

# Supply Contract

Fraser Coast Regional Council  
FCRC

{Customer}  
Customer

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## Supply Contract

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**Date** [ ]

**Parties** **Fraser Coast Regional Council ABN 19 277 850 689** of 77 Tavistock Street,  
Hervey Bay, Queensland 4655 (**FCRC**)

**(Customer and address)**

**(Customer)**

### Operative provisions

1. This Agreement consists of:
  - (a) the Special Conditions set out in Part C;
  - (b) the Standard Terms set out in Part B;
  - (c) the Customer Details and Service Details set out in Part A;
  - (d) the Application Form attached to this physical document or to the electronic mail message under which FCRC forwarded this document to you (**Application Form**) (only to the extent it is specifically referred to elsewhere in this **Agreement**); and
  - (e) the Title Search or Interim Water Allocation attached to this physical document or to the electronic mail message under which Wide Bay Water forwarded this document to you, if any (**Title Document**) (only to the extent it is specifically referred to elsewhere in this Agreement).

To the extent of any inconsistencies between them, the above documents will be given precedence in the order listed above.

2. This Agreement:
  - (a) represents the entire agreement between you and FCRC; and
  - (b) supersedes any prior agreement or discussions between you and FCRC.
3. By providing a copy of this Agreement to you electronically or in hard copy form, FCRC offers to enter into this Agreement with you. That offer remains open until it is revoked by FCRC in writing.
4. You will be deemed to have accepted FCRC's offer (and this Agreement will be deemed to be in force) if:
  - (a) you commence taking water pursuant to the Customer's Allocation; or
  - (b) you provide to the Registrar of Titles any consent or notification which FCRC has provided to you in relation of the transfer or lease of the Customer's Allocation to you; or
  - (c) you confirm your acceptance to FCRC by email or otherwise in writing, including by executing this contract.

5. If there is an existing contract between you and FCRC in relation to the supply of water in relation to the Customer's Allocation, that contract is terminated on and from commencement of this Agreement.

(DELETE RELEVANT SIGNATURE BLOCK)

**CUSTOMER**

<b>Signed</b> for and on behalf of <b>[CUSTOMER]</b> in accordance with s.127 of the Corporations Act 2001 (Cth):
Signature of Director
Full name of Director
Signature of Witness
Full name of Witness
Date

**[INDIVIDUAL]**

<b>Signed</b> by <b>[CUSTOMER]</b> in the presence of:
Signature of <b>[INSERT NAME]</b>
Full name of Witness
Signature of Witness
Date

## Part A – Customer Details and Service Details

### Customer Details – Transfer/Sale of Allocation

This version of the Customer Details applies when an Application Form for Transfer/Sale of Water Allocation is submitted to FCRC.

#### 1. Customer's Personal Details

Customer	The Transferee / Purchaser / Customer set out in Part B of the Application Form.
ABN / ACN	The ABN or ACN set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The mobile and landline numbers set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.

#### 2. Details of Customer's Acquisition

Current Holder	The customer (if any) described in Part A of the Application Form.
Extent of interest to be acquired	Transfer
Portion of interest to be acquired	Full volume of the Customer's Allocation.
Completion Date	The date that settlement of the transfer of the Water Entitlement to the Customer occurs.
Nature of Acquisition Dealing	Acquisition

#### 3. Customer Allocation Particulars

Type of Customer's Allocation	The type of Customer's Allocation described on the Title Document.
Water Entitlement	The water entitlement described on the Title Document

Customer's Interest	The full Water Entitlement as described on the Title Document as a % of the Allocation – normally 100%.
Customer's Allocation Identifier	The Water Entitlement allocation described on the Title Document including Allocation No and Crown Plan
Amount of Allocation	The volume described in Part D of the Application Form.

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#### 4. Customer's Nominated Works

Customer's Nominated Works	As described in Part C of the Application Form – normally all pipework, valves, fittings and the like and mechanical equipment adjoining Meter No. #####.
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#### 5. Service Details

Fixed Allocation Charges (current to next 30 June)	The "Part A - fixed allocation charge" for the Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Usage Charges (current to next 30 June)	The "Part B - usage charge" for the Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Billing Date	In accordance with the term stipulated on the invoice.
Security	No

Other charges may be levied from time to time at rates set in accordance with clause 8.8.

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#### 6. FCRC details

ABN / ACN	19 277 850 689
Address for Notices (street or property address)	As described in FCRC Rules
Telephone Numbers	



Email Address	
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## Customer Details – Lease of Allocation

This version of the Customer Details applies if the Allocation is being transferred for Lease or Sublease.

### 1. Customer's Personal Details

Customer	The Lessee set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The telephone number set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.

### 2. Details of Customer's Acquisition

Current Holder	The customer described in Part A of the Application Form.
Type of Customer's Allocation	The type of Customer's Allocation described on the Title Document.
Extent of interest to be acquired	Lease
Portion of interest to be acquired	Full volume of the Customer's Allocation.
Completion Date	The date that the lease or sublease between the customer described in section 1 and the Current Holder commences.
Nature of Acquisition Dealing	Lease or Sublease

### 3. Customer Allocation Particulars

Customer's Allocation Identifier	The Customer's Allocation described on the Title Document.
Customer's Interest	The whole of the Customer's Allocation (or, in the case of a sublease, lease of the Customer's Allocation) owned by the Current Holder as described on the Title Document.

Amount of Allocation	The volume described in Part A of the Application Form.
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#### 4. Customer's Nominated Works

Customer's Nominated Works	As described in Part C of the Application Form.
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#### 5. Service Details

Fixed Allocation Charges (current to next 30 June)	The "Part A - fixed allocation charge" for the [Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme] fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Usage Charges (current to next 30 June)	The "Part B - usage charge" for the [Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme] fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Billing Date	In accordance with the term stipulated on the invoice.
Security	YES for an amount of \$[insert] or NO

Other charges may be levied from time to time at rates set in accordance with clause 8.8.

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#### 6. FCRC details

ABN / ACN	19 277 850 689
Address for Notices (street or property address)	As described in FCRC Rules
Telephone Numbers	
Email Address	

## Customer Details – Seasonal Water Assignment

This version of the Customer Details applies when an Application Form for Seasonal Water Assignment is submitted to FCRC.

### 1. Customer's Personal Details

Customer	The Assignee set out in Part B of the Application Form.
Address for Invoices (mailing address)	The address set out in Part B of the Application Form.
Address for Notices (street or property address)	The address set out in Part B of the Application Form.
Telephone Numbers	The telephone number set out in Part B of the Application Form.
Email Address	The email address set out in Part B of the Application Form.

### 2. Details of Customer's Seasonal Assignment

Current Allocation Holder	The person described in Part A of the Application Form.
Type of Allocation	The type of Allocation described on the Title Document.
Extent of interest to be acquired	Seasonal Assignment
Portion of interest to be acquired	[insert]
Nature of Acquisition Dealing	Seasonal Assignment

### 3. Seasonal Assignment Particulars

Allocation Holder's nominated transfer volume	The [INSERT].
Seasonal Assignment Term	[E.G. water year]

### 4. Customer's Nominated Works

Customer's Nominated Works	As described in Part C of the Application Form.
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## 5. Service Details

Fixed Allocation Charges (current to next 30 June)	The "Part A - fixed allocation charge" for the [Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme] fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Usage Charges (current to next 30 June)	The "Part B - usage charge" for the [Teddington Weir Water Supply Scheme/Wide Bay Water Supply Scheme] fixed by FCRC each financial year in its Schedule of Fees and Charges as part of Council's annual budget.
Billing Date	In accordance with the term stipulated on the invoice.
Security	YES for an amount of \$[insert] or NO

Other charges may be levied from time to time at rates set in accordance with clause 8.8.

