

Standard Supply Contract Eton Water Supply Scheme (No. 2)

Water Act 2000

Section 122A – Chief executive may approve standard supply contracts

I, Robert Michael McCarthy, chief executive of the Department of Natural Resources and Mines approve the following standard supply contract for the storage and delivery by resource operations licence holders of water under water allocations in the Eton Water Supply Scheme.



Robert Michael McCarthy
Chief Executive

15 June 2005

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Standard Supply Contract Eton Water Supply Scheme (No. 2)

Background

This is the standard supply contract approved by the chief executive under section 122A of the Water Act 2000 for the storage and delivery by a resource operations licence holder of water under a water allocation in the Eton Water Supply Scheme.

Application of Contract

This contract applies to the holder of:

- (a) a water allocation managed under the Resource Operations Licence, granted under the Pioneer Valley Resource Operations Plan and, where applicable, for which no supply contract for the distribution of the water otherwise exists between the holder of the water allocation and the holder of the Resource Operations Licence under which the water allocation is managed on the day the water allocation is recorded on the Water Allocations Register;
- (b) the Resource Operations Licence under which the water allocation is managed.

Standard Conditions

1. Diversion and Acceptance of Water

ROL Holder must divert water on behalf of the Customer into the Distribution Network, as ROL Holder reasonably estimates will satisfy the likely demand of the Customer from time to time. The Customer accepts that the diversion of water by ROL Holder is subject to:

- (a) the Resource Operations Licence;
- (b) the water available under the Customer's ROL Contract;
- (c) the capacity of the Distribution Network from time to time;
- (d) ROL Holder's estimate of the likely demand of other customers within the Distribution Network;
- (e) the provisions of the Act; and
- (f) this Agreement.

2. Overall Statutory Framework for Services

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

- (a) the Act; and
- (b) the Strategic Asset Management Plan, if any.

3. ROL Holder's Obligations

- (a) ROL Holder shall promptly repair any damage to, or malfunction in, the Meter of which details are notified to ROL Holder;
- (b) ROL Holder shall repair the Meter at ROL Holder's cost, unless clause 10.1 or 11.2 apply;
- (c) ROL Holder shall divert water to the Distribution Network;
- (d) Where consultation is required under this Agreement, ROL Holder shall:
 - (i) consult fairly and reasonably with the Customer or any entity representing customers of ROL Holder within the Distribution Network; and
 - (ii) allow the Customer a reasonable opportunity to participate in any such consultation;

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- (e) ROL Holder shall, at approximately annual intervals, during this Agreement publish a report comparing the performance of ROL Holder with the Service Targets;
- (f) ROL Holder shall publish Service Targets for the Distribution Network and revise these from time to time after considering changes in customer needs determined through customer consultation, and changes in industry practice and procedures.

4. Customer's Obligations

The Customer:

- (a) may take only the water the Customer is entitled to take under the Customer's ROL Contract through the ROL Holder Diversion Works and the Customer's Offtake Works;
- (b) the maximum diversion rate under clause 10.4 may be varied from time to time:
 - (i) by agreement between the parties under this clause; and
 - (ii) either for a fixed period of time or on a permanent basis, provided the variation does not breach a Law or have the potential to adversely impact on another person.
- (c) in taking water, must comply with:
 - (i) the approval or any variation of that approval under clause 10.4 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 ROL Holder Distribution Rules.
- (d) must not, by any act or omission, cause ROL Holder to breach the Act;
- (e) must not take more than the Customer's Maximum Distribution Volume, except as allowed by this Agreement;
- (f) must not take water until the Customer's ROL Contract has become unconditional;
- (g) where a system for the ordering of water is in place under the ROL Holder 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) provided for under the ROL Holder Distribution Rules.
 - (iv) agrees that all water ordered will be accounted for under the water sharing rules administered under the Resource Operations Licence (that is, where the water sharing rules contain capacity sharing arrangements or provide for water accounting at the ROL Holder Works and at the ROL Holder Diversion Works, water orders by the Customer will be used to determine water available to the Customer; where water sharing rules do not provide for water

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accounting at the ROL Holder Works or the ROL Holder Diversion Works, water meter readings will be used to determine water available to the Customer);

- (h) where access conditions for restricting the taking of water are in place under the ROL Holder 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;
- (i) bears the risks of:
 - (i) destruction of or damage to the Customer's Offtake Works from an Event of Force Majeure or resulting from ROL Holder's diverting water, under this or any other agreement or the Resource Operations Licence;
 - (ii) Transportation Losses;
 - (iii) the exercise of a Statutory Right, for example, a water permit issued by the Regulator; and
 - (iv) any action taken under a State Direction;
- (j) during the Term, must procure and maintain in full force and effect and comply with the terms of:
 - (i) the Customer's water entitlement;
 - (ii) the Customer's Development Permit; and
 - (iii) the Customer's ROL Contract, including making all payments when due under the Customer's ROL Contract;
- (k) exclusively authorises ROL Holder to divert, on the Customer's behalf, water available to the Customer under the Customer's ROL Contract;
- (l) must not divert from the Regulated Area water the subject of this Agreement; and
- (m) irrevocably authorises ROL Holder to order on behalf of the Customer a release of water under the Customer's ROL Contract.

