Owner, Receiver or Attorney.

## **24 Limitation of liability and release**

### **24.1 Extent of liability for losses**

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

- (a) water not being available under the Customer's Bulk Water Contract;
- (b) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (c) complying with a State Direction.

### **24.2 Customer has remedies under the Water Legislation**

The Scheme Owner and the Customer acknowledge and agree that clause 24.1 is not intended to limit or affect action which the Customer may take against the Scheme Owner under the Water Legislation or for the wilfully negligent acts of the Scheme Owner.

### **24.3 Releases by Customer**

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

- (a) death or personal injury, damage to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of any action by the Scheme Owner other than actions that would constitute a breach of this Agreement or negligence by the Scheme Owner, including for example, channel overflows however caused, pipeline breaks where such action is necessary for the Scheme Owner to comply with the requirements of any Law binding on it;
- (b) death or personal injury, damage to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of flooding or inundation caused by:
  - (i) overflows from the Distribution Network; or
  - (ii) the Distribution Network acting as a barrier,

in either case, as a consequence of a circumstance referred to in paragraphs (a), (e), (f) and (h) of the definition of "Event of Force Majeure";

- (c) alterations to the Distribution Network or conditions within the Distribution Network however caused including, for example, the movement of water weeds to clog pumps and the impact of sudden losses or fluctuations of flow or pressure surges within the Distribution Network; or
- (d) the circumstances in which the Customer bears the risk as stated in clause 24.5.

#### **24.4 Indemnity by Customer**

The Customer must indemnify the Scheme Owner against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Scheme Owner arising out of the circumstances in which the Customer releases the Scheme Owner under clause 24.3 and a failure to comply with clause 18.1(b).

#### **24.5 Customer bears certain risks**

The Customer bears the risks of:

- (a) destruction of or damage to the Customer's Offtake Works from an Event of Force Majeure or resulting from the Scheme Owner diverting water, under this or any other agreement or the Distribution Operations Licence;
- (b) Transportation Losses;
- (c) the exercise of a Statutory Right; and
- (d) any action taken under a State Direction.

### **25 Default and termination**

#### **25.1 Termination for Customer's breach, insolvency or bankruptcy**

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

- (a) the Customer (being a natural person) has become a bankrupt;
- (b) the Customer (being a corporation) becomes Insolvent; or
- (c) the Customer breaches a provision of this Agreement and has not remedied that breach within a reasonable period, having regard to the nature of the breach, after service of notice of the breach from the Scheme Owner of its intention to terminate,

(each an **Event of Default**).

#### **25.2 Decommissioning**

Where the total of all water allocations located at the Scheme Diversion Location and the subject of an existing distribution contract for diversion into the Distribution Network becomes less than 10% of the Distribution Network's capacity, then the Scheme Owner may terminate this Agreement by notice in

writing to the Customer. This Agreement will terminate two years after notice is given by the Scheme Owner.

### **25.3 Substantial destruction or damage**

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

### **25.4 Payment of Termination Amount**

- (a) Where this Agreement is terminated as a consequence of a breach by the Customer, the Customer must pay to the Scheme Owner the Termination Amount.
- (b) Nothing in this clause 25.4 limits any other rights of the Scheme Owner under this Agreement or otherwise against the Customer in relation to any breach of this Agreement by the Customer.

### **25.5 Termination Amount**

- (a) The Customer acknowledges that the Termination Amount:
  - (i) is intended to represent a genuine and reasonable assessment of the loss of future profit, increased average operating costs, proportionate share of ongoing fixed costs and decommissioning costs likely to be incurred by the Scheme Owner for the Distribution Network having regard to the quantities of water supplied and the persons supplied from the Distribution Network; and
  - (ii) protects a legitimate commercial interest of the Scheme Owner for the occurrence of the circumstances in which the Termination Amount becomes payable.
- (b) The Scheme Owner reserves the right to undertake a formal assessment of the Termination Amount, at the cost of the Customer.

### **25.6 Rights on termination**

Any termination of this Agreement is:

- (a) without prejudice to any other rights or remedies the Party terminating may have; and
- (b) without prejudice to any other rights or remedies accrued before the date of termination.