## 6. FCRC details

ABN / ACN	19 277 850 689
Address for Notices (street or property address)	As described in FCRC Rules
Telephone Numbers	
Email Address	

## Part B – Standard Terms

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### 1. Introduction

#### 1.1 FCRC and this Agreement

FCRC holds a Resource Operations Licence for water infrastructure in the Regulated Area, which authorises it to provide the Water Supply Services.

You are responsible for obtaining the water to be transported and either:

- (a) hold a Customer's Allocation for the taking of water from the Regulated Area;
- (b) propose to acquire an interest in a Customer's Allocation for the taking of water from the Regulated Area; or
- (c) have a contract for the supply of water under Part 4 of the Act.

This Agreement sets out:

- (d) the terms on which FCRC will provide the Water Supply Services and Related Services; and
- (e) your rights and obligations in connection with those services.

#### 1.2 Defined terms and interpretation

Words that are bold and italicised in this Agreement have a defined meaning as set out in clause 23.1.

To assist with understanding and interpreting this Agreement, a number of principles of interpretation are set out in clause 23.2.

#### 1.3 Consultation with you

This Agreement requires FCRC to consult with you (or entities representing customers within the Regulated Area) prior to taking some actions (as set out in this Agreement). In undertaking any such consultation, FCRC will be fair and reasonable and allow you a reasonable opportunity to participate.

#### 1.4 Cooperation with you

You acknowledge that this Agreement requires you and FCRC to cooperate.

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## 2. What is a Supply Contract

### 2.1 What this Agreement is

This Agreement is between us, FCRC and you, the Customer.

The Agreement provides the terms on which FCRC releases water and provides Water Supply Services and Related Services to you.

It is a legally enforceable document and sets out terms on which it has been agreed FCRC will provide those services and you have accepted the provision of those services.

## 2.2 What is not covered by this Agreement

This Agreement does not entitle you to take water. You must acquire that entitlement separately through a Customer's Allocation in respect of the Regulated Area, or through a contract for the supply of water from FCRC or someone else who has such a Customer's Allocation.

This Agreement does not authorise the development or installation of the Customer's Nominated Works. You must acquire all relevant permits and approvals for such works.

Accordingly, during the term of this Agreement you 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 Approvals.

## 2.3 How does this relate to other Agreements you have with FCRC?

Where you have another agreement with FCRC (whether entered before or after this Agreement) which relates to water in the Regulated Area then:

- (a) default by you under any such agreement constitutes default by you under each such agreement;
- (b) amounts owing by you to FCRC under one agreement may be set off against amounts owing by you under every other agreement;
- (c) any security provided by you in connection with an agreement may be used by FCRC as if given as security for obligations under all agreements and for all debts due by you to FCRC;
- (d) a failure to pay any debt due by you to FCRC when due, is a default under each such agreement; and
- (e) if FCRC issues a single invoice to you for amounts payable under more than one agreement, non-payment or underpayment by you of that invoice will be considered to be a non-payment or underpayment equally under each agreement. For example, if FCRC issues a single invoice for \$300 in relation to three agreements, and you pay \$150 of that invoice, you will be deemed to have failed to pay \$50 under each of the three agreements.

## 2.4 How this Agreement impacts on other customers

The water infrastructure utilised to provide you with services is also used to provide services to other customers. Many of the terms in this Agreement have been included to protect other customers within the Regulated Area and a breach of your obligations under this Agreement may adversely affect the interests of such customers.

You agree, for the benefit of such customers (in addition to being for the benefit of FCRC), to comply with your obligations under this Agreement.

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## 3. How the terms of this Agreement might change

### 3.1 Review Date

- (a) Subject to paragraph (b), a Review Date will occur on:

- (i) 1 June 2022 (**Initial Review Date**); and
  - (ii) each three (3) year anniversary of the Initial review Date until this Agreement expires or is terminated.
- (b) FCRC may, by written notice to you, extend a Review Date to a later date nominated by FCRC. If FCRC does so, subsequent Review Dates will occur on each five (5) year anniversary of the extended Review Date, subject to FCRC's right to grant further extensions under this clause.

### **3.2 FCRC may suggest changes**

Some provisions of this Agreement may be rendered inappropriate over time.

Where FCRC considers that has occurred it will initiate consultation with you or any group representing customers within the Regulated Area (if such group exists) with a view to establishing new terms and conditions.

Where, after such consultation, FCRC has determined new terms and conditions which should apply to the Water Supply Services or Related Services, FCRC may by written notice given to you three (3) months prior to a Review Date, notify you of the new terms and conditions.

If, on or prior to the relevant Review Date you:

- (a) accept in writing the new terms and conditions, then as and from the relevant Review Date this Agreement shall terminate (without releasing either party from obligations accrued to that Review Date) and a new agreement on those new terms and conditions shall apply; or
- (b) do not accept the new terms and conditions, FCRC may by written notice to you not later than three (3) months after the relevant Review Date, elect to continue to supply the Water Supply Services and Related Services on the terms of this Agreement or to terminate this Agreement as and from the date of such notice.

### **3.3 Changes arising from changes in law**

Where there has been a change in any Law, the Resource Operations Licence, or any other instrument made under the Act, FCRC may require reasonable changes to this Agreement, after consultation with you.

### **3.4 Other amendments have to be agreed with you**

Except as set out in clauses 3.2 or 3.3, this Agreement may only be amended by another agreement executed by you and FCRC.

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## **4. Term**

### **4.1 When this Agreement commences**

The Agreement commences on the Commencement Date, subject to the satisfaction or waiver of the Conditions Precedent (if any).

Where this Agreement commences part way through a Water Year or item 2 in the Customer Details is completed:

- (a) you must make yourself aware of the volume of water taken by the Current Holder during the Water Year in which the Commencement Date occurs;



- (b) you warrant that you will make arrangements satisfactory to FCRC for the Meter of the Current Holder to be read at the time immediately prior to you taking water under this Agreement and provide details of that Meter reading to FCRC promptly. If you fail to do so, FCRC may adopt the last water reading held in FCRC's records (even if this reading falls prior to the date of commencement or transfer); and
- (c) you accept that no representation of warranty is given by FCRC about the volume of water which may be taken by you during the balance of that Water Year.

The Current Holder shall remain principally liable for all charges until you are entitled to take the Current Holder's water under this Agreement, however you indemnify FCRC in respect of any such Charges not paid by the Current Holder.

## **4.2 When this Agreement ends**

The Agreement continues until it is terminated in accordance with its provisions.

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## **5. Water Supply Services**

### **5.1 FCRC to Release water**

FCRC must release water within the Regulated Area from the FCRC Works which FCRC reasonably estimates will satisfy your likely demand from time to time.

### **5.2 Conditions of Release**

The release of water cannot be guaranteed.

You acknowledge that the release of water by FCRC is subject to:

- (a) the Resource Operations Licence;
- (b) the Customer's Allocation;
- (c) any conditions or constraints on the Customer's Allocation;
- (d) FCRC's estimate of the likely demand of other customers within the Regulated Area;
- (e) the capacity of, and availability of water from, the FCRC Works;
- (f) the provisions of the Act and instruments made under it; and
- (g) this Agreement.