5. Separate Agreements

Where the Customer and ROL Holder have made an agreement, whether before or after the making of this Agreement, in addition to this Agreement, which relates to water within the Regulated Area, then:

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

6. Other Distribution Services

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

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

7. Charges

7.1 Water Charges

The Customer must pay the ROL Holder:

- (a) Distribution Charges for the Distribution Services;
- (b) for the services referred to in clauses 6(a) to (d), the relevant Other Distribution Charges;
- (c) for the services referred to in clause 6(e), where the:
 - (i) ROL Holder has indicated that it is prepared to offer the further service; and
 - (ii) ROL Holder has stated the terms of providing the further service, including the price and payment of a deposit;

the price stated if it is a fixed price, otherwise a reasonable price having regard to the cost (including administration and overhead costs) to ROL Holder in undertaking the further service;

- (d) any money due by the ROL Holder, to the holder of another resource operations licence, where the ROL Holder has diverted water that has been taken by the Customer.

7.2 Invoicing

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

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

7.3 Payment on Account for Minimum Charge

Where, in the ROL Holder's reasonable opinion, the Minimum Charge will apply for the Distribution Charges in any Water Year, ROL Holder may render an invoice for the Minimum Charge in advance with any adjustment to be made in the last invoice for the relevant Water Year.

7.4 Calculation and Payment of Charges

- (a) Distribution Fixed Charges shall be calculated and payable in advance for the relevant period in which the invoice is rendered.

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- (b) Distribution Consumption Charges and Additional Charges shall be rendered in arrears for the period for which meter readings have been taken on behalf of ROL Holder.
- (c) The balance payable for Other Distribution Charges for Other Distribution Services shall be rendered in arrears after performance of the services.

7.5 Re-invoicing after Errors

If an error is discovered in any invoice within 2 years from the date of the invoice, ROL Holder may issue a subsequent invoice, with an amount reflecting the error. If the error is such that ROL Holder 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 ROL Holder.

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

7.6 Payment

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

Where the Customer notified ROL Holder of a dispute about the invoice under clause 24, the Customer must pay to ROL Holder the undisputed amount in accordance with this clause. Once the dispute is resolved, the agreed amount outstanding must be paid within 30 days.

7.7 Interest on Arrears

Any amounts charged to ROL Holder under clause 19.1, 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 ROL Holder 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. ROL Holder may include interest payable under this clause in an invoice subsequently forwarded to the Customer.

7.8 Charges for Water Ordered but Not Taken

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

- (a) ROL Holder is in breach of its obligations under any Law; or
- (b) the holder of the Resource Operations Licence is in breach of the obligations under the Resource Operations Licence; or
- (c) the rights and interests of other customers within the Distribution Network will be adversely affected;

then, ROL Holder 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 ROL Holder within 3 months of the end of the Water Year, the Customer must pay the relevant charge.

However, nothing in this clause shall limit any other rights of ROL Holder under this Agreement or otherwise against the Customer in relation to any such breach. In particular, ROL Holder may require the Customer to pay an amount equal to the costs reasonably incurred by ROL Holder in complying with the Customer's order, less the relevant charge for Distribution Consumption Charges.

7.9 Consequences for Water Ordered but Not Taken

Where ROL Holder forms the opinion referred to in clause 7.8, and the sum of the water ordered but not taken, and the water taken, exceeds of the total of the Customer's

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Maximum Distribution Volume, the Customer shall be deemed to be in breach of clause 4(e).

8. Term

8.1 Initial Term

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

8.2 Changes to Contract Conditions

The Customer acknowledges that some provisions of this Agreement may be rendered inappropriate over time and accept that ROL Holder 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.

8.3 Notice of New Terms

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

8.4 Customer's Response to New Terms

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

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

8.5 Failure to hold a Customer's ROL Contract

If, on any Review Date, the Customer does not hold a Customer's ROL Contract, this Agreement shall automatically terminate as and from such Review Date.