## 25.7 Consequences if Customer owns, leases or occupies land in Declared Drainage Area

- (a) If:
- (i) this Agreement expires or is terminated; and
  - (ii) immediately before termination, the Customer is the owner or lessee of, or occupies, land all or part of which is located within the Declared Drainage Area,
- the Customer and the Scheme Owner are deemed to have entered into a Drainage Contract.
- (b) This clause survives the expiry or termination of this Agreement.

## 26 Security

### 26.1 Request for Security

- (a) The Scheme Owner may request the provision of Security if:
- (i) **(breach)**: the Customer commits a breach nominated in any of clause 13.2(a)(i), 13.2(a)(ii), 13.2(a)(iii) or 13.2(a)(v), whether the Scheme Owner has given a direction or not; or
  - (ii) **(financial capacity)**: the Scheme Owner is not reasonably satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement; or
  - (iii) **(initial customers on the LMA Start Date)**: this Agreement arose pursuant to section 738I(5) of the Water Act and as at immediately before the LMA Start Date, the Customer:
    - (A) is the holder of a water allocation to whom water was supplied under the Resource Operations Licence immediately before the LMA Start Date; and
    - (B) provided security in connection with a Customer's Bulk Water Contract (including a contract for bundled bulk and distribution services between the Customer and the holder of a Resource Operations Licence which is in place as at immediately before the LMA Start Date) **(Pre-LMA Start Date Contract Security)**,subject, in the case of a request under this clause 26.1(a)(iii), to the restrictions in clause 26.1(b);
  - (iv) **(new water allocation after the LMA Start Date)**: this Agreement arose pursuant to section 738I(7) of the Water Act and the Scheme Owner is not reasonably satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement; or
  - (v) **(lease or transfer of water allocation)**: this Agreement arose pursuant to section 738I(9) of the Water Act and the Scheme

Owner is not reasonably satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement.

- (b) The Scheme Owner may not request the provision of Security under clause 26.1(a)(iii) unless:
- (i) the type of Security requested under clause 26.1(a)(iii) is the same as the type of the Pre-LMA Start Date Contract Security (or the Customer and the Scheme Owner agree that a different type of security may be requested);  
*[Explanatory Notes: The restriction in this clause 26.1(b)(i) means that, if the Pre-LMA Start Date Contract Security provided by the Customer is in the form of a corporate guarantee, the Scheme Owner can only request a Security in the form of a corporate guarantee under clause 26.1(a)(iii) (eg and not a bank guarantee) without the Customer's agreement.]*
  - (ii) if the Pre-LMA Start Date Contract Security is in the form of an on demand guarantee from a financial institution (**Pre-LMA Start Date Bank Guarantee**) either:
    - (A) the party with the benefit of the Pre-LMA Start Date Bank Guarantee has released that Pre-LMA Start Date Bank Guarantee or otherwise has ceased to have the benefit of the Pre-LMA Start Date Bank Guarantee; or
    - (B) the amount of the Pre-LMA Start Date Bank Guarantee has been reduced:
      - (1) to reflect the fact that the counterparty to the Customer's Bulk Water Contract will no longer be providing services equivalent to the Distribution Services being provided by the Scheme Owner under this Agreement; or
      - (2) otherwise, in connection with the transfer of the Channel Scheme (and associated businesses, assets and liabilities) to the Scheme Owner on the LMA Start Date.

## 26.2 Provision of Security

If Security is requested in writing by the Scheme Owner, the Customer must promptly (and in any event within 14 days of the request) provide and maintain Security until the later of:

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

## 26.3 Form of Security

Unless otherwise agreed by the parties, Security required to be provided by the Customer under this clause 26 must be in the form of any one or more of the following (as determined by the Scheme Owner):

- (a) in the form of an on demand guarantee on terms and from a financial institution acceptable to the Scheme Owner, acting reasonably, for:
  - (i) subject to clause 26.3(a)(ii), an amount equal to a quarter of the Charges invoiced for the previous Water Year;
  - (ii) if:
    - (A) the amount referred to in clause 26.3(a)(i) can not be determined (for example, because this Agreement was not in place in the previous Water Year); or
    - (B) the Scheme Owner considers, acting reasonably, that the amount referred to in clause 26.3(a)(i) is not appropriate (for example, because the Scheme Owner considers, acting reasonably, that the Charges for a 3 months period in the Water Year in which the request is made will be materially higher than the amount referred to in clause 26.3(a)(i)),  
  
