

Doc ID	Doc Name	Review date	Reviewed by	Approved by	Approval Date	Next Review Date
OPM007	Water Transfer Agreement	5/3/18	Technical Committee	LBW Board	17/5/18 Minute 8.6	1/10/2020

WATER TRANSFER AGREEMENT*

This form is used for the purpose of allowing the transportation of third party water allocation via utilising LBW's infrastructure.

SCHEDULE 1 CUSTOMER DETAILS

Name:		
ACN:	ABN:	
Address:		Mobile:
Phone:	Fax:	Email:

ADDRESS TO WHICH ALL ACCOUNTS ARE TO BE ISSUED BY LBW

Same as Customer's address? (tick if this applies)

Name:		
Address:		Mobile:
Phone:	Fax:	Email:

NOMINATED TAKING POINT

Address:

TRANSFER CHARGE

Price per megalitre: \$

SEASONAL WATER ALLOCATION ENTITLEMENT

Megalitres to be transferred:

EXECUTION OF AGREEMENT

Signed by LBW:	Signed by Customer:	
Name & position:	Name:	
	EXECUTED by	Director
Date:	in accordance with section 127(1) of the Corporations Act 2001:	
	Date:	

***THE AGREEMENT IS GOVERNED BY THE ATTACHED TERMS AND CONDITIONS**

OFFICE USE ONLY

Property location correct?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Farm map attached?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
----------------------------	------------------------------	-----------------------------	--------------------	------------------------------	-----------------------------

PLEASE SIGN AND RETURN THIS AGREEMENT TO THE RELEVANT OFFICE VIA THE DETAILS AT THE TOP OF THE PAGE.

1. Definitions

"**LBW**" means Lower Burdekin Water;
"**Customer**" means the seasonal water allocation entitlement assignee;
"**Distribution Losses**" has the meaning set out in clause 4;
"**Nominated Taking Point**" means a licenced taking point nominated by the Customer in Schedule 1;
"**Normal Pumping Times**" LBW operating its pumping system for the distribution of its water allocation entitlement;
"**Peak Flow Periods**" means the period when water demand from LBW ratepayers, customers and replenishment activities is equal to or greater than LBW's capacity to supply within its water distribution system;
"**Seller**" means the owner of the seasonal water allocation entitlement purchased by the Customer and being transferred by LBW under this agreement;
"**Water Entitlements**" means the Customer's open water licence entitlements (if any) and the seasonal water allocation entitlement;
"**Water Year**" means the accounting period commencing 1 July through to and including 30 June of the next calendar year for the relevant seasonal water allocation entitlement

2. Purchase of Seasonal Water Allocation Entitlement

2.1 It is a condition of this agreement that the Customer has made payment in full to the Seller for the seasonal water allocation entitlement.
2.2 Prior to LBW transferring water for the Customer under this agreement, the Customer must provide LBW with written notice from the Seller confirming the Seller has received payment for the seasonal water allocation entitlement.

3. Acknowledgement

3.1 These terms and conditions:
(a) regulate how LBW will charge the Customer for the transfer of water purchased by the Customer to the Nominated Taking Point; and
(b) set out the conditions applicable to the transfer of water;
(c) where the Customer is the holder of an Open Water Licence, are to be read in conjunction with the Water Supply Agreement; and
(d) the Customer must enter or be party to into a water supply agreement with LBW.
3.2 The Customer acknowledges that:
(a) LBW does not guarantee the supply of the Water Entitlements in terms of either quantity or quality;
(b) water taken by the Customer will be deducted from the Water Entitlements in the following order:
(i) from the seasonal water allocation entitlement;
(ii) then from any open water licence entitlement.

(c) LBW may from time to time restrict or suspend the taking of Water Entitlements by the Customer.
(d) Seasonal water allocation entitlements purchased by the Customer and transferred to LBW's water account by SunWater Limited cannot be traded or transferred to another entity.
(e) Where the Customer does not take all of the seasonal water allocation entitlement to be transferred under this agreement:
(i) the Customer is not entitled to carry over any portion of the unused seasonal water allocation entitlement into the next water year.
(ii) LBW will retain the balance of the seasonal water allocation entitlement and the Customer is not entitled to recover the cost of any such water from LBW.