9. ROL Holder Distribution Rules and Charges

9.1 ROL Holder Distribution Rules

ROL Holder 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) concerning the Distribution Network, including:

- (a) implementing ROL Holder's rights and obligations regarding the operation of the Distribution Network;
- (b) setting out, clarifying or amending the rights and obligations of ROL Holder and the Customer under this Agreement; and
- (c) guidelines for the exercise of ROL Holder's discretion under this Agreement, provided that the ROL Holder Distribution Rules:
 - (d) are not inconsistent with any Law applying to the operation of the Distribution Network;
 - (e) are not inconsistent with the Strategic Asset Management Plan if any; and
 - (f) have been the subject of consultation with the Customer or any group representing customers within the Distribution Network (if such group exists).

9.2 ROL Holder Distribution Charges

ROL Holder may make or amend:

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

9.3 Process to make or amend the Distribution Consumption Charges or Distribution Fixed Charges

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

9.4 Index Review of the Distribution Consumption Charges or Distribution Fixed Charges

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

10. Customer Obligations – ROL Holder Distribution Works and Customer's Offtake Works

10.1 Customer not to Damage

The Customer shall not damage, or by any act or omission permit damage, to the ROL Holder Distribution Works or the Distribution Network.

10.2 Customer to Notify Damage

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

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

10.3 Customer's Operation of ROL Holder Distribution Works

Where the Customer, at ROL Holder's request, carries out activities or performs services for the operation of the ROL Holder Distribution Works or the Distribution Network, the

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Customer shall carry out such activities and services reasonably and promptly and with proper care and attention.

10.4 Customer's Offtake Works to be Approved

Prior to installing or altering the Customer's Offtake Works the Customer must obtain the prior written approval of ROL Holder 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.

10.5 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 ROL Holder Distribution Rules; and

(b) maintain in good working order and condition,

the Customer's Offtake Works.

10.6 Miscellaneous Provisions for Clause 10

(a) Nothing in clauses 10.1 or 10.3 makes the Customer liable to ROL Holder for an Event of Force Majeure or for operating the Distribution Network in accordance with ROL Holder's instructions in 10.3.

(b) An example of "omission" as used in clause 10.1, is the failure to maintain the Customer's Offtake Works.

10.7 Access by Customer

ROL Holder 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.

11. Meter/Measurement

11.1 Meter Installation

(a) Unless this requirement is waived by ROL Holder a Meter acceptable to ROL Holder must be acquired and installed, at the cost of the Customer, within the Customer's Offtake Works or ROL Holder Distribution Works

(b) The Customer may:

(i) install the Meter itself;

(ii) arrange for a third party to install the Meter; or

(iii) request ROL Holder to install the Meter in accordance with clause 6 of this Agreement.

(c) Any party installing a Meter shall install the same correctly in accordance with the approval under clause 10.4.

(d) ROL Holder's right under subclause (a) includes the right to require the replacement or upgrade of a Meter already installed where such replacement or upgrading is necessary in the reasonable opinion of ROL Holder, but at the cost of ROL Holder or, where the Customer has breached clause 11.2, the Customer.

11.2 No Actions Affecting Meter

The Customer must not:

(a) damage, or by any act or omission permit damage to the Meter; or

(b) do or omit to do anything which may affect:

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- (i) the accuracy of any Meter used by ROL Holder in connection with this Agreement;
- (ii) the operation of the Customer's Offtake Works or any Meter used by ROL Holder 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 clause 11.2, is the failure to maintain the Customer's Offtake Works.

11.3 Ownership of Meter

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

11.4 Meter Readings

When directed by ROL Holder, or as required by the ROL Holder 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 ROL Holder (by telephone or fax) 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 ROL Holder (if requested by ROL Holder).

11.5 Access to Read, Test, Repair, Calibrate

At all reasonable times, the Customer must ensure that ROL Holder, and any person nominated or authorised by ROL Holder, 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.

11.6 Disclosure of Records

- (a) By ROL Holder

The Customer authorises ROL Holder to make available to:

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

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

- (b) By the Regulator or other holder

The Customer authorises the Regulator and a holder of a resource operations licence in the Regulated Area, with whom the Customer has a contract for the supply of water, to make available to ROL Holder 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 ROL Holder to determine whether the Customer has complied with this Agreement or to enable ROL Holder to issue an invoice to the Customer.

- (c) By the electricity supplier

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

11.7 Report Malfunctions, Damage

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

- (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.

11.8 Removal of Meter on Termination

On Termination of this Agreement under clause 22.1, ROL Holder may remove the Meter and seal off any ROL Holder Distribution Works or Distribution Network at the cost of the Customer.