an amount, as determined by the Scheme Owner, acting reasonably, equal to the Scheme Owner's estimate of the Charges for a quarter in the Water Year in which the request is made; or
- (b) in the form of a personal or corporate guarantee on terms and from an entity acceptable to the Scheme Owner, acting reasonably, under which the guarantor:
  - (i) guarantees to the Scheme Owner the due and punctual performance by the Customer of all of the obligations contained in this Agreement that must be performed by the Customer (including each obligation of the Customer to pay money); and
  - (ii) indemnifies the Scheme Owner against all claims and costs the Scheme Owner may suffer or incur consequent on or arising directly from any breach by the Customer of any of the obligations referred to in clause 26.3(b)(i).

#### **26.4 No Services without Security**

The Scheme Owner is not obliged to provide any Services under this Agreement until:

- (a) the Security is provided to the Scheme Owner; and
- (b) thereafter, to the extent that Security is provided in the form referred to in clause 26.3(a) and the Scheme Owner uses the Security to pay amounts owing by the Customer under this Agreement, the Customer has provided further Security so that the total Security is for an amount not less than the amount determined in accordance with clause 26.3(a).

#### **26.5 Release of Security**

Upon the later of termination of this Agreement and the payment of all moneys owing (whether or not then due or owing contingently or prospectively), the



Scheme Owner must release any Security provided under this Agreement to the Customer.

## **27 Dispute resolution**

### **27.1 Activation**

- (a) The objective of this clause 27 is to provide an effective and equitable process for the resolution of disputes and to encourage the participants to discuss and resolve the matter.
- (b) If a dispute arises under this Agreement any party may give written notice to the party with whom the dispute exists.

### **27.2 Excluded disputes**

Unless otherwise agreed between the parties, clauses 27.3 to 27.8 do not apply to any dispute in relation to:

- (a) any amendment or making of a Charge as contemplated in clauses 9.1, 9.2 and 9.3; or
- (b) if this is a Contract by Agreement, any special conditions of this Agreement; or
- (c) any right of termination.

### **27.3 Appointment of representative**

- (a) The notice given in accordance with clause 27.1(b) must designate a representative with the appropriate authority to negotiate the dispute.
- (b) Within five business days of receipt of the notice referred to in clause 27.1(b), the recipient must designate a representative with similar authority.

### **27.4 Discussions**

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

### **27.5 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.

### **27.6 Methods of resolution**

A party receiving a request under clause 27.5 must promptly discuss the following and other related subjects with the party making the request:

- (a) the mode of proceeding, whether by negotiation, mediation, conciliation, expert appraisal, expert determination or mini-trial;
- (b) the responsibility for payment of the costs of the mode agreed under clause 27.6(a);

- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

## **27.7 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 27 is to attempt to settle a dispute between the parties.

## **27.8 Termination of dispute resolution procedure**

Any party may terminate the dispute resolution procedure provided by this clause 27 at any time and pursue other available remedies.

# **28 Native Title**

## **28.1 Existence of Native Title**

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

# **29 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 29(b) applies.

# **30 Notices**

## **30.1 Notices**

- (a) Any notice given under this Agreement must be:
  - (i) in writing addressed to the intended recipient; and

- (ii) signed by a person duly authorised by the sender.
- (b) A notice must be given by being:
  - (i) personally delivered or left at the party's current business address for notices;
  - (ii) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
  - (iii) sent by email to the party's current email address for notices.

### **30.2 Particulars for notices**

The particulars for delivery of notices are:

- (a) for the Scheme Owner:
  - (i) the business address;
  - (ii) the postal address; or
  - (iii) the email address,

for delivery of notices to the Scheme Owner as nominated in the Scheme Distribution Rules and published on the Scheme Owner's Website from time to time; and

- (b) for the Customer:
  - (i) the business address;
  - (ii) the postal address; or
  - (iii) the email address,

for delivery of notices to the Customer as nominated by the Customer and notified in writing to the Scheme Owner (and, if the Customer has not, by the Commencement Date, nominated and notified in writing to the Scheme Owner any one or more of the particulars for delivery of notices, the Customer must promptly do so after the Commencement Date). The Customer's particulars for delivery of notices are deemed to include any particulars shown in the register that records the details of the Customer's Allocation.