### **5.3 No warranty as to water quality**

You must satisfy yourself about the quality of water by testing or other means prior to diverting or taking any water in the Regulated Area.

FCRC makes no representation and gives no warranty:

- (a) about the quality of water within the FCRC Works or the Regulated Area;
- (b) that any actions, measures or steps will be taken by FCRC to prevent any adverse effects on the quality of water prior to its diversion or taking by you or on your behalf

(whether in the Regulated Area, within the FCRC Works or after its release from the FCRC Works); or

- (c) that water within the FCRC Works, the Regulated Area or available for diversion or taking by you at the Customer's Nominated Works is potable or suitable for any purpose (whether or not FCRC knows about that intended purpose).

You must indemnify FCRC against any Liability incurred or suffered by or brought or made or recovered against FCRC in connection with the quality of water within the FCRC Works and the Regulated Area where your act or omission (whether or not under this Agreement) has affected the quality of such water, and by any person to who you have supplied water or allowed to take water.

You release FCRC from all Liability which you may have or claim to have or but for this release might have had against FCRC connected with the quality of water within the FCRC Works, the Regulated Area or diverted or taken by or on your behalf.

## **5.4 Risks you assume in relation to water releases**

You bear the risk of and any Liability resulting from:

- (a) destruction of or damage to the Customer's Nominated Works from an Event of Force Majeure or resulting from FCRC's releasing water, under this or any other agreement or the Resource Operations Licence;
- (b) Supply Water Losses;
- (c) the exercise of a Statutory Right, for example, a water permit issued by the Regulator; and
- (d) any action taken under a State Direction.

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## **6. Restrictions on water releases**

### **6.1 When FCRC can suspend or restrict water releases to you**

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

- (a) during maintenance or replacement of the FCRC Works or of the water infrastructure of the holder of another resource operations licence in the Regulated Area;
- (b) where FCRC or the holder of another resource operations licence in the Regulated Area is carrying out works for new water infrastructure;
- (c) where, in the reasonable opinion of FCRC, such release:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including FCRC or you);
  - (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 FCRC of its obligations under the Resource Operations Licence, any Law or an agreement; or

- (v) would be impractical considering the level of demand, performance of the watercourse (including potential water losses) and the requirements of other customers within the Regulated Area at the time;
- (d) by reason of an Event of Force Majeure; or
- (e) where provided for under the FCRC Rules.

## 6.2 When FCRC can stop you taking water

- (a) If the Customer:
  - (i) commits a material breach of this Agreement;
  - (ii) is in arrears for payments for Charges for more than two (2) months;
  - (iii) breaches this Agreement and fails to reimburse FCRC for costs incurred by FCRC in rectifying the breach;
  - (iv) fails to provide the security required under clause 10; or
  - (v) breaches any of clauses 9.1, 11.1(a), 11.1(b), 12.3(b), 12.3(c) or 12.5,

FCRC may give the Customer a notice in writing (**Remediation Notice**) stating that a breach or failure has occurred.

- (b) Following receipt of a Remediation Notice, the Customer must:
  - (i) to the extent it has not rectified the breach or failure the subject of the Remediation Notice, commence, and continue, to diligently pursue the cure of the relevant breach or failure; and
  - (ii) within 5 Business Days of receipt of a Remediation Notice, submit to FCRC a plan which specifies the measures the Customer will put in place to minimise future breaches or failures and otherwise ensure that the Customer complies with its obligations under the Agreement (**Draft Cure Plan**).
- (c) Within 5 Business Days of receipt of a Draft Cure Plan by FCRC, FCRC and the Customer must meet and agree the Draft Cure Plan (including any amendments to the Draft Cure Plan reasonably requested by FCRC). The Draft Cure Plan as:
  - (i) agreed by FCRC (acting reasonably) and the Customer; or
  - (ii) failing agreement, modified by FCRC (acting reasonably).

will become the agreed cure plan in respect of the breach or failure (**Agreed Cure Plan**).

- (d) If the Customer fails to submit a Draft Cure Plan in accordance with clause 6.2(b)(ii), or comply with the Agreed Cure Plan, FCRC may, without limiting any of its other rights under this Agreement or at law or in equity, not release water under this Agreement or stop you or any person diverting or taking water pursuant to the Customer's Allocation, from diverting or taking water under the Customer's Allocation by making modifications to FCRC Works, the Meter or the Customer's Nominated Works.

- (e) Notwithstanding that the Customer may have complied with an Agreed Cure Plan (and rectified the breaches or failures), the breach or failure may nonetheless entitle FCRC, in its discretion, to terminate the Agreement for cause under clause 17.2.

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## 7. Related Services

If you are not in breach of this Agreement, then FCRC will provide at your request each of the following Related Services:

- (a) connection services (including FCRC's procuring and installing a Meter);
- (b) disconnection services (including FCRC's arranging for the removal of a Meter);
- (c) extra Meter reading services (involving FCRC's reading of a Meter in addition to a reading anticipated under this Agreement);
- (d) Meter testing services (including FCRC's procuring testing of a Meter);
- (e) assistance with obtaining approvals referred to in clause 11.1(a)(iv); or
- (f) further services (involving such other services as FCRC is offering from time to time).

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## 8. What you pay

### 8.1 Charges

You must pay FCRC:

- (a) Service Charges for the Water Supply Services;
- (b) for the Related Services referred to in clause 7(a) to 7(d), the relevant Other Charges;
- (c) for the Related Services referred to in clause 7(e) to 7(f), where:
  - (i) FCRC has indicated that it is prepared to offer the further service; and
  - (ii) FCRC 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 FCRC in undertaking the further service.

### 8.2 How your charges are calculated

- (a) **Fixed Allocation Charges** are calculated and payable in advance for the relevant period in which the invoice is rendered. For the avoidance of doubt, the Fixed Allocation Charges are payable even if no Water is supplied under this Agreement
- (b) **Usage Charges** are rendered in arrears for the period for which Meter readings have been taken on behalf of FCRC.

- (c) **Other Charges:** The balance payable for Other Charges for Related Services shall be rendered, at FCRC's election, in advance or in arrears of performance of the Related Services.

### 8.3 When you will be invoiced

FCRC may, unless otherwise required by Law, render an invoice to you for:

- (a) Water Service Charges at approximately the Billing Date or as published in the FCRC Rules; and
- (b) Other Charges after performance of any Related Services.

If FCRC does not render an invoice at the time it was first entitled to do so under this clause 8.3, FCRC may render an invoice up to two (2) years after that time.

### 8.4 Invoicing errors

If you receive an invoice that you believe is incorrect, you can contact us in accordance with the FCRC Details in Part A.

If an error is discovered in any invoice to you, within two (2) years from the date of the invoice, FCRC may issue a subsequent invoice to you, with an amount reflecting the error. If correcting the error requires:

- (a) FCRC to reimburse you, reimbursement may be effected by setting off the reimbursable amount against amounts payable on the next invoice or by refunding the reimbursable amount on request by you; or
- (b) If the error is such that you are required to pay FCRC an additional amount, then FCRC must invoice you for that amount, which will become due as provided for in clause 8.5.