11.9 Estimate

- (a) If, for any period during the current Water Year or the most recently completed Water Year only:
- (i) ROL Holder 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) ROL Holder has reasonable grounds to believe the Customer has not strictly complied with the requirements of clauses 11.2, 11.4 or 11.7,
- to determine applicable Distribution Consumption Charges, ROL Holder may make an estimate of the volume of water taken by the Customer over that period. Any estimate made by ROL Holder under this clause may be issued as a separate invoice by ROL Holder and shall bind the Customer;
- (b) In making such an estimate, ROL Holder 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 24 will apply to this an estimate under this clause;
- (d) examples of "reasonable grounds" under clause 11.9 (a), include:
- (i) testing of the Meter; or
- (ii) timing the Meter against a known discharge; or
- (iii) where the Meter is not registering and water is being taken.

11.10 Customer to Assist

The Customer shall:

- (a) upon request by ROL Holder, supply to ROL Holder any relevant document or information in the possession or control of the Customer, which would assist ROL Holder in making an estimate under clause 11.9;
- (b) permit ROL Holder or any person authorised by ROL Holder to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and

- (c) permit ROL Holder or any person authorised by ROL Holder 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.

11.11 Testing and Calibrating at Request of Customer

The Customer may request ROL Holder to test and calibrate the Meter. Where the Meter is operating within the manufacturer's specifications or the Customer has not complied with clause 11.2, the Customer shall meet the cost of such testing and calibration, otherwise the cost shall be met by ROL Holder. The charges payable by the Customer to ROL Holder must be adjusted for the current Water Year or the most recently completed Water Year, under clause 11.9(b), to the extent ROL Holder reasonably considers that the Meter has not been operating within the manufacturer's specification.

Nothing in this clause 11.11 shall affect the right of the Customer to have the Meter tested and calibrated by a certified testing authority, where the Customer has obtained the prior consent of ROL Holder to the testing and calibration. Such consent must not be unreasonably withheld by ROL Holder.

12. Non-diversion Authorisations

12.1 Suspension or Restriction of Diversions

ROL Holder may suspend or restrict diversions of water by ROL Holder on behalf of the Customer and the taking of water by the Customer:

- (a) during maintenance or replacement of either the Distribution Network or the ROL Holder Distribution Works, or of the water infrastructure of the holder of the resource operations licence in the Regulated Area;
- (b) where the holder of the Resource Operations Licence in the Regulated Area is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of ROL Holder, such diversion or taking:
 - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including ROL Holder 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 ROL Holder 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 Regulated Area at the time;
 - (vi) would not be allowed under the Water Resources Plan, the Resource Operations Plan or the Resource Operations Licence;
- (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 ROL Contract and the holder of the Resource Operations Licence has given notice to ROL Holder;
- (g) where provided for, under the ROL Holder Distribution Rules.

12.2 Direction Not to Take Water

Where

- (a) 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 ROL Holder for costs incurred by ROL Holder in rectifying the breach;
 - (iv) has not provided the security required under clause 23;
 - (v) has breached any of clauses 4(a), (c), (d), (e), (f), (h), 11.2, 11.5 or 11.10; then,

ROL Holder may direct the Customer or any person diverting or taking the Customer's Maximum Distribution Volume, not to divert or take water under the Customer's Allocation.

- (b) The direction under this clause must give a reasonable time within which:
 - (i) the Customer must object in writing, to the direction; and
 - (ii) the Customer must take the remedial steps required, with examples of "reasonable times" being:
 - (A) 7 days, for the payment of outstanding debt; and
 - (B) 14 days, for the provision of security under clause 23.

12.3 Consequences of Ordering and Not Taking Water

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

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

then ROL Holder 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 Distribution Volume is reduced, by the volume of water not taken; and
- (d) the reduction will be made from the Customer's Maximum Distribution Volume in the current and subsequent Water Years until the volume of water not taken has been entirely deducted.

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

12.4 If Customer does Not Comply with Direction Not to Take Water

Where ROL Holder considers that the Customer, or a person to whom the direction is given, has not complied with or will not comply with a direction under clause 12.2, ROL Holder 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 ROL Holder Distribution Works, the Meter, the Customer's Off-Take Works or the Customer's Additional Works.

13. Water Quality

13.1 No Warranty by ROL Holder

ROL Holder makes no representation and gives no warranty:

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- (a) about the quality of water within the Distribution Network or the ROL Holder Distribution Works or the Regulated Area;
- (b) that any actions, measures or steps will be taken by ROL Holder to prevent any adverse effects on the quality of water in the Distribution Network or the Regulated Area, within the ROL Holder Distribution Works or after its diversion and prior to its taking by or on behalf of the Customer; or
- (c) that water within the Distribution Network or the ROL Holder Distribution Works, the Regulated Area or 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 ROL Holder knows the Customer may put the water).

13.2 Acknowledgement by Customer

The Customer acknowledges ROL Holder 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.

13.3 Customer to Test

The Customer shall satisfy itself about the quality of water by testing or other means prior to taking water from the Distribution Network or diverting water from the Regulated Area by ROL Holder.