4. Schedule of charges

4.1 The charge per megalitre to be levied by LBW upon the Customer pursuant to this agreement shall be in accordance with the schedule.
4.2 LBW will charge and the Customer agrees to pay the Transfer Charge per megalitre:
(a) for water used, based upon periodic readings taken by LBW from the Customer's pump flow meter; and
(b) Distribution Losses as set out in clause 4.
4.3 LBW will invoice the Customer for the Transfer Charge monthly in arrears.

5. Distribution Losses

5.1 The Customer acknowledges that water loss will occur in the transfer of the seasonal water allocation entitlement to the Nominated Taking Point ("**Distribution Losses**");
5.2 LBW will calculate the nominal Distribution Losses as follows:
(a) Meter reading closing balance;
(b) Less meter reading opening balance;
(c) Multiplied by 10%.
5.3 Distribution Losses will be deducted from the Water Entitlements in the following order.
(i) from the seasonal water allocation entitlement; then
(ii) from any open water licence entitlement.
5.4 The Customer shall promptly notify LBW of any malfunction of, or damage to, the pump flow meter.
5.5 The Customer will indemnify LBW for any costs incurred by LBW in repairing damage occasioned to the pump flow meter where such damage has been caused as a result of action or inaction by the Customer.
5.6 The amount stated as due and owing on any invoice issued by LBW to the Customer for such repairs shall be conclusive evidence of that amount which is payable by the Customer to LBW on the due date.
5.7 In the event of any inconsistency between these terms and conditions and the terms and conditions

of any open water licence approved by LBW to the Customer whereby the Customer is allowed to pump open water for irrigation purposes, then the terms and conditions of the Water Supply Agreement shall prevail.

6. Suspension or termination of Agreement

6.1 Should any of the following events occur ("default event") LBW may, in its sole and absolute discretion, either suspend or terminate this agreement, as the circumstances require:

- (a) non-payment by the Customer of any invoices issued by LBW to the Customer, when due for payment;
- (b) an inability of LBW, for whatever reason, to ensure the transfer of the seasonal water allocation entitlement to the Customer;
- (c) any failure by the Customer to comply with a direction issued by LBW pursuant to clause 13 below;
- (d) despite clause 7 below, LBW being unable to enter the Customer's land for any of the purposes outlined therein.

6.2 Where this agreement is to be suspended prior to the suspension of a Customer's open water licence or right to pump seasonal water allocation entitlement pursuant to this agreement, LBW will give a written notice to the Customer of the default event which shall:

- (a) specify the event;
- (b) state the proposed period of suspension or cancellation;
- (c) state the date of when the proposed suspension or termination is to start and (if appropriate) end;
- (d) where applicable, allow a period of not less than 14 days for the Customer to remedy the default event and set out the manner in which the default can be remedied to LBW's satisfaction.

6.3 Where this agreement is terminated LBW will give written notice of the breach giving rise to the termination.

6.4 Upon termination of this agreement by either party:

- (a) LBW will retain the balance of the untaken seasonal water allocation entitlement; and
- (b) the Customer agrees to waive all rights to the seasonal water allocation entitlement and to release and indemnify LBW for all claims which it could have but for this clause bought against LBW in respect of the untaken seasonal water allocation entitlement referred to in in subclause 6.4(a) above.

7. Transfer of Season Water Allocation Entitlements - Operations

7.1 There is no guarantee of an open water supply (including any seasonal water allocation entitlement) and it may be necessary to introduce rosters from time to time to ensure equitable distribution of the available supply.

7.2 Seasonal water allocation entitlement assignees must order water from the seasonal water allocation entitlements one business day prior to water being required.

7.3 At LBW's sole discretion the transfer of seasonal water allocation entitlements may be suspended during Peak Flow Periods when LBW open water licensee demands exceed infrastructure capacity.