### 8.5 Due date for payment

- (a) You must pay all invoices from FCRC by the due date specified on the invoice, which must not be less than fourteen (14) days of the date of the invoice.
- (b) Where you notify FCRC of a dispute about an invoice under clause 16, you must pay to FCRC the undisputed amount in accordance with this clause. Once the dispute is resolved, the amount agreed or determined to be outstanding must be paid within thirty (30) days of that resolution.
- (c) Any amounts charged by FCRC, if not paid by you when due, will accrue interest calculated in accordance with and at the rate decided by Council in accordance with section 133 of the Local Government Regulation 2012. FCRC may include interest payable under this clause 8.5(c) in an invoice subsequently forwarded to you.

### 8.6 Financial hardship

- (a) If:
  - (i) you are experiencing financial hardship and as a result are unable to pay the Charges; and
  - (ii) you are eligible for relief under Council's Financial Hardship Policy,

you may make an application for relief in accordance with the Financial Hardship Policy.

- (b) If you are approved for assistance under the Financial Hardship Policy, your obligations under this agreement will be amended to the extent specified in your approval for financial assistance.
- (c) Nothing in this agreement fetters Council's exercise of powers under its Financial Hardship Policy.

## **8.7 FCRC is entitled to use estimates for Usage Charges in certain circumstances**

If, for any period during the current Water Year or the most recently completed Water Year:

- (a) FCRC has reasonable grounds to believe that the Meter is or was not measuring accurately;
- (b) no Meter is installed;
- (c) access to the Meter was not obtained for any reason; or
- (d) FCRC has reasonable grounds to believe that you have not strictly complied with the requirements of clauses 12.3(a), 12.3(b), 12.3(c) or 12.3(d),

FCRC may make an estimate of the volume of water taken by you over that period to determine your Usage Charges.

Any estimate made by FCRC under this clause may be issued to you as a separate invoice by FCRC.

In making such an estimate, FCRC must consult with you, act reasonably and may have regard to any relevant matter including water ordered by you, your prior water use history, hours pumped, electricity consumed, industry practice or the area under irrigation.

## **8.8 How your charges are made or amended by FCRC**

FCRC fixes the Usage Charges and Fixed Allocation Charges and Other Charges in its Schedule of Fees and Charges made by FCRC as part of its budget process.

## **8.9 Consequences where another person has diverted water for you**

Where:

- (a) another person diverts water on your behalf; and
- (b) in taking the water from that other person, you have taken more water than:
  - (i) you were entitled to take from that person; or
  - (ii) was ordered from that person,

then:

- (c) you will pay the Usage Charge, calculated on the volume of water that would have been diverted to allow the water to be taken or ordered; and

- (d) the Customer will be deemed to be in breach of clause 11.1(a)(iii).

## **8.10 Costs to you of FCRC providing information or approvals**

Where information or an approval is to be provided by FCRC under this Agreement or by Law, you shall pay to FCRC an administration charge for the information or dealing with the approval, as set out in FCRC's Schedule of Fees and Charges, if any.

## **8.11 GST**

The parties agree that:

- (a) 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;
- (b) 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
- (c) the payee will provide to the payer a Tax Invoice if clause 8.11(a) applies.

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## **9. Regulatory compliance**

### **9.1 Statutory framework**

You and FCRC agree that, in the performance of this Agreement, each party is required to comply with:

- (a) the Act and instruments made under it or developed in connection with the Act or such instruments;
- (b) the Water Plan;
- (c) the Water Entitlement Notice;
- (d) the Resource Operations Licence;
- (e) the Water Management Protocol;
- (f) Operations Manual;
- (g) trading rules set out in the Resource Operations Licence; and
- (h) the Local Government Act 2009 and the Local Government Regulation 2019.

You must not, by an act or omission cause FCRC to breach any of those documents.

### **9.2 FCRC Rules**

FCRC may make and amend the FCRC Rules concerning the Regulated Area.

The FCRC Rules may impose additional obligations on you, or prescribe how FCRC will conduct its activities, for the purposes of (for example):

- (a) implementing FCRC's rights and obligations as the holder of the Resource Operation Licence; or
- (b) setting out, clarifying or amending the rights and obligations of FCRC and you under this Agreement.

Changes to the FCRC Rules must not be inconsistent with the Resource Operations Licence and this Agreement and must first be the subject of consultation with you or any group representing customers within the Regulated Area (if such group exists).

### **9.3 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 FCRC's obligations under this Agreement are subject to any such requirement.

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## **10. Your obligations in relation to provision of Security**

FCRC incurs significant fixed costs in providing services, such that it requires certainty of payment from each of its customers.

### **10.1 When and how much security you can be required to provide?**

- (a) FCRC requires security upfront if so indicated in the 'Service Details' section of Part A.
- (b) In addition, FCRC may require you provide security if:
  - (i) you commit a breach nominated in either of clause 6.2(a)(i), 6.2(a)(ii), 6.2(a)(iii) or 6.2(a)(v) of this Agreement, whether FCRC has given a direction or not;
  - (ii) FCRC is not reasonably satisfied as to your financial capacity to comply with your obligations under this Agreement;
  - (iii) in the circumstances specified in the FCRC Rules.
- (c) Either:
  - (i) if paragraph (a) applies; or
  - (ii) after a request in writing by FCRC under paragraph (b),

you must promptly provide (and maintain until released in accordance with clause 10.4) a security of an amount nominated by FCRC up to the Service Charges invoiced for the previous Water Year (or for the first Water Year, FCRC's reasonable estimate of the Service Charges for that Water Year).

### **10.2 What type of security can you provide?**

The security you provide must take the form of an on demand guarantee on terms and from a bank reasonably acceptable to FCRC.

### **10.3 What happens if you don't provide security?**

Failing to provide security where required under clause 10.1 is a breach of this Agreement.



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

- (a) the security is provided to FCRC; and
- (b) thereafter, if FCRC uses the security to pay amounts owing by you under this Agreement, until you have provided further security so that the total security is for an amount not less than the amount calculated under clause 10.1.

## 10.4 Getting your Security released

Upon the later of termination of this Agreement and the payment of all moneys owing by you (whether or not then due or owing contingently or prospectively) FCRC shall release any security provided by you under this Agreement. FCRC is not obliged to, and will not, pay to you any interest accrued in relation to any security provided under this Agreement.

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## 11. Your obligations in relation to taking water

### 11.1 General obligations in relation to taking water

- (a) **Limits on taking water:** You must not take water:
  - (i) beyond the water you are entitled to take under the Customer's Allocation through the Customer's Nominated Works;
  - (ii) at a rate higher than the maximum diversion rate under clause 13.2(a), which may be varied temporarily or permanently from time to time by agreement between the parties, provided the variation does not breach a Law or have the potential to adversely impact on another person;
  - (iii) that is more than the Customer's Maximum Delivery Volume, except as allowed by this Agreement or as a Statutory Right; and
  - (iv) until approval is granted and, if required, you are registered as the holder of the Customer's Allocation.
- (b) **Conditions on taking water:** In taking water, you must comply with:
  - (i) the initial approval or any variation of that approval under clause 13.2(a) including the configuration, specifications of and maximum diversion rate from the Customer's Nominated Works;
  - (ii) this Agreement;
  - (iii) each State Direction; and
  - (iv) the FCRC Rules.
- (c) **Position of Customer's Nominated Works:** You must ensure that your Customer's Nominated Works are appropriately positioned to take water under this Agreement, having regard to storage, bank and stream conditions.