13.4 Customer to Indemnify

The Customer must indemnify ROL Holder against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against ROL Holder:

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

13.5 Release by Customer

The Customer releases ROL Holder 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 ROL Holder connected with:

- (a) the quality of water within the Distribution Network, the ROL Holder Distribution Works, the Regulated Area or taken by the Customer; or
- (b) the addition of chemicals to water in the Distribution Network as acknowledged in clause 13.2.

14. Additional Water Taken by Customer

The Customer acknowledges that ROL Holder may, in the circumstances stated in the ROL Holder Distribution Rules, from time to time, divert to the Distribution Network water which the Customer may take in addition to the Customer's Maximum Distribution Volume on:

- (a) complying with the ROL Holder Distribution Rules;
- (b) complying with clause 11.4; and
- (c) paying the Additional Charges for the water taken by the Customer.

15. Decommissioning of Distribution Network by ROL Holder

Where the total of all water entitlements located at the ROL Holder 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 ROL Holder may terminate this Agreement by notice in writing to the Customer. This Agreement shall terminate two years after notice is given by ROL Holder.

16. Assignment/Subcontracting by ROL Holder

16.1 Assignment by ROL Holder

ROL Holder 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.

16.2 ROL Holder may Subcontract

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

17. Amendment of Customer's ROL Contract

17.1 Further Supply Contract

The Customer shall not enter into a variation of the Customer's ROL Contract or a new ROL Contract except:

- (a) as a consequence of an application referred to in clause 17.3; and
- (b) unless:
 - (i) ROL Holder and the Customer have entered into a further supply contract or an amendment to this Agreement on terms acceptable to ROL Holder in its absolute discretion; and
 - (ii) where the holder of the Resource Operations Licence and the other party to the contract, have entered into a further supply contract or an amendment to the other supply agreement.

17.2 Acknowledgement of Consequences of Clause 17.1

The Customer acknowledges that:

- (a) until this clause has been complied with:
 - (i) all Charges payable under this Agreement remain payable to ROL Holder; and
 - (ii) ROL Holder is not obliged to take any action to deliver water as proposed by the Customer in the variation;
- (b) ROL Holder in exercising its discretion in clause 17.1(b)(i):
 - (i) will not act in a way that reduces the income of ROL Holder from the Distribution Network; and
 - (ii) may require a single payment to pay out the Customer's obligations under this Agreement.

17.3 Notice of Application

If the Customer:

- (a) applies to amend, transfer, lease or deal with the Customer's Allocation (being a water allocation) in whole or in part; or

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

then the Customer shall give written notice of the application to ROL Holder promptly after the application is made.

17.4 ROL Holder's Duty Unaffected

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

17.5 Further or Amended Supply Agreement

Where ROL Holder is to approve the amendment, transfer, lease, dealing with, change or Temporary Transfer then its statutory responsibility or ROL Holder's decision under a ROL Contract, is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

17.6 Temporary Transfer of Water

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

18. Alternate Location for Taking Water

18.1 Notice to ROL Holder

If the Customer wishes to nominate an alternative Location for Taking Water for taking all or a part of the Customer's Maximum Delivery Volume in the Water Year or for a number of water years, the Customer must obtain the prior written approval of ROL Holder.

18.2 On-Supply to be Lawful or Approved

The Customer shall not seek the approval of ROL Holder under clause 18.1 unless such dealing:

- (a) is lawful;
- (b) may be effected without an approval under Law; or
- (c) if it may be effected after obtaining an approval under a Law, when the approval has been obtained.

18.3 Further Supply Contract

The Customer shall not enter into any contract or arrangement for the purposes of clause 18.1, unless:

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

19. Power of Sale

19.1 Charge of Allocation

The Customer charges to ROL Holder the Customer's Allocation with the due and punctual payment of:

- (a) all moneys payable under this Agreement;

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- (b) all moneys payable under the additional agreements referred to in clause 5;
- (c) all debts (including amounts which become a debt due to ROL Holder under the Act) from time to time due by the Customer to ROL Holder;
- (d) the Termination Amount payable by the Customer under clause 22.2.

19.2 Exercise of Statutory Power

Where the Customer is in breach of this Agreement or if ROL Holder is entitled to terminate this Agreement under clause 22.1, ROL Holder may, subject to giving notice as required by the Act, and ROL Holder giving the Customer notice of the breach or the existence of ROL Holder's rights under clause 21.1, sell the Customer's Allocation.

19.3 Further Powers

Where ROL Holder is entitled to sell the Customer's Allocation, ROL Holder may also, amend transfer, lease or deal with the whole or part of the Customer's Allocation.

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

19.4 Manner of Dealing

Without limitation, any Dealing by Attorney may be made:

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

19.5 Application of Sale Proceeds

- (a) Any amounts received from the Dealing by Attorney shall be applied in the way required by the Act.