### **30.3 Communications by post**

Subject to **clause 30.5**, a communication is given if posted:

- (a) within Australia to an Australian postal address, six business days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten business days after posting.

### **30.4 Notices by email**

Subject to **clause 30.5**, a Notice is given if sent by email on the first to occur of the following:

- (a) when it is dispatched by the sender to the recipient's email address, unless the sender receives an automatic notification that the e-mail has not been received (other than an out of office greeting for the named addressee); and
- (b) the sender receiving a message from the intended recipient's information system confirming delivery of the email.

### **30.5 After hours communications**

If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), the notice will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

## **31 Miscellaneous**

### **31.1 Obligations for the benefit of third parties**

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

### **31.2 Entire agreement**

This Agreement contains the entire agreement of the parties concerning its subject matter, namely the Services of the Scheme Owner to the Customer in relation to the Customer's Maximum Allocation and supersedes all earlier agreements. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties concerning its subject matter.

### **31.3 Severance of invalid or illegal terms**

- (a) Subject to clause 31.3(c), if:
  - (i) any term of this Agreement (**relevant term**) is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever; or
  - (ii) a term of a Standard Distribution Contract which is the same or substantially the same as the relevant term (**equivalent template term**) is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever,then:
  - (iii) the relevant term is severed from this Agreement; and
  - (iv) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies without reliance on the part severed.

- (b) The Scheme Owner must promptly notify the Customer if it becomes aware that an equivalent template term is or has become invalid, void, voidable or otherwise unenforceable for any reason whatever.
- (c) If:
  - (i) this Agreement is a Contract by Agreement;
  - (ii) an equivalent template term is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever; and
  - (iii) the basis on which the equivalent template term is or becomes invalid, void, voidable or otherwise unenforceable for any reason does not apply to this Agreement,

then, notwithstanding clause 31.3(a), the Customer and the Scheme Owner may agree in writing that the relevant term will not be severed from this Agreement.

#### **31.4 No waiver**

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

#### **31.5 Stamp duty and costs**

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

#### **31.6 Further assurances**

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to any provisions of this Agreement.

#### **31.7 Exclusion of certain provisions**

- (a) To the extent permitted, sections 142 and 143 of the PPSA are excluded in full and will not apply to this document and the Scheme Owner need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), and 132(4) of the PPSA.
- (b) The Customer waives its right to receive from the Scheme Owner any notice required under section 157 of the PPSA or, after the occurrence of an Event of Default, the provisions of the PPSA referred to in section 144 of the PPSA except section 135.

### **31.8 Allocation of Payments**

To the extent permitted by Law, the Scheme Owner may apply payments by the Customer towards payment of such moneys, debts and amounts referred to in clause 21.1 as the Scheme Owner determines in its absolute discretion.

### **31.9 Rights cumulative**

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

### **31.10 Consents**

Except as expressly stated otherwise in this Agreement, the Water Legislation or Water Instruments, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

### **31.11 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **31.12 Counterparts and effect of execution**

- (a) This clause 31.12 applies if this is a Contract by Agreement.
- (b) This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (c) This Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.
- (d) Unless otherwise required by the Scheme Owner, this Agreement may be executed in any way permitted by Law, including as permitted by the *Electronic Transactions Act 1999* (Cth).

## **32 Definitions/Interpretation**

### **32.1 Definitions**

In this Agreement these terms have the following meanings:

<b>Additional Charges</b>	The charge as made by the Scheme Owner when notice of the availability of additional water is given under clause 15.
<b>Agreement</b>	This agreement.