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## 12. Your obligations in relation to metering

### 12.1 Meter installation

- (a) A Meter acceptable to FCRC must be acquired and installed at your cost, within the Customer's Nominated Works or FCRC Works.
- (b) You may install the Meter yourself, arrange of a third party to install the Meter or request FCRC to install the Meter in accordance with clause 7 of this Agreement.
- (c) Any entity installing a Meter shall install the Meter correctly in accordance with the approval under clause 13.2(a).
- (d) A Meter acquired and installed by FCRC remains the property of FCRC despite any payment by you.
- (e) Any Meter installed by you shall, upon installation, become and remain the property of FCRC.

### 12.2 Meter upgrade or replacement

FCRC has a right to require you to replace or upgrade a Meter already installed at your cost where such replacement or upgrading is necessary in the reasonable opinion of FCRC. The costs of such replacement or upgrade will be payable by you if you have breached clause 12.3(c), or otherwise payable by FCRC.

### 12.3 Your obligations in respect of Meter

- (a) **Meter readings:** When directed by FCRC, or as required by the FCRC Rules, you must:
  - (i) take readings (including date, time and volume readings) from the Meter;
  - (ii) advise FCRC (by telephone or email) of a Meter reading within 24 hours of taking the reading;
  - (iii) at FCRC's request, provide evidence of the meter reading, including by providing photographic evidence of the Meter reading, with a date and time stamp by email to FCRC;
  - (iv) maintain written records of such Meter readings; and
  - (v) provide copies of such records to FCRC (if requested by FCRC).
- (b) **Access to Meter:** You must ensure that, at all reasonable times, FCRC, and any person nominated or authorised by FCRC, has safe and convenient access to the Meter and the Customer's Nominated Works (for purposes including reading, testing, repairing and calibrating the Meter and assessing compliance with this Agreement). In respect of access to the Meter:
  - (i) You acknowledge damage may be suffered by us, the environment and third parties if Weeds are transferred from place to place within the Regulated Area and within the State of Queensland.
  - (ii) To avoid the risk of harm to us, the environment and third parties, you will:

- A. ensure there is available at all times safe navigable light motor vehicle access from a road or property access track to the Meter and the Customer's Nominated Works which is free of noxious weeds and overgrown vegetation; and
  - B. keep FCRC informed of the place where access complying with paragraph 12.3(b) is available.
- (c) **No damage or interference with Meter:** You must not:
- (i) damage or by any act or omission permit damage to the Meter; or
  - (ii) do or omit to do anything (including failing to maintain the Customer's Nominated Works) which may affect:
    - A. the accuracy of any Meter used by FCRC in connection with this Agreement;
    - B. the operation of the Customer's Nominated Works or any Meter used by FCRC so as to render inaccurate the recording of the volume of water taken; or
    - C. the capacity of the Customer's Nominated Works to take water.
- (d) **Reporting Meter malfunctions or damage:** You must, in becoming aware of any actual or threatened damage to or malfunction in the Meter, promptly notify FCRC:
- (i) where the damage or malfunction is serious, verbally as soon as possible and subsequently in writing within seven (7) days; and
  - (ii) 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 (7) days.

## 12.4 FCRC obligations to repair Meter

FCRC must promptly repair any damage to or malfunction in the Meter which you notify FCRC of, with such repairs to be at your cost if you have breached clauses 12.3(c) or 13.1(a) or otherwise payable by FCRC.

## 12.5 Other assistance you are to provide

You must:

- (a) upon request by FCRC, supply to FCRC any relevant document or information in your possession or control which would assist FCRC in making an estimate under clause 8.7;
- (b) permit FCRC or any person authorised by FCRC to have access to, and read, any electricity meter recording electricity used in connection with the taking of water; and
- (c) permit FCRC or any person authorised by FCRC to have access to your land for any purpose reasonably associated with the performance of this Agreement or carrying out its responsibilities under the Resource Operations Licence.

## 12.6 If you think the Meter is inaccurate

Where you think the Meter is not measuring or reading accurately, you may request FCRC to test and calibrate the Meter.

The cost of such testing or calibration shall be borne by:

- (a) you, where the Meter is operating within the manufacturer's specifications or you have breached clause 12.3(c); or
- (b) otherwise, FCRC.

To the extent that, following such testing or calibration, FCRC reasonably considers that the Meter has not been operating within the manufacturer's specification, your charges must be adjusted for the current Water Year or the most recently completed Water Year, under clause 8.7.

You are also entitled to have the Meter tested and calibrated by a certified testing authority, with the prior consent of FCRC (not to be unreasonably withheld).

## 12.7 Removal of Meter on termination

On termination of this Agreement, FCRC may remove the Meter and seal off any FCRC Works at your cost.

## 12.8 FCRC may disclose / receive information

You consent to FCRC making available to:

- (a) the Regulator;
- (b) a holder of a Resource Operations Licence in the Regulated Area;
- (c) any other person as required under any Law; and
- (d) with your consent, any person proposing a dealing with the Customer's Allocation,

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

You consent to any electricity supplier to supply to FCRC particulars of electricity consumption by you for the taking of water.

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## 13. Your obligations in relation to FCRC Works and Customer's Nominated Works

### 13.1 FCRC Works

- (a) **No damage:** You must not, by any act or omission, damage, or permit damage to, the FCRC Works (including through any failure to maintain the Customer's Nominated Works).
- (b) **Notification of damage:** You must, on becoming aware of any actual or threatened damage to, or malfunction in the FCRC Works, promptly notify FCRC verbally and

subsequently in writing (where the damage or malfunction is serious) or otherwise in a manner convenient to you.

- (c) **Care and attention in activities for the operation of the FCRC Works:** Where you, at FCRC's request, carry out activities or perform services for the operation of the FCRC Works, you must carry out such activities and services reasonably and promptly and with proper care and attention.

You will not be liable to FCRC under clauses 13.1(a) or 13.1(c) for an Event of Force Majeure or for operating FCRC Works in accordance with FCRC's instructions given in requests made under clause 13.1(c).

## 13.2 Customer's Nominated Works

- (a) **Required approval:** Prior to installing or altering the Customer's Nominated Works you must obtain the prior written approval of FCRC to the Customer's Nominated Works, including the configuration, specifications of and maximum diversion rates for any pump included in them, which approval may not be unreasonably withheld. For the avoidance of doubt, as stated in clause 2.2, this Agreement does not authorise the development or installation of the Customer's Nominated Works. You must acquire all relevant permits and approvals for such works.
- (b) **Maintenance:** You must maintain the Customer's Nominated Works.

FCRC authorises you, and any person nominated or authorised by you, to access the Customer's Nominated Works for the purposes of operation, maintenance and Meter reading, but at your or such other person's risk.

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## 14. Powers granted to FCRC

### 14.1 You grant a charge over the Customer's Allocation

You charge to FCRC the Customer's Allocation to secure the due and punctual payment of:

- (a) all moneys payable under this Agreement;
- (b) all moneys payable under the additional agreements referred to in clause 2.3;
- (c) all debts (including amounts which become a debt due to FCRC under the Act) from time to time due by you to FCRC; and
- (d) the Termination Amount payable by you under clause 17.3.

To the extent permitted by Law, FCRC may apply any payments by you towards payment of such moneys, debts and amounts as FCRC determines in its absolute discretion.

### 14.2 FCRC's power of sale of Customer's Allocation

Where you are in breach of this Agreement or if FCRC is entitled to terminate this Agreement under clause 17.2, FCRC may, subject to giving notice as required by the Act, and FCRC giving you notice of the breach or the existence of FCRC's rights under clause 17.2, sell the Customer's Allocation.