19.6 Power of Attorney

- (a) For valuable consideration and by way of security the Customer irrevocably appoints the Chief Executive Officer of ROL Holder its attorney to:
 - (i) do anything which the Customer is obliged to do under or in relation to this Agreement but has failed to do so;
 - (ii) do anything which the Customer is entitled to do under the Act in relation to the Customer's Allocation; or
 - (iii) amend, transfer, lease, or deal with the Customer's Allocation and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such amendment, change, lease or sale.
- (b) Without limitation, the Attorney may at any time:
 - (i) do anything which in the opinion of ROL Holder or Attorney is necessary or expedient to secure, preserve, perfect or give effect to the security contained in this Agreement and for this purpose without limitation may execute any application, transfer, lease, or Additional Contract and other assurance of any of the Customer's Allocation in favour of any purchaser, assignee, lessee or any nominee; and

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- (ii) delegate his powers (including delegation).
- (c) No Attorney may act under this clause:
 - (i) unless notice required by clause 19.2 has been given; or
 - (ii) inconsistently with this Agreement.
- (d) To the extent permitted by Law, no Attorney will be liable:
 - (i) for any conduct or delay in the exercise or non-exercise of any power;
 - (ii) for any loss (including consequential loss) which results,
 - (iii) for negligence of the Attorney, where the sale has been made after a public process (eg auction, tender, public notification of sale),except where the liability arises from the fraud or wilful misconduct of the Attorney.

Nothing in this Agreement limits the Customer's ability to obtain advice or engage another person to act on the Customer's behalf.
- (e) No party to any sale 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.

20. Substantial Destruction or Damage to the Distribution Network or ROL Holder Distribution Works

This Agreement shall terminate where in ROL Holder's reasonable opinion, ROL Holder 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, ROL Holder Distribution Works or water infrastructure of the holder of a Resource Operations Licence are substantially destroyed or damaged. As soon as is reasonably practicable after ROL Holder has formed the opinion, ROL Holder shall notify the Customer and this Agreement shall terminate from the date stated by ROL Holder in that notice to the Customer.

21. Limitation of Liability and Release

21.1 Extent of Liability for Losses

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

- (a) any breach of this Agreement by ROL Holder;
- (b) water not being available under the ROL Contract;
- (c) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (d) complying with a State Direction.

21.2 Customer has Remedies under the Act

ROL Holder and the Customer acknowledge and agree that clause 21.1 is not intended to limit or affect action which the Customer may take against ROL Holder under the Act or for the wilfully negligent acts of ROL Holder.

21.3 Releases by Customer

The Customer releases ROL Holder 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 ROL Holder 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 ROL Holder, including for example, channel overflows however caused, pipeline breaks where such action is necessary for ROL Holder 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 overflows from the Distribution Network or the Distribution Network acting as a barrier as a consequence of a circumstance referred to in paragraphs (a), (e), (f) and (h) of the definition of "Event of Force Majeure";
- (c) death or personal injury, damage to the Customer's Offtake Works, other property, livestock, crops or assets as a consequence of actions of ROL Holder in remedying a breach of this Agreement by the Customer or a breach of an agreement for the diversion of water which ROL Holder has with another customer in the Distribution Network for example, in the removal of unauthorised connections or outlets;
- (d) 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;
- (e) the circumstances in which the Customer bears the risk as stated in clause 4(i).

21.4 Indemnity by Customer

The Customer must indemnify ROL Holder against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against ROL Holder arising out of the circumstances in which the Customer releases ROL Holder under clause 21.3 and a failure to comply with clause 4(j)(iii).

22. Default and Termination

22.1 Termination

ROL Holder may terminate this Agreement, without affecting ROL Holder'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 ROL Holder of its intention to terminate.

22.2 Payment on Termination for Breach by Customer

Where this Agreement is terminated as a consequence of a breach by the Customer, the Customer shall pay to ROL Holder the Termination Amount. However, nothing in this clause shall limit any other rights of ROL Holder under this Agreement or otherwise against the Customer in relation to any such breach.

22.3 Termination Amount

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

23. Security

23.1 Request for Security

ROL Holder may request the provision of security if:

- (a) the Customer commits a breach nominated in either of clause 12.2(a) (i), (ii), (iii) or (v) of this Agreement, whether ROL Holder has given a direction or not; or
- (b) ROL Holder is not reasonably satisfied as to the financial capacity of the Customer to comply with its obligations under this Agreement.

23.2 Provision of Security

The Customer must promptly provide, after a request in writing by ROL Holder a security of an amount equal to one quarter of the Water Charges invoiced for the previous Water Year, until the later of:

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

23.3 Form of Security

The security may take the form of an on demand guarantee on terms and from a financial institution reasonably acceptable to ROL Holder.

