

Doc no: OPM008	Doc Name: Water Supply Agreement – Outside Authority Area	Review date: 5/04/2018	Reviewed by: Technical Committee	Approved by: LBW Board	Approval Date: 19/5/2018 Minute 8.7	Next Review Date 1/9/2020
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## WATER SUPPLY AGREEMENT – OUTSIDE AUTHORITY AREA \*

### 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:

### CHARGES

SET OUT IN SCHEDULE 1

### LICENCE DETAILS

SET OUT IN SCHEDULE 3

### EXECUTION OF AGREEMENT

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

**\*THE AGREEMENT IS TO REGULATE THE SUPPLY OF WATER FROM INSIDE THE AUTHORITY AREA TO AGRICULTURAL DEVELOPMENTS LOCATED OUTSIDE THE AUTHORITY AREA AND IS GOVERNED BY THE ATTACHED TERMS AND CONDITIONS AND THE SPECIAL CONDITIONS IN SCHEDULE 2 (IF ANY)**

### 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"/>
Special conditions completed? Yes <input type="checkbox"/> No <input type="checkbox"/>	WMS location determined? 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.

“Charges” mean the cost for water taken by the Customer pursuant to this agreement and set out in Schedule 1 to this agreement and which are reviewed by LBW annually.

“Customer” means the person or entity listed in the agreement which these terms and conditions accompany.

“Pumping Period” means the time during which the Customer’s pump operates to take water from within the authority area.

“Water Metering Structures” means the metering equipment and any associated infrastructure used to take (and measure the amount of) water taken by the Customer under this agreement, the design of which is to be approved by LBW and the cost of construction and installation of which is to be borne by the Customer.

**2. Acknowledgement**

2.1 These terms and conditions:

- (a) regulate how LBW will charge the Customer for the supply of water from location/s within LBW’s authority area to the Customer’s land (or any part thereof) which is located outside LBW’s authority area;
- (b) set out the operational procedures applied to such water use;
- (c) are to be read in conjunction with any special conditions set out in Schedule 2 to this agreement, such special conditions to prevail in the extent of any inconsistency with these terms and conditions.

2.2 The Customer acknowledges and agrees that:

- (a) the reference to water in this agreement means any water transferred or supplied from within LBW’s authority area to outside that area and for whatever purpose;
- (b) it will not be permitted to take any water until:
  - i. this agreement is executed by the Customer;
  - ii. the location within LBW’s authority area at which the Water Metering Structures are to be constructed and installed, has been determined to LBW’s reasonable satisfaction; and
  - iii. the Water Metering Structures are commissioned and in good working order, to LBW’s reasonable satisfaction;
- (c) as to where the Water Metering Structures are to be constructed and installed, the Customer:
  - i. bears the obligation of procuring the location and engaging and negotiating with the landowner/s in respect of it;
  - ii. must ensure that access to the Water Metering Structures are secured in favour of LBW by way of a registered easement over that part of the land, for any of the purposes set out in clause 4.5 below;
  - iii. will bear all costs associated with registration of LBW’s easement including but not limited to, survey costs (if any) and LBW’s legal costs on an indemnity basis;
- (d) all water is non-potable and LBW does not guarantee the quality or quantity of water to be supplied including, but not limited to the supply of water for any fixed period of time or that it will be continuous and uninterrupted, or that a minimum or maximum volume of water will be supplied;
- (e) LBW may however stipulate that the total amount of water to be used by the Customer during a Pumping

Period (or any other period of time) is to not exceed a set amount;

- (f) the pumping of water under this agreement is at the sole and absolute discretion of LBW and that it may suspend or terminate this agreement either with or without notice, under clause 6. Without limiting the generality of the foregoing, suspension or termination may also occur in the specific instances set out in the special conditions (if any).

**3. Use of third party information**

3.1 The Customer authorises LBW to use any personal information which it may obtain or receive from the miller (or any other third party) concerning the Customer and the land, for the purpose of calculating charges and water management under this agreement.

**4. Operations**

4.1 The Customer will at all times keep LBW informed of the intended and actual Pumping Periods. This obligation extends to notifying LBW within 24 hours before a Pumping Period starts and ends. Such notice may be given in writing (by email or facsimile) or orally (by the Customer telephoning LBW or its nominated water officer/s).

4.2 The Customer will only be permitted to pump the volume of water available for the Pumping Period, as advised by LBW.

4.3 LBW may, from time to time, direct the Customer to cease pumping whereupon the Customer must do so as soon as practicably possible and in any event, not less than six (6) hours after such direction is given. Such direction may be given in writing (by email or facsimile) or orally.

4.4 Without limiting the Customer’s obligations in clause 2.2(c) above, the Customer is responsible for obtaining all necessary permits, licences, approvals and easements as may be required when constructing and installing the Water Metering Structures on LBW and/or any third party property.

4.5 The Customer will ensure free, clear and safe access to the Water Metering Structures and water monitoring bores by LBW and the Customer hereby unconditionally and irrevocably authorises LBW, its servants, agents, contractors and/or employees to:

- (a) access, enter and remain upon the land and inspect the Water Metering Structures and water monitoring bores at all reasonable times and without the need for prior notice, for the purposes of any of the following:
  - 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 any repair of the water flow meter;
  - v. temporarily or permanently disconnecting or disabling the Water Metering Structures in whole or in part because of the Customer’s failure to comply with a direction under clause 4.3.