<b>Amended Charges</b>	The meaning given in clause 9.2.
<b>Amended Charges Effective Date</b>	The meaning given in clause 9.2(a)(iii).
<b>Attorney</b>	The meaning given in clause 21.7(a).
<b>Authority</b>	The Crown, a minister of the Crown, a federal, state or local government or government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court or a tribunal.
<b>Billing Interval</b>	The billing interval referred to in item 9 of the Channel Scheme Specific Details Table.
<b>Change in Law</b>	<p>(a) The making of, change in, or a change by an Authority in the interpretation or application of any Law or authorisation, licence, approval, permit, authority or exemption after the Commencement Date; and</p> <p>(b) Without limiting paragraph (a), includes:</p> <p>(i) any entity, service or thing becoming regulated or declared under any statutory regime for prices oversight or regulation from time to time applying in Queensland; or</p> <p>(ii) if any entity, service or thing which is regulated or declared under any statutory regime for prices oversight or regulation from time to time applying in Queensland, that entity, service or thing ceasing to be regulated or declared.</p>
<b>Channel Scheme</b>	The meaning given in item 1 of the Channel Scheme Specific Details Table.
<b>Channel Scheme Specific Details Table</b>	The table so titled starting on page 3.
<b>Charges</b>	<p>(a) The Minimum Charge;</p> <p>(b) the Distribution Fixed Charges;</p> <p>(c) the Distribution Consumption Charges;</p> <p>(d) the Drainage Charges;</p> <p>(e) the Other Distribution Charges;</p>

	(f) any charges for any services referred to in clause 5.1(e);
	(g) any administration charge referred to in clause 6.10; and
	(h) the Additional Charges.
<b>Commencement Date</b>	If: <ul style="list-style-type: none"> <li>(a) this Agreement is a Statutory Contract, the date on which this Agreement takes effect in accordance with section 738I(5), 738I(7) or 738I(9) (as applicable) of the Water Act; or</li> <li>(b) this Agreement is a Contract by Agreement, the earlier of: <ul style="list-style-type: none"> <li>(i) the date of this Agreement; and</li> <li>(ii) the Commencement Date stated in schedule 1.</li> </ul> </li> </ul>
<b>Contract by Agreement</b>	The meaning given in paragraph B.3(b) of the Background.
<b>Customer</b>	The meaning given in paragraph B.2 of the Background.
<b>Customer's Allocation</b>	Any water allocation held by the Customer in the DOL Area and the subject of the Customer's Bulk Water Contract.
<b>Customer's Bulk Water Contract</b>	A contract between the Customer and holder of a Resource Operations Licence.
<b>Customer's Drainage Services Land</b>	If the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area, that part of the land: <ul style="list-style-type: none"> <li>(a) for which the Customer is the owner or lessee; or</li> <li>(b) in respect of which the Customer occupies, (as applicable) which is located within the Declared Drainage Area.</li> </ul>
<b>Customer's Maximum Allocation</b>	The actual volume of water to which the Customer is entitled in any Water Year from the DOL Area and the Customer's Bulk Water Contract (if any), as may be varied under clauses 15, 18 or 19.
<b>Customer's Offtake Works</b>	The works used by the Customer for taking water from the DOL Area as may be varied under clause 11.4.



<b>Dealing by Attorney</b>	For a water allocation, any amendment, transfer, dealing with, change, lease or sale.
<b>Declared Drainage Area</b>	The drainage area described in item 3 of the Channel Scheme Specific Details Table.
<b>Distribution Charges</b>	The greater of: <ul style="list-style-type: none"> <li>(a) the Minimum Charge; and</li> <li>(b) the total in a Water Year of: <ul style="list-style-type: none"> <li>(i) the Distribution Fixed Charges; and</li> <li>(ii) the Distribution Consumption Charges.</li> </ul> </li> </ul>
<b>Distribution Consumption Charges</b>	The charges described as the Distribution Consumption Charges published on the Scheme Owner's Website from time to time. The Distribution Consumption Charges as at the Commencement Date are set out in annexure A and may be varied from time to time under clause 9.
<b>Distribution Fixed Charges</b>	The charges described as the Distribution Fixed published on the Scheme Owner's Website from time to time. The Distribution Fixed Charges as at the Commencement Date are set out in annexure A and may be varied from time to time under clause 9.
<b>Distribution Network</b>	The network of channels, pipelines, natural formations and other works in the DOL Area as operated from time to time by the Scheme Owner in the Channel Scheme.
<b>Distribution Operations Licence</b>	The distribution operations licence under the Water Act held by the Scheme Owner with respect to the Channel Scheme.
<b>Distribution Services</b>	The services described in clause 1.1.
<b>DOL Area</b>	The area to which the Distribution Operations Licence relates.
<b>Drainage Contract</b>	A contract for the provision of Drainage Services between the Scheme Owner and the owner, lessee or occupier of land all or part of which is located within the Declared Drainage Area which does not also provides for the provision of Distribution Services (or services substantially the same as the Distribution Services). A Drainage Contract includes a drainage services contract as defined in section 738JB(5) of the Water Act.  Where this Agreement provides that the parties are deemed to have entered into a Drainage Contract, the