7.4 Where the Customer orders water to be transferred outside normal pumping times, LBW will charge and the Customer will pay a surcharge for additional pumping costs, which may include at LBW's sole discretion Distribution Losses in excess of the nominated 10%.

7.5 LBW will notify the Customer of the additional costs and Distribution Losses prior to pumping.

7.6 The Customers may accept the surcharge by:

- (a) signing the surcharge notification and returning it to LBW; or
- (b) by instructing LBW to pump the seasonal water allocation entitlement after receiving the notification referred to in clause 6.5.

7.7 A flow meter is installed to the satisfaction of LBW on all permitted pump/s, and access is allowed for Board's Officers to such meter/s for maintenance and accounting purposes.

7.8 That all channel/lagoon pumping ceases when LBW's pumps relative to each diversion are closed down.

7.9 LBW reserves the right of granting permission for pumping from large open water pondages after closure of LBW's Pumping Stations.

7.10 LBW reserves the right to disallow any pumping from channel or lagoon until the lower reaches of all systems have reached spill point or until channel supply is deemed satisfactory by LBW.

8. Land access

8.1 The Customer shall ensure free, clear and safe access to the land by LBW for any of the purposes set out in the following clause.

8.2 The Customer hereby unconditionally and irrevocably authorises LBW, its servants, agents, contractors and/or employees to:

- (a) access, enter and remain upon the land at all reasonable times and without prior notice, for the purposes of:
 - i. regular meter readings;
 - ii. maintenance, repair or installation of meters;
 - iii. water and energy meter inspection, accuracy testing and flow calibration;
 - iv. infrastructure operation, maintenance and repairs.

Where time permits and it is reasonable to do so, LBW will notify the Customer of LBW's intention to access the land;

- (b) use such reasonable force as necessary to access and enter the land. Should the Customer or its agents refuse to permit or otherwise restrict such access, the Customer

hereby indemnifies LBW, its servants, agents, contractors and/or employees against any loss or damage directly or indirectly suffered by any third party as a result.

9. Interest

9.1 The Customer acknowledges and agrees that generally in respect of invoices issued by LBW to the Customer:

- (a) such invoices are payable in full within 30 days from the date of the invoice;
- (b) interest may be additionally charged on all or any part of the invoice amount that remains unpaid on and from the date that is 60 days from the date of invoice. The method of calculating the rate of interest shall be in accordance with LBW's Rating Policy. LBW may, in its sole and absolute discretion, apply payments made by the Customer in satisfaction of interest first, and then to the balance of overdue monies; and
- (c) payment will be made by the Customer by cash, cheque, bank cheque or by direct credit to LBW's nominated bank account, or by any other method nominated by LBW from time to time.

9.2 The amount stated as due and owing on any invoice issued by LBW to the Customer shall be conclusive evidence of that amount which is payable by the Customer to LBW on the due date.

9.3 The Customer further agrees and acknowledges that all costs, expenses and disbursements incurred by LBW arising out of or incidental to LBW exercising its rights hereunder (including but without limitation, debt collection agency fees, legal costs calculated on a solicitor and own client basis and/or costs associated with accessing the land under clause 7 above) are additional monies due and payable by the Customer to LBW and may be recovered by LBW from the Customer as a liquidated debt in a court of competent jurisdiction.

10. Security of payment

10.1 Where the Customer is the owner of any land or personal property capable of being charged, the Customer hereby agrees:

- (a) to charge all of his/her/their joint and/or several interest in the said land or personal property in favour of LBW (or its nominee) to secure all unpaid amounts payable by the Customer to LBW under these terms and conditions;
- (b) that LBW (or its nominee) shall be entitled to, among other things, lodge a caveat over any land of which the Customer is the registered owner (whether as joint tenants or tenants in common), which shall be released once all unpaid amounts have been paid;
- (c) that should LBW elect to proceed in any manner in accordance with this clause, the Customer indemnifies LBW from and against all of LBW's costs and disbursements including but not

limited to, legal costs on a full solicitor and own client basis;

- (d) to irrevocably nominate, constitute and appoint LBW (or its nominee) as the Customer's attorney to perform all necessary acts to give full effect to this clause;
- (e) if the Customer is a trustee of any trust, the Customer is bound by these terms and conditions and charges its land as trustee in favour of LBW, and the Customer warrants that it is a proper exercise of the Customer's authority and power under the trust instrument and at law, to charge the trust assets in accordance with this clause.