### 14.3 Further powers of FCRC

Where FCRC is entitled to sell the Customer's Allocation, FCRC may also, amend, transfer, lease, deal with, or enter into an Additional Contract in respect of the whole or part of the Customer's Allocation.

Where FCRC exercises its power under this clause 14, then FCRC 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 FCRC.

### 14.4 You appoint FCRC as your Attorney

- (a) **Appointment:** For valuable consideration and by way of security you irrevocably appoints the Chief Executive Officer of FCRC as your attorney to:
- (i) do anything which you are obliged to do under or in relation to this Agreement but have failed to do so;
  - (ii) do anything which you are entitled to do under the Act in relation to the Customer's Allocation; or
  - (iii) amend, transfer sell, lease, deal with or enter into an Additional Contract to which you are a party concerning 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, sale, lease or Additional Contract.

Without limitation, the Attorney may at any time:

- (i) do anything which in the opinion of FCRC 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 and 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 delegation).

Without limitation, any Dealing by the Attorney may be made:

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

- (b) **Pre-requisites for FCRC acting as Attorney:** No Attorney may act under this clause 14:

- (i) unless notice required by clause 14.2 has been given; or
  - (ii) inconsistently with this Agreement.
- (c) **Liability of Attorney:** 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; 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 Attorney.

Nothing in this Agreement limits your ability to obtain advice or engage another person to act on your behalf.

- (d) **Authority of Attorney:** No party to any sale, transfer, or lease or Additional Contract and no person asked to register a Dealing by Attorney is bound to enquire:
- (i) whether you have 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.

## 14.5 How FCRC will apply proceeds from any Dealing

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

- (a) firstly, in paying the costs of the Dealing by Attorney;
- (b) secondly, in discharging your Liability to FCRC for the moneys, debts and amounts charged to FCRC under this Agreement;
- (c) thirdly, in discharging your Liability, if any, for the Customer's Allocation;
- (d) fourthly, in discharging, in accordance with the priorities of their registered interests, any Liability owing by you to a person who has a registered interest recorded over the Customer's Allocation on the Water Allocations Register; and
- (e) fifthly, in payment to you.

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## 15. Changes to your Allocation

### 15.1 When you should give notice to FCRC

If you:

- (a) apply to amend, transfer, lease or deal with the Customer's Allocation in whole or in part;
- (b) apply for a change to the Customer's Allocation (being a water allocation) in whole or in part;
- (c) apply for or enter into a contract to acquire, lease or deal with the Customer's Allocation;
- (d) enter into an Additional Contract,

then you must give written notice of the application or entry to FCRC promptly after the application is made or Additional Contract is entered.

## **15.2 What happens following approval**

Where an amendment, transfer, lease, deal with or change of the whole or part of the

Customer's Allocation you applied which relates to the Regulated Area is approved, or another water allocation or Additional Contract for the Regulated Area is approved, FCRC shall, subject to:

- (a) the payment of all moneys and debts charged to FCRC under this Agreement;
- (b) FCRC and the transferee, assignee, you or counterparty to the Additional Contract entering into a further supply contract or an amendment to your agreement on terms acceptable to FCRC in its absolute discretion;
- (c) FCRC and you entering into either a further supply contract or an amendment to this Agreement on terms acceptable to FCRC in its absolute discretion; and
- (d) where all of the Customer's Allocation has been transferred, FCRC and you entering into a release of this Agreement on terms acceptable to FCRC in its absolute discretion,

give FCRC's consent and where required give notice of the existence of a supply contract to the Registrar when that supply contract is made.

## **15.3 Agreement does not change FCRC's obligations under the Act**

Where, under the Act, FCRC is to approve the amendment, transfer, lease, dealing with, change or dealing related to the Additional Contract referred to in this clause 15:

- (a) you acknowledge that FCRC is obliged to carry out its responsibility under the Act in accordance with the terms of the Act and any other Law binding on it without regard to this Agreement; and
- (b) FCRC's statutory responsibility is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

## **15.4 Applying for a temporary transfer of water**

- (a) You may apply to:
  - (i) transfer part of all of the Customer's Allocation to a third party.
- (b) FCRC has the discretion to either refuse or accept your application.



- (c) Where you apply for such a change it will be dealt with as a variation to this Agreement, which will be implemented to the extent terms are agreed by you and FCRC.
- (d) Additional information on temporary transfers are listed in the FCRC Rules.

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## **16. What to do if you are unhappy with the service provided by FCRC or have a dispute**

### **16.1 Customer Complaints**

FCRC places a high value on customer feedback with a view to improving our performance to increase customer satisfaction. FCRC recognise that there may be times when we do not get it right, when this happens we want to learn and understand so we can improve. If you are unhappy with our service, FCRC has provided under this Agreement, we welcome the opportunity to put things right, you can contact us in accordance with the FCRC Details in Part A. When you let us know about your complaint, we will try to resolve it straight away. If it is complex, or involves other parties we may need longer.

### **16.2 Commencing a formal dispute**

- (a) If a dispute arises under this Agreement (apart from a dispute in relation to the levy of Charges, or a dispute which arises either prior to the exercise of rights of termination in clause 17 of this Agreement, or in relation to such rights of termination), any party may give written notice to the party with whom the dispute exists. The notice shall designate a representative with the appropriate authority to negotiate the dispute.
- (b) The Customer acknowledges that:
  - (i) the Charges are set on an annual basis as part of Council's budget process;
  - (ii) the formal dispute process does not apply in relation to the levy of Charges, or the methodology for determining the Charges.

### **16.3 Appointment of representative**

Within five (5) Business Days of receipt of the notice referred to in clause 16.2, the recipient shall designate a representative with similar authority.

### **16.4 Discussions**

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

### **16.5 Negotiation of procedures**

If the dispute is not resolved as a result of the discussions within fifteen (15) Business Days of the notice referred to in clause 16.2 being given, either party may request the commencement of negotiations in good faith on a dispute resolution procedure, other than litigation or arbitration.

## 16.6 Methods of resolution

A party receiving a request under clause 16.5 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 clause 16.6(a);
- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) the procedural rules and a timetable for the conduct of the selected mode of proceeding; and
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

## 16.7 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 16 is to attempt to settle a dispute between the parties.

## 16.8 Termination

Any party may terminate the dispute resolution procedure provided by this clause 16 at any time and pursue other available remedies.

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## 17. Termination Events

### 17.1 Termination before the Approval Date

You have a right to terminate this Agreement by written notice to FCRC if, before the Approval Date, approval under the Act has not been obtained for either:

- (a) the transfer of the Customer's Allocation to you; or
- (b) any change to the Customer's Allocation referred to in clause 11.1(a)(iv).

FCRC has a right to terminate this Agreement by written notice to you if FCRC is a party to a supply contract or otherwise obliged to supply water to the Current Holder and FCRC has not, by the Approval Date, entered an agreement for release with the Current Holder.

If this Agreement is terminated by either party under this clause 17.1, neither party shall have any further obligations to the other, except if you have breached clauses 2.2 or 11, in which case you shall be liable to FCRC for all Liability incurred or suffered by FCRC in carrying out its obligations under this Agreement or as a consequence of that breach.

### 17.2 Other circumstances in which this Agreement may terminate

This Agreement may terminate in the following circumstances:

- (a) **Bankruptcy or insolvency:** FCRC may terminate this Agreement immediately by giving notice to you of its intention to terminate where you are bankrupt (where you are a natural person) or Insolvent (where you are a corporation).