	form of that deemed Drainage Contract will be the form of the template Drainage Contract as published from time to time on the Scheme Owner's Website.
<b>Drainage Network</b>	The drainage network described in item 4 of the Channel Scheme Specific Details Table.
<b>Drainage Services</b>	The services described in item 5 of the Channel Scheme Specific Details Table.
<b>Encumbrance</b>	An interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property.
<b>Event of Default</b>	Has the meaning given in clause 25.1.
<b>Event of Force Majeure</b>	<p>Any event or circumstance or combination of events or circumstances which is beyond the reasonable control of the party concerned including, without limiting the generality of the foregoing:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;</li> <li>(c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;</li> <li>(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;</li> <li>(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);</li> <li>(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);</li> </ul>

	(g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which the Distribution Network or the Customer's Offtake Works are constructed; or
	(h) the prevention of access to repair damage to or malfunction of the Distribution Network, the Meter or the Customer's Offtake Works caused by any of the events set out above.
<b>Excluded Drainage Area</b>	Has the meaning given in clause 20.1(a).
<b>Excluded Drainage Area Agreement</b>	Has the meaning given in clause 20.1(a).
<b>Five Yearly Review Date</b>	1 July 2017 and each date which is 5 years after the previous Five Yearly Review Date.  <i>[Explanatory Notes: The Five Yearly Review Date is 1 July 2017, 1 July 2022, 1 July 2027 etc.]</i>
<b>GST</b>	The goods and services tax as imposed by the GST Law.
<b>GST Amount</b>	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.
<b>GST Law</b>	The meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or, if that Act does not exist for any reason, 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.
<b>Index Number</b>	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 or, in the absence of such nomination, as determined by the Scheme Owner, acting reasonably.
<b>Indexation Date</b>	The meaning given in clause 9.3.
<b>Input Tax Credit</b>	The meaning given to that term by the GST Law.
<b>Insolvent</b>	With regard to, bodies corporate, that one or more of the following events have occurred:

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

**Irrigable Land**

That area of land within the Declared Drainage Area specified as irrigable land at the time the original water rights were issued in the area of the Declared Drainage Area under the Irrigation Act 1922 and shown in the original farm plans.

**Law**

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

Without limiting the above, Law includes the Water Legislation and Water Instruments.

<b>LMA Start Date</b>	The meaning given in item 8 of the Channel Scheme Specific Details Table.
<b>Location for Taking Water</b>	The location determined in accordance with clause 19.1, as may be varied under clause 19.
<b>Meter</b>	A meter to measure the volume of water taken at the Customer's Offtake Works Location, and which includes any valve and associated item nominated by the Scheme Owner.
<b>Minimum Charge</b>	The charge described as the Minimum Charge published on the Scheme Owner's Website from time to time. The Minimum Charge as at the Commencement Date is set out in annexure A and may be varied from time to time under clause 9.
<b>ML</b>	Megalitre.
<b>Native Title</b>	The same meaning as used in the <i>Native Title Act 1993</i> (Cth).
<b>Net Present Value Rate</b>	A rate equal to the Bank Bill Swap Rate (180 Day) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by the Scheme Owner by a nominee of the President of the Chartered Accountants Australia and New Zealand (Queensland Branch). If the nominee of the President of the Chartered Accountants Australia and New Zealand (Queensland Branch) fails or declines to make any such determination, the rate will be as determined by the Scheme Owner, acting reasonably.
<b>New Contract Conditions</b>	The meaning given in clause 8.2.
<b>New Contract Conditions Effective Date</b>	The meaning given in clause 8.2(a)(i).
<b>New Contract Conditions Objection Notice</b>	The meaning given in clause 8.3(a).
<b>Non-Irrigable Land</b>	That area of land within the Declared Drainage Area specified as non-irrigable land at the time the original water rights were issued in the area of the Declared Drainage Area under the Irrigation Act 1922 and shown in the original farm plans.