11. Urgent action

11.1 In the event that any urgent action is necessary to protect the water supply (or the safety of any person or thing in relation to it), the Customer is entitled to take and must take such urgent action as may be reasonably necessary and will immediately notify LBW of such action.

12. Limitation of liability

12.1 To the extent permitted by law, any right, duty or liability which may arise by implication of statute, common law or otherwise in respect of LBW's supply of water to the Customer is hereby expressly negated and excluded.

12.2 Without limiting the generality of clause 11.1 above, LBW makes no warranty or gives any representation as to the quality of water supplied to the Customer nor as to the continuous and uninterrupted supply of open water.

12.3 LBW shall have no liability to the Customer for any failure to supply water for so long as LBW's performance is prevented or delayed because of circumstances outside of LBW's control.

12.4 In the event any loss or damage (to person or property or otherwise) is suffered by the Customer because of the supply of water by LBW, or by any third party to whom the Customer has on-supplied such water, then the Customer hereby indemnifies LBW for any such loss or damage howsoever arising, save for any loss or damage caused by LBW's negligence.

13. Dispute resolution

13.1 The Customer is an "interested person" for the purposes of the *Water Act 2000* (Qld) (as amended from time to time) and chapter 6 of that Act shall accordingly apply in the event the Customer is dissatisfied with LBW's decision about a rate or charge made and levied on the Customer.

13.2 This clause is not intended to restrict or prejudice the rights of:

- (a) the Customer to apply for an internal review of LBW's decision, such application to be brought within 30 business days after the day the Customer is given notice of the rate or charge made and levied on the Customer; or

- (b) LBW's rights to pursue a claim against the Customer for a liquidated sum payable pursuant to this agreement.

14. LBW Policies

- 14.1 The Customer agrees to be bound by LBW's published policies as amended from time to time.
- 14.2 The Customer agrees to comply with direction given by LBW in pursuance of its policies upon LBW giving reasonable notice of the direction.
- 14.3 The Customer may object to the direction issued by LBW, such objection to be in writing and served upon the office of LBW within fourteen days of the date of the direction.
- 14.4 LBW shall determine the objection to the direction and affirm or revoke the direction with notice of LBW's determination to be given to the Customer within fourteen days of receipt of the objection.
- 14.5 The Customer agrees to be bound by LBW's determination on the objection to the decision and to comply with any affirmed direction within the time specified in the notice.

15. General

- 15.1 If any part of these terms and conditions or any related document is or becomes void or unenforceable, that part is severed so that all parts

which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

- 15.2 LBW may licence, subcontract, assign, let or sell all or any part of its rights and obligations pursuant to this agreement without the Customer's consent. The Customer however is not permitted to do any of these things.
- 15.3 This agreement shall be governed by the laws of Queensland and the parties hereto submit to the jurisdiction of the courts and tribunals of that State.
- 15.4 LBW's failure to exercise any right or power herein does not operate as a waiver and a partial exercise of a power or right does not preclude any further exercise of that power or right.
- 15.5 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this agreement or any part of it.

Water Supply Agreement Holder:

Schedule A - Details of Pumps

	Pump 1
Water Supply Agreement Number	
Type	
Nominal Water Allowance Volume <i>(Megalitres)</i>	
Capacity/Size of Pump	
Maximum Diversion Flow Rate <i>(litres per second)</i>	
Energy Source	
Meter Number	
GPS coordinates	
Location of Pump <i>(System/Diversion)</i>	
Area Irrigated with Open Water <i>(Hectares)</i>	
Alternative Site	
Is the Licence Amalgamated	

Schedule B – Property Descriptions and Wilmar Farm Number information

Property Descriptions serviced by this Agreement:

	Lot	Plan Number	Wilmar Farm Number	Number of hectares
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				