Where time permits and it is reasonable to do so, LBW will endeavour to notify the Customer of LBW’s intention to inspect the Water Metering Structures and water monitoring bores;

- (b) use such reasonable force, as may be necessary, to access and enter the land and inspect the Water Metering Structures and water monitoring bores. 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.

**5. Charges**

- 5.1 LBW will charge and the Customer agrees to pay:
  - (a) a one-off licence fee for the Water Metering Structures, as determined by LBW;
  - (b) the Charges, as may be applicable.
- 5.2 LBW will charge and the Customer agrees to pay for water taken during each Pumping Period to be calculated as follows:
  - (a) an amount per megalitre for water used, based upon periodic readings taken by LBW from the water flow meter;
  - (b) in the event of damage to or malfunction of the water flow meter, by either of the following methods:
    - i. an amount per megalitre assumed by LBW to have been used for the applicable period, based upon the average of the prior year's readings for the corresponding period. However, LBW may, in its sole discretion, waive any assumed usage charge (either whole or in part); or
    - ii. the pump curves of the pump may be used to determine the flow rate of the pump and
  - (c) the volume of water pumped may be calculated by multiplying the flow rate by the hours pumped during the Pumping Period.
- 5.3 The Customer will promptly notify LBW of any malfunction of, or damage to, all or any part of the Water Metering Structures. Where the Customer fails to do so, LBW is entitled to calculate the water taken as if such malfunction or damage had not occurred and may use the methods set out in clause 5.2(b) above.
- 5.4 The amount stated as due and owing on any invoice issued by LBW to the Customer for the Charges shall be conclusive evidence of that amount which is payable by the Customer to LBW on the due date.
- 5.5 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 thirty (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 sixty (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.
- 5.6 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 an indemnity basis and/or costs associated with accessing the land under clause 4.5, 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.

**6. Suspension or termination**

- 6.1 The following constitute an "irremediable breach":
  - (a) an inability of LBW, for whatever reason, to ensure the supply of water to the Customer under this agreement; and/or
  - (b) without limiting the generality of the foregoing, where the continued supply of water may cause or is likely to cause environmental harm or in the specific instances set out in the special conditions (if any); and/or
  - (c) the Customer's failure to cease pumping under clause 4.3. If because of the Customer's act or omission, LBW is unable to inspect the Water Metering Structure to determine compliance with its direction, the Customer acknowledges and agrees that such inability is not a remediable breach requiring a notice under clause 6.4. LBW will in that instance be entitled to assume that the Customer has not complied with the direction.
- 6.2 Where there is an irremediable breach, LBW may immediately suspend or terminate this agreement without any prior notice to the Customer. Notice of the suspension or termination may be given by LBW to the Customer in writing (by email or facsimile), or orally. Further, where the breach is the Customer's failure to comply with a direction under clause 4.3:
  - (a) LBW may immediately and temporarily or permanently disconnect all or any part of the Water Metering Structures; or
  - (b) if the Customer or its agents have not permitted or restricted access to the Water Metering Structures to enable inspection of it, LBW may apply to a court for urgent injunctive relief.
- 6.3 The following constitute a "remediable breach":
  - (a) non-payment by the Customer of any Charges invoiced by LBW to the Customer, when due for payment; and/or
  - (b) LBW being unable to inspect the Water Metering Structures for any of the purposes set out in clause 4.5 but subject to clause 6.1(c); and/or
  - (c) failure by the Customer to comply with a direction issued by LBW pursuant to clause 10.
- 6.4 In the event of a remediable breach, LBW will give a written notice to the Customer:
  - (a) specifying the breach;
  - (b) stating the proposed period of suspension or termination;
  - (c) stating the date of when the proposed suspension is to start and end, or when the termination is to occur; and
  - (d) allowing a period of not less than seven (7) days for the breach to be remedied and set out how that can occur, to LBW's reasonable satisfaction.
- 6.5 If the Customer fails to remedy the breach in accordance with a notice under clause 6.4, LBW may immediately suspend or terminate this agreement. Notice of the suspension or termination may be given by LBW to the Customer in writing (by email or facsimile), or orally.

**7. Security of payment**

- 7.1 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.

**8. Urgent action**

- 8.1 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.

**9. Limitation of liability**

- 9.1 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.
- 9.2 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.
- 9.3 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.

**10. LBW Policies**

- 10.1 The Customer agrees to be bound by LBW's published policies as amended from time to time and to comply with any direction given by LBW in pursuance of its policies, upon LBW giving reasonable notice to the Customer of the direction.
- 10.2 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 (14) days after the date of the direction.
- 10.3 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 (14) days after receipt of the objection.
- 10.4 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.

**11. General**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.

**PART 1 – CHARGES**

<b>COMPONENT</b>	<b>PRELIMINARY ESTIMATE (\$/ML)</b>	<b>COMMENTS</b>
Head works		
Converted area rate		
Water use		
Additional SW A component		
Third party access		
Allocation charge		
<b>Total</b>		

**PART 2 – SPECIAL CONDITIONS**

1.

**PART 3 – INFRASTRUCTURE DETAILS**

**Water Supply Agreement Holder:**

**Schedule A - Details of Pumps**

	<b>Pump 1</b>
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.				