<b>Other Distribution Charges</b>	The charges for the Other Distribution Services and the administration charge referred to in clause 6.10. The various Other Distribution Charges as at the Commencement Date are set out in annexure A.
<b>Other Distribution Services</b>	The services identified in clause 5.1 and any services which the Scheme Owner indicates in the Scheme Distribution Rules that it will provide.
<b>Overdue Rate</b>	A rate of interest equal to the Suncorp-Metway variable business lending rate applicable from time to time plus two percent (2%) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by the Scheme Owner by a nominee of the President of the Chartered Accountants Australia and New Zealand (Queensland Branch). If the nominee of the President of the Chartered Accountants Australia and New Zealand (Queensland Branch) fails or declines to make any such determination, the rate will be as determined by the Scheme Owner, acting reasonably.
<b>Payment</b>	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.
<b>PPSA</b>	The <i>Personal Property Securities Act 2009</i> (Cth).
<b>Receiver</b>	A receiver or receiver and manager appointed by the Scheme Owner under this Agreement and any person who derives a right directly or indirectly from a Receiver.
<b>Regulator</b>	The regulator or chief executive under the Water Act or Water Supply Act.
<b>Resource Operations Licence</b>	The [#] Water Supply Scheme resource operations licence under the Water Act held by SunWater.
<b>Scheme Distribution Rules</b>	The rules and guidelines made and amended from time to time under clause 10.
<b>Scheme Diversion Location</b>	That point on a watercourse where water is delivered under the Customer's Bulk Water Contract to enable the Scheme Owner to deliver water to the location of the Customer's Offtake Works.
<b>Scheme Owner</b>	The entity identified as such in item 2 of the Channel Scheme Specific Details Table.

<b>Scheme Owner's Website</b>	The website referred to in 10 of the Channel Scheme Specific Details Table.
<b>Secured Amounts</b>	Has the meaning given in clause 21.1.
<b>Security</b>	A Security Interest satisfying the requirements of clause 26 but expressly excluding the Security Interest contemplated in clause 21.
<b>Security Interest</b>	A security interest under the PPSA, a mortgage, charge, lien or pledge and any other interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation. It includes any retention of title to any property and any right to set off or withhold payment of any deposit or other money.
<b>Services</b>	The Distribution Services, the Drainage Services (if applicable) and Other Distribution Services.
<b>Service Target</b>	<p>A target from time to time nominated by the Scheme Owner for the level of services it provides. For example, a Service Target may be about:</p> <ul style="list-style-type: none"> <li>(a) making water available in nominated timeframes at nominated locations;</li> <li>(b) notification for, and timing of, interruptions to supply;</li> <li>(c) frequency and duration of interruptions to supply;</li> <li>(d) timing and duration of planned maintenance; and</li> <li>(e) response times to applications made under this Agreement.</li> </ul>
<b>Standard Distribution Contract</b>	A distribution contract for the Channel Scheme for the purposes of section 7381 of the Water Act.
<b>Starting Register of Customer's Location</b>	<p>The document, as agreed between the Scheme Owner and the holder of the Resource Operations Licence on or before the LMA Start Date, which sets out the location at which water may be taken, as at immediately before the LMA Start Date for each of the customers of the holder of the Resource Operations Licence to whom water:</p> <ul style="list-style-type: none"> <li>(a) was supplied under the Resource Operations Licence immediately before the LMA Start Date; and</li> </ul>

- (b) continues to be supplied under the Distribution Operations Licence after the LMA Start Date.

<b>State Direction</b>	The requirements of any notice published or any regulation made under a Water Legislation or Water Instrument 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 Distribution Operations Licence and/or owner/operator of the Distribution Network and any modification, extension or replacement thereof from time to time in force.
<b>Statutory Contract</b>	The meaning given in paragraph B.3(a) of the Background.
<b>Statutory Right</b>	The right to take water (other than the Customer's Allocation) under the Water Legislation of Water Instrument for example, a water permit issued by the Regulator.
<b>Tax Invoice</b>	The meaning given to that term by the GST Law.
<b>Taxable Supply</b>	The meaning given to that term by the GST Law.
<b>Termination Amount</b>	The amount which represents the value as at the date of termination using a discount figure equivalent to the Net Present Value Rate of the Distribution Fixed Charges and the Distribution Consumption Charges which would have been payable under this Agreement for a period of 10 years after the date of termination, on the assumption that in each Water Year the Customer took the whole of the Customer's Allocation.
<b>Transportation Losses</b>	<p>The water lost after diversion into the Distribution Network or otherwise rendered unavailable to be taken or used by the Customer as a result of:</p> <ul style="list-style-type: none"><li>(a) contamination (from whatever cause);</li><li>(b) theft or any unlawful taking;</li><li>(c) the taking by other customers within the Distribution Network of an amount of water greater than that to which the customer is entitled;</li><li>(d) where a system for the ordering of water is in place under the Scheme Distribution Rules and a customer has:</li></ul>