23.4 No Services without Security

ROL Holder is not obliged to provide any services under this Agreement until:

- (a) the security is provided to ROL Holder; and
- (b) thereafter, if ROL Holder uses the security to pay amounts owing by the Customer under this Agreement, until the Customer has provided further security so that the total security is for an amount not less than the amount calculated under clause 23.2.

23.5 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) ROL Holder shall release the security to the Customer.

24. Dispute Resolution

24.1 Activation

- (a) The objective of clause 24 is to provide an effective and equitable process for the resolution of disputes and to encourage the participants to discuss and resolve the matter.
- (b) If a dispute arises under this Agreement (apart from a dispute in relation to Charges set under clause 9.3 or clause 9.4, or a dispute which arises either prior to the exercise of rights of termination in clauses 5 and 6 of the Terms of the Agreement, or in the Special Conditions of this Agreement or in relation to such rights of termination), any party may give written notice to the party with whom the dispute

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exists. The notice shall designate a representative with the appropriate authority to negotiate the dispute.

24.2 Appointment of representative

Within five business days of receipt of the notice referred to in clause 24.1, the recipient shall designate a representative with similar authority.

24.3 Discussions

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

24.4 Negotiation of procedures

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

24.5 Methods of resolution

A party receiving a request under clause 24.4 shall promptly discuss the following and other related subjects with the party making the request:

- (a) the mode of proceeding, whether by negotiation, mediation, conciliation, expert appraisal, expert determination or mini-trial;
- (b) the responsibility for payment of the costs of the mode agreed under subclause (a);
- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

24.6 Exchange of information

The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement under this clause 24, is to attempt to settle a dispute between the parties.

24.7 Termination

Any party may terminate the dispute resolution procedure provided by this clause 24 at any time and pursue other available remedies.

25. Native Title

25.1 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 ROL Holder's obligations under this Agreement are subject to any such requirement.

26. GST

The parties agree that:

- (a) all Payments have been calculated without regard to GST;
- (b) ROL Holder will comply with its obligations under the *Trade Practices Act 1974* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional

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amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;

- (d) any reference to a cost or expense in this Agreement excludes any amount for GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and
- (e) the payee will provide to the payer a Tax Invoice if subclause (c) applies.

27. Miscellaneous

27.1 Obligations for the Benefit of Third Parties

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

27.2 Notices

Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient:
 - (i) for ROL Holder, at the address of its office, nominated in the ROL Holder Rules or if not nominated, closest to the Regulated Area;
 - (ii) for the Customer,
 - (A) for an invoice under clause 7 at the Address for Invoices in the Customer's Schedule;
 - (B) for any other notice, either:
 - (1) to the Facsimile Number in the Customer's Schedule;
 - (2) at the Address for Notices in the Customer's Schedule;
 - (3) at the address last known to ROL Holder; or
 - (4) at the address shown in the register that records the details of the Customer's Allocation.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by the Customer will be taken to have been given when delivered, received or left at the above address;
- (d) in the case of a notice by ROL Holder forwarded by mail, will be taken to have been given 4 days after posting by ROL Holder;
- (e) if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

27.3 Entire Agreement

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

27.4 Amendment

This Agreement may be amended:

- (a) by another agreement executed by all parties; or

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- (b) as reasonably required by ROL Holder, after consultation, where there has been a change in any Law, the Resource Operations Licence, or the Strategic Asset Management Plan, if any.

27.5 No Waiver

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

27.6 Stamp Duty and Costs

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

27.7 Further Assurances

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

27.8 Details from Register

Where any details are to be included in the Customer's Schedule then, if not so included, the relevant details shall be deemed to be those appearing for the Customer in the register that records the details of the Customer's Allocation.

27.9 Costs of Approval

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

- (a) as set out in the Regulated Charge;
and if there is no such Regulated Charge:
(b) the charge published from time to time in accordance with clause 9.2, if any.

27.10 Allocation of Payments

To the extent permitted by Law, ROL Holder may apply payments by the Customer towards payment of such moneys, debts and amounts referred to in clause 19.1 as ROL Holder determines in its absolute discretion.

28. Definitions/Interpretation

28.1 Definitions

Act means the Water Act 2000.

Additional Charges means the applicable Regulated Charge and if no Regulated Charge applies the charge as made by ROL Holder when notice of the availability of additional water is given under this Agreement.

Allocation means a water allocation granted under the Resource Operations Plan.

Commencement Date means the date on which the Allocation is recorded on the Water Allocations Register.

Customer means the person who is the holder of the Allocation.

Customer's Additional Works means works other than the Customer's Offtake Works, from which the Customer may take water.