- (b) **Breach:** FCRC may terminate this Agreement by giving notice to you of its intention to terminate where you breach a provision of this Agreement and have not remedied that breach within a reasonable period, having regard to the nature of the breach, after service of notice of the breach from FCRC of its intention to terminate.
- (c) **Ceasing to hold the Customer's Allocation:** If, at any time, you do not hold the Customer's Allocation, FCRC may terminate this Agreement immediately by giving you notice.
- (d) **Termination of Additional Contract:** Where you hold an Additional Contract, that part of this Agreement for the supply of water available under the Additional Contract will terminate on the relevant Termination Date for the Additional Contract specified in the Customer Details.
- (e) **Damage to water infrastructure:** This Agreement shall terminate where, in FCRC's reasonable opinion, FCRC is no longer able to control the level of water in or the rate of release from the relevant water infrastructure because the FCRC Works or water infrastructure of the holder of another Resource Operations Licence are substantially destroyed or damaged. As soon as is reasonably practicable after FCRC has formed that opinion, FCRC shall notify you and this Agreement shall terminate from the date stated in the notice to you.

### 17.3 Termination Amount

- (a) Where this Agreement is terminated as a consequence of your breach, you are liable to pay to FCRC the Termination Amount (without limiting any other rights of FCRC under this Agreement or otherwise against you in relation to any such breach).
- (b) You acknowledge 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 FCRC for the FCRC Works having regard to the quantities of water supplied and the persons supplied from the FCRC Works.
- (c) FCRC has the right to undertake a formal assessment of the Termination Amount, at your cost.

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## 18. Liability

### 18.1 Limits on FCRC's Liability to you

To the extent permitted by Law, FCRC is not liable to you under or in connection with this Agreement for any Liability incurred or suffered by you or by anyone claiming through you for any breach of this Agreement by FCRC, any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator or complying with a State Direction.

That limitation does not limit action which you make take against FCRC under the Act or for any deliberate breach or wilfully negligent acts or omissions by FCRC.

### 18.2 Matters which you release FCRC for

You release FCRC from all Liability which you may have or claim to have or but for this release might have had against FCRC connected with:

- (a) death or personal injury, damage to the Customer's Nominated Works, other property, livestock, crops or assets as a consequence of any action by FCRC other

than actions that would constitute a breach of this Agreement or negligence by FCRC, including for example, the storing or releasing of water where such action is necessary for FCRC to comply with the requirements of any Law binding on it;

- (b) death or personal injury, damage to the Customer's Nominated Works, other property, livestock, crops or assets as a consequence of any action by FCRC in remedying a breach of this Agreement by you or a breach of an agreement for the delivery of water which FCRC has with another customer in the Regulated Area for example, in the removal of unauthorised connections or outlets;
- (c) alterations to storage levels or stream and bank conditions however caused including, for example, as a consequence of releases of water by FCRC causing the movement of water weeds to clog pumps, the washing away of pumping pools, slumping of riverbanks, and the impact of sudden losses or fluctuations of flow; or
- (d) the circumstances in which you bear the risk as stated in clause 5.4.

You indemnify FCRC against any Liability incurred or suffered by or brought or made or recovered against FCRC arising out of the circumstances for which you release FCRC under this clause 18.2.

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## 19. Warranties

You warrant to FCRC that, where Item 2 in the Customer Details in Part A has been completed or is applicable, that:

- (a) you have entered a contract for the acquisition or lease of the Customer's Allocation;
- (b) true particulars of which contract are stated in the Customer Details;
- (c) such contract is and will remain in full force and effect;
- (d) you will take such actions as are reasonably necessary and within your power or control, including but not limited to procuring the detailed information, calculations and studies referred to in clause 19(e) to ensure that approval as required under the Act to:
  - (i) the transfer or lease of the Customer's Allocation to you; and
  - (ii) any change necessary to the Customer's Allocation necessary to give effect to this Agreement,is approved and registered promptly; and
- (e) that you are aware that to secure the approvals referred to in clause 19(d), where the same are not provided for under a resource operations plan, that detailed information, calculations and studies, including hydrological studies may be required by the chief executive in deciding whether or not to grant the approvals referred to in clause 19(d).

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## 20. Assignment and Subcontracting

### 20.1 Assignment by FCRC

FCRC may assign its rights and obligations under this Agreement (so that that person provides the services to you) to any person provided such person:

- (a) is or becomes the holder of the Resource Operations Licence or a new licence issued in lieu; and
- (b) such person enters into a covenant in favour of you to be bound by the provisions of this Agreement.

## **20.2 FCRC may Subcontract**

FCRC may subcontract the performance of any of its obligations under this Agreement, but any subcontracting does not release FCRC from Liability to you for performance of that obligation.

## **20.3 You cannot Subcontract**

You acknowledge that you cannot assign, novate or otherwise transfer any of your rights or obligations under this Agreement without the prior consent of FCRC.

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## **21. How to give and receive notices**

A number of provisions of this Agreement anticipate you giving notices to FCRC or receiving notices from FCRC.

### **21.1 How notice is to be given**

Any notice given under this Agreement by you or FCRC:

- (a) must be given to the intended recipient using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post, or email; and
- (b) must be in writing addressed to the intended recipient:
  - (i) for notices to FCRC, either:
    - A. at the address of its office, nominated in the FCRC Rules or if not nominated, closest to the Water Supply Scheme; or
    - B. by electronic mail, to the address specified in the FCRC Details in Part A (or any other electronic mail address notified to you by FCRC from time to time), marked 'Contractual Notice';
  - (ii) for notices to you,
    - A. for an invoice under clause 8 at the Address for Invoices in the Customer Details;
    - B. for any other notice, either;
      - 1) to the email address in the Customer Details;
      - 2) at the Address for Notices in the Customer Details;
      - 3) at the address last known to FCRC; or
      - 4) where you are the holder of the Customer's Allocation, at the address shown in the register

that records the details of the Customer's Allocation.

- (c) must be in legible writing and in English;
- (a) in the case of communications other than email, must be signed by the sending party or by a person duly authorised by the sending party;
- (b) in the case of email, must:
  - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this Agreement; and
  - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender;

## 21.2 When notice taken to be received

Without limiting the ability of you or us to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be given by the sending party and received by the intended recipient:

- (a) in the case of delivery by hand or courier service, on delivery;
- (b) in the case of prepaid express post sent to an address in the same country, on the second Business Day after the date of posting;
- (c) in the case of email, whether or not containing attachments, the earlier of:
  - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the sending party receives an automated message that the email has not been delivered;
  - (ii) receipt by the sending party of an automated message confirming delivery; and
  - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (d) the communication will be taken to be so given by the sending party and received by the recipient regardless of whether:
  - (i) the recipient is absent from the place at which the communication is delivered or sent;
  - (ii) the communication is returned unclaimed; and
  - (iii) in the case of email, the email or any of its attachments is opened by the recipient;

- (e) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (f) if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

### 21.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 21 is delivered or sent by more than one method, the communication is taken to be given by the sending party and received by the recipient whenever it is taken to be first received in accordance with clause 21.2.