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

<b>Water Act</b>	The <i>Water Act 2000</i> (Qld).
<b>Water Instrument</b>	Each of the following which may, from time to time, apply to the DOL Area under the Water Act: <ul style="list-style-type: none"> <li>(a) Water Plan;</li> <li>(b) operations manual;</li> <li>(c) water management protocol;</li> <li>(d) Resource Operations Licence;</li> <li>(e) Distribution Operations Licence;</li> <li>(f) water licence,</li> </ul> (where a term in this definition is not otherwise defined in this Agreement, it has the meaning given in the Water Act).
<b>Water Legislation</b>	The Water Act and the Water Supply Act.
<b>Water Plan</b>	The water plan, if any, from time to time under the Water Act which applies to the DOL Area which, as at the Commencement Date, is the water plan described in item 6 of the Channel Scheme Specific Details Table.
<b>Water Supply Act</b>	The <i>Water Supply (Safety and Reliability) Act 2008</i> (Qld).
<b>Water Year</b>	The meaning given in item 7 of the Channel Scheme Specific Details Table.
<b>Yearly Review Date</b>	1 July 2017 and each anniversary of that date.  [Explanatory Notes: The Yearly Review Date is 1 July 2017, 1 July 2018, 1 July 2019 etc.]

## 32.2 Interpretation

In interpreting this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in this Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) clause headings and 'explanatory notes' are inserted for convenience only and do not affect the interpretation of this agreement;
- (f) references to "dollars" and "\$" are references to Australian dollars;
- (g) references to time are references to time in the location of the DOL Area;
- (h) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it, and includes any subordinate legislation issued under that legislation or as it may be modified, re-enacted or substituted;
- (i) a reference to a Governmental Authority includes any successor authority;
- (j) a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of this Agreement;
- (k) a reference to any agreement (including this Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced, from time to time;
- (l) a term used in the Water Act or Water Supply Act has the same meaning when used in this Agreement;
- (m) a reference to **conduct** includes any omission and any representation, statement or undertaking, whether or not in writing;
- (n) where the customer comprises two or more persons the liability under this Agreement is joint and several.

# Schedule 1

## Additional details for Contract by Agreement

*[Explanatory Notes: This schedule 1 is only applicable if this Agreement is a Contract by Agreement.]*

1	Customer details	Name:	[insert]
		ACN / ABN (if applicable):	[insert]
		Address:	[insert]
		Phone:	[insert]
		Email:	[insert]
2	Customer's particulars for delivery of notices	Business address:	[insert]
		Postal address:	[insert]
		Email:	[insert]
3	Commencement Date (if not the date of this Agreement)	[insert]	
4	Volume	[insert]	
5	Location for Taking Water	[insert]	
6	Land (Lot and plan reference)	[insert]	
7	SunWater customer number	[insert]	

# Execution

*[Explanatory Notes: The execution of this Agreement is only required if this Agreement is a Contract by Agreement.]*

**Executed** as a deed.

Execution by the **Scheme Owner**:

**Executed by Fairbairn Irrigation  
Network Limited** )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

Execution by the **Customer**:

[By two directors or a director and a company secretary of an Australian incorporated company]

**Executed by [Customer]** )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

[By the sole director who is also the sole company secretary of an Australian incorporated company]

**Executed by [Customer]** )  
)

.....  
Sole Director and Sole Company  
Secretary

.....  
Name of Sole Director and Sole Company  
Secretary (print)

[By a duly authorised officer of an Australian incorporated company]

**Executed by [Customer]** by its duly )  
authorised officer in the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

[If the Customer is an individual]

**Signed by [Customer]** in the presence )  
of: )

.....  
Witness

.....  
Name of Witness (print)

[insert other appropriate execution block for Customer if required]