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Customer's Allocation means the Customer's Allocation as defined in the Customer's ROL Contract.

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

Customer's Maximum Distribution Volume means the actual volume of water to which the Customer is entitled in any Water Year from the Customer's ROL Contract, if any or as varied under clauses 14, 17 or 18.

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

Customer's ROL Contract means a supply contract – river between the Customer and holder of the Resource Operations Licence.

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

Distribution Charges means the greater of:

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

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

- (a) the Regulated Charge for the Customer's Allocation if applicable; or
- (b) otherwise, the Consumption Charge determined by the ROL holder and published in a newspaper circulating generally in the Regulated Area, as varied under clause 9.3 or clause 9.4.

Distribution Network means the network of channels, pipelines, natural formations and other works as operated from time to time by ROL Holder.

Distribution Services means the services described in clause 1.

Distribution Fixed Charges means either:

- (a) the Regulated Charge for the Customer's Allocation if applicable;
- (b) otherwise, the Fixed Charge determined by the ROL holder and published in a newspaper circulating generally in the Regulated Area as varied under clause 9.3 or clause 9.4.

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

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain

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any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;

- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the Distribution Network or the ROL Holder Distribution Works or the Customer's Offtake Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the Distribution Network or the ROL Holder Distribution Works, the Meter or the Customer's Offtake Works caused by any of the events set out above.

GST means the goods and services tax as imposed by the GST Law.

GST Amount means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%) together with any related interest, penalties, fines or other charge.

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

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

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

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

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

Law means:

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

Location for Taking Water means the Customer's Offtake Works Location as varied under clause 18.

Meter means 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 ROL Holder.

Minimum Charge means either:

- (a) the Regulated Charge if applicable; or
- (b) otherwise, the Minimum charge determined by the ROL Holder and published in a newspaper circulating generally in the Regulated Area as varied under clause 9.2(a).

ML means megalitre.

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

Net Present Value Rate means rate equal to the Bank Bill Swap Rate (180 Day) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by ROL Holder by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

Other Distribution Charges means the charges for the Other Services and the administration charge referred to in clause 27.9.

Other Distribution Services means the services identified in clause 6 and any services, which ROL Holder indicates, in the ROL Holder Distribution Rules, that it will provide.

Overdue Rate means a rate of interest equal to the Suncorp-Metway variable business lending rate applicable from time to time plus two percent (2%) and if at any time this rate ceases to be published, then such other rate per annum as may be determined after request by ROL Holder by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

Payment means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

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

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

Regulator means the regulator or chief executive under the Act.

Resource Operations Licence means the resource operations licence granted, under the Act, under which the Allocation is managed.

Resource Operations Plan means the resource operations plan, if any, from time to time under the Act which applies to the Regulated Area.

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

Services means Distribution Services and Other Distribution Services.

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

- (a) making water available in nominated timeframes at nominated locations;
- (b) notification for and timing of interruptions to supply;
- (c) frequency and duration of interruptions to supply;
- (d) timing and duration of planned maintenance;

(e) response times to applications made under this Agreement.

State Direction means the requirements of any notice published or any regulation made under the Act or any present or future requirement, instruction, direction or order made under any Law which is binding on, or which would customarily be observed by, a reasonable and prudent holder of the Resource Operations Licence and/or owner/operator of the ROL Holder Works and any modification, extension or replacement thereof from time to time in force.

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

Strategic Asset Management Plan means the Strategic Asset Management Plan approved from time to time under the Act, if any.

ROL Holder means the holder of the Resource Operations Licence.

ROL Holder Distribution Rules means the rules and guidelines made and amended from time to time under clause 9.1.

ROL Holder Distribution Works means the works to which the water is to be diverted by ROL Holder at the ROL Holder Diversion Location.

ROL Holder Diversion Location means that point on a watercourse where water is delivered under a ROL Contract to enable ROL Holder to deliver water to the location of the Customer's Offtake Works.

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

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

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

Termination Amount means the amount which represents the value as at the date of termination using a discount figure equivalent to the Net Present Value Rate of the Distribution Fixed Charges and the Consumption Charges which would have been payable under this Agreement for a period of 10 years after the date of termination, on the assumption that in each Water Year the Customer took the whole of the Customer's Allocation.

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

Transportation Losses means 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:

- (a) contamination (from whatever cause);
- (b) theft or any unlawful taking;
- (c) the taking by other customers within the Distribution Network of an amount of water greater than that to which the customer is entitled;
- (d) where a system for the ordering of water is in place under the ROL Holder Distribution Rules and a customer has:
 - (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 ROL Holder 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.

Water Allocations Register means the water allocations register defined in the Act.

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

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

28.2 Interpretation

In interpreting this Agreement, unless the context otherwise requires:

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