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## 22. General provisions

- (a) **Entire agreement:** To the extent permitted by law, in relation to its subject matter, this Agreement:
  - (i) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
  - (ii) supersedes any prior written or other agreement of the parties.
- (b) **Amendment:** This Agreement may only be amended:
  - (i) by another agreement executed by all parties; or
  - (ii) as reasonably required by FCRC, after consultation with the Customer, where there has been a change in any Law, the Resource Operations Licence, or any other instrument made under the Act.
- (c) **Waiver:** Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.

No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

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

- (d) **Duty and costs:** Each party bears its own costs arising in connection with negotiating, preparing, executing and performing this Agreement but you will bear any 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 indemnify FCRC for the amount of such duty and associated costs.
- (e) **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.



- (f) **Governing law:** This Agreement is governed by and must be construed according to the law applying in Queensland.
- (g) **Jurisdiction:** Each party irrevocably:
  - (i) submits to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (i) above.
- (h) **FCRC's rights as a local authority:** Nothing in this Agreement shall prejudice or affect FCRC's rights, powers, duties and obligations in the exercise of its function as a local authority.

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## 23. Definitions and Interpretation

### 23.1 Definitions

The following definitions apply unless the context requires otherwise.

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

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

**Agreement** means this agreement.

**Approval Date** means the date which is six (6) months from the date of this Agreement (or such later date nominated by FCRC to you by notice in writing).

**Billing Date** means the billing date referred to in the Customer Details.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Brisbane.

**Charges** means Service Charges and Other Charges.

**Commencement Date** means the date of this Agreement.

**Council** means Fraser Coast Regional Council.

**Current Holder** means the person who is, at the date of this Agreement, the holder of the Customer's Allocation.

**Customer** means the person identified in the Customer Details.

**Customer's Allocation** means:

- (a) for the purposes of the definitions of 'Customer's Maximum Delivery Volume', 'Fixed Allocation Charges', 'Resource Operations Licence', 'RCS', 'Statutory Right' and 'Termination Amount' in this clause 23:



- (i) where you hold the Customer's Allocation described in Part A, that Customer's Allocation; and
  - (ii) otherwise (including if no Customer's Allocation is described in Part A) each water allocation from which you have received a seasonal water assignment from time to time or upon which your Statutory Right is based; and
- (b) for all other purposes:
- (i) where you hold the Customer's Allocation described in Part A, that Customer's Allocation; and
  - (ii) otherwise (including if no Customer's Allocation is described in Part A), your Statutory Right in the Customer's Allocation described in Part A.

**Customer's Approvals** means each approval required under a law (including any development permit required to be held by the Customer under the Planning Act 2016 (Qld)) for the Customer's Nominated Works.

**Customer Details** means the section of Part A described as such.

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

**Customer's Nominated Works** means the works used or nominated by the Customer for taking water as may be varied during the term of this Agreement under clause 13.2(a).

**Dealing by Attorney** includes the Customer's Allocation, any amendment, change, lease, sale or Additional Contract.

**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, natural disaster, pandemic, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any compulsory access regime) or failure to obtain any necessary governmental consent, permit, authorisation, licence, approval or acknowledgment;
- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);

- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the FCRC Works or the Customer's Nominated Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the FCRC Works, the Meter or the Customer's Nominated Works caused by any of the events set out above.

**FCRC Rules** means the rules and guidelines made and amended from time to time under clause 9.2.

**FCRC Works** means the Meter and water infrastructure described in the Resource Operations Licence.

**Financial Hardship Policy** means the Financial Hardship Policy adopted by FCRC, from time to time.

**Fixed Allocation Charges** means the Fixed Allocation Charges described as such in the Customer Details.

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

**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 liquidator being appointed in respect of the body corporate;
- (e) 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
- (f) 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.

**Liability** means a claim, action, proceeding, judgment, damage, loss, cost, expense or liability.

**Meter** means a meter to measure the volume of water taken at the Customer's Nominated Works and which includes any valves and associated items nominated by FCRC.

**ML** means megalitre.

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

**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 SunWater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch).

**Operations Manual** means the operations manual prepared under the Act relating to the Resource Operations Licence.

**Other Charges** means the "Other Charges" charge made by FCRC under clause 8.8.

**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.

**RCS** means a registration confirmation statement in respect of the Customer's Allocation as issued by the Queensland Department of Natural Resources and Mines.

**Registrar** means the registrar under the Act.

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

**Regulator** means the regulator or chief executive under the Act.

**Related Services** means the services identified in clause 7 and any services, which FCRC indicates, in the FCRC Rules, that it will provide.

**Resource Operations Licence** means the resource operations licence under the Act held by FCRC and which relates to the Customer's Allocation (as recorded in the RCS for the relevant Customer's Allocation).

**Review Date** has the meaning given in clause 3.1.

**Service Charges** means the total in a Water Year of:

- (a) the Fixed Allocation Charges; and
- (b) the Usage Charges.

**Services** means Water Supply Services and Related Services.

**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 FCRC Works and any modification, extension or replacement thereof from time to time in force.

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

**Supply Water Losses** means the water lost after release from the FCRC Works or otherwise rendered unavailable to be taken, diverted or used by you as a result of:

- (a) evaporation or other natural losses;
- (b) seepage;
- (c) contamination (from whatever cause);
- (d) theft or any unlawful taking;
- (e) the taking by other customers within the Regulated Area of an amount of water greater than that customer is entitled to;
- (f) where a system for the ordering of water is in place under the FCRC Rules, and a customer has:
  - (i) taken more water than has been ordered by the customer; or
  - (ii) has not taken all of the water that has been ordered by the customer; or
- (g) breaches of the Water Plan, the Water Entitlement Notice, the FCRC Rules or any other instrument made under the Act by other persons.

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

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

**Term** means 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 Fixed Allocation Charges and the Usage Charges which would have been payable under this Agreement on the assumption that in each Water Year you took the whole of the Customer's Allocation:

- (a) where you have an interest in the Customer's Allocation for the period of 10 years after the date of termination; and
- (b) where you have an Additional Contract with FCRC for the lesser of the period of 10 years after the date of termination and the unexpired period of the Additional Contract. Water Allocations Register means the register of water allocations maintained pursuant to the Act.

**Usage Charges** means the Charge described by reference to the volume of water taken being the Usage Charge described as such in the Customer Details.

**Water Entitlement Notice** means the water entitlement notice, if any, from time to time under the Act, that applies to the Regulated Area.

**Water Management Protocol** means the water management protocol, from time to time under the Act, which gives effect to the Water Plan.

**Water Plan** means the water resources plan or resource operations plan, if any, from time to time under the Act, that applies to the Regulated Area.

**Water Supply Services** means the services described in clause 5.

**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 FCRC.

**Weeds** means the weeds recognised as prohibited or restricted invasive plants in Queensland under the Biosecurity Act 2014 (Qld).

## 23.2 Interpretation

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 you in the register that records the details of the Customer's Allocation.

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) where any expression is defined in this Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) clause headings are inserted for convenience only and shall not affect the interpretation of this Agreement;
- (e) references to "dollars" and "\$" are references to Australian dollars;
- (f) references to time are references to time in the location of the Regulated Area;
- (g) 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;
- (h) a reference to a governmental authority includes any successor authority;
- (i) a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of this Agreement;
- (j) 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;
- (k) a term used in the Act has the same meaning when used in this Agreement;
- (l) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing; and
- (m) where the Customer comprises two or more persons the Liability under this Agreement shall be joint and several.

## **Part C – Special Conditions**

*There are no special conditions to this Agreement.*

## **Attachments – FCRC Rules**

The FCRC Rules are supplied in addition to this Contract.