

| Doc no: | Doc Name:              | Review date: | Reviewed by:        | Approved by: | Approval Date:                |
|---------|------------------------|--------------|---------------------|--------------|-------------------------------|
| OPM002  | Water Supply Agreement | 3/9/2020     | Technical Committee | LBW Board    | 24/9/2020 (Board Minute 12.2) |

## WATER SUPPLY AGREEMENT

THE AGREEMENT IS GOVERNED BY THE ATTACHED TERMS AND CONDITIONS

### WATER SUPPLY AGREEMENT HOLDER DETAILS:

|  |        |
|--|--------|
| Name/s: [if a partnership please insert all names] |        |
| Owner/Lessee                                       | Title: |
| Contact Name:                                      | Tel:   |
| ACN:   | ABN:   |
| Postal Address                                     | Email: |
| Residential Address:                               | Fax:   |

### OPEN WATER SUPPLY DETAILS AND CONDITIONS

Refer to Schedule A

### AREA RATES AND WATER CHARGES

Reviewed annually with notice of all rates and charges payable published on LBW's website [www.lowerburdekinwater.com.au](http://www.lowerburdekinwater.com.au)

### EXECUTION OF AGREEMENT

| Lower Burdekin Water | Water Supply Agreement Holder        |                     |
|----------------------|--------------------------------------|---------------------|
| Signed by LBW:       | Signed by Customer:                  |                     |
| Signature: .....     | Name: .....                          |                     |
| Name: .....          | Signature: .....                     |                     |
| Position: .....      | Name: .....                          |                     |
|                      | Signature: .....                     |                     |
|                      | Name: .....                          |                     |
|                      | Signature: .....                     |                     |
|                      | Name: .....                          |                     |
|                      | <u>EXECUTED</u> by:                  | .....               |
|                      | .....                                | Director            |
|                      | [Insert company name]                | .....               |
|                      | in accordance with section 127(1) of | Director/Secretary: |
|                      | the <i>Corporations Act 2001</i> :   |                     |
| Date:                | Date:                                |                     |

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

### 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"/> |
|----------------------------|------------------------------|-----------------------------|--------------------|------------------------------|-----------------------------|

**1. Definitions**

“Agreement” means this agreement;

“assessable land” has the meaning set out in clause 5.2 of this Agreement;

“Customer” means the ratepayer or LBW customer;

“irrigated agricultural land” means the irrigated land under crop

"LBW" means Lower Burdekin Water;

“open water” means water sold by Lower Burdekin Water from its infrastructure or via the Burdekin River system and other watercourses

"Open water supply" means an open water supplied under this agreement;

**2. Acknowledgement**

2.1 These terms and conditions:

- (a) regulate how LBW will charge the Customer for the supply of open water to the land and the rates payable by the Customer in relation to that land; and
- (b) set out the operational procedures applied to open water use.

2.2 The Customer acknowledges that:

- (a) LBW does not guarantee the supply of open water in terms of either quantity or quality;
- (b) all water is strictly of a non-potable water standard;
- (c) the nominal water allowance provided by LBW to the Customer pursuant to this

Agreement is and remains the property of LBW;

- (d) LBW may from time to time vary the nominal water allowance volume to be provided to the Customer by LBW under this Agreement;
- (e) any reduction in the nominal water allowance volume may be temporary or permanent at LBW's sole discretion;
- (f) this Agreement is not assignable and will terminated upon any change in the Customer for the land set out in Schedule A.

**3. Use of third party information**

3.1 The Customer hereby 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 levying rates.

**4. Schedule of rates and charges**

4.1 The schedule is published on LBW’s website at [www.lowerburdekinwater.com.au](http://www.lowerburdekinwater.com.au) or can be obtained from LBW’s business premises during business hours. The Customer may also at any time request that LBW furnish a copy of the schedule, whereupon LBW will do so.

4.2 The rates and charges to be levied by LBW upon the Customer pursuant to this Agreement shall be in accordance with the schedule, such charges and amounts to be reviewed annually by LBW.

4.3 The Customer’s nominal water allowance shall be those specified in this Agreement subject to any restrictions imposed by LBW in accordance with clause 2.2 and Clause 8.

**5. Land area rates**

5.1 LBW will charge and the Customer agrees to pay rates at the applicable scheduled amount, multiplied per hectare of irrigated agricultural land.

5.2 Subject to clause 5.3 below, the assessable area of irrigated agricultural land upon which rates are to be levied and shall become payable by the Customer, will be determined:

- (a) in the case of sugarcane crops, by information provided by the miller to LBW; and

- (b) in the case of crops other than sugarcane, by information contained in the Customer's annual crop declaration. Where no such declaration is made, then the assessable area shall be, in LBW's sole discretion, the entire area of the land or that part of the land which is irrigated agricultural land.
- 5.3 If part of the land for which rates have been levied is not to be used by the Customer to grow any crop of any kind during the yearly period of 1 July to 30 June, then rates shall not be payable by the Customer to LBW in relation to such fallow land, but only where:
- (a) the Customer, within 30 days after the date of the rates notice, provides to LBW a sworn statutory declaration (with any supporting documentation) evidencing that all or part of the land for which rates have been charged is not assessable; and
- (b) LBW is satisfied, in its sole and absolute discretion, with the information so provided. LBW may request further information in this regard. LBW will give the Customer written notice of its decision and issue any amended rates notice to the Customer.
- 5.4 Rates payable in respect of assessable area of the irrigated agricultural land used by the Customer for sugarcane crops may be contributed to by the miller in which case, clause 10.2 below shall apply.
- 6. Open water charges**
- 6.1 This clause 6 shall only apply where LBW approves an open water supply in favour of the Customer.
- 6.2 LBW will charge and the Customer agrees to pay:
- (a) a one-off headworks charge for the Customer's use of infrastructure to extract open water for irrigation and other purposes from LBW;
- (b) an amount per megalitre for open water used, based upon periodic readings taken by LBW from the Customer's pump flow meter;
- (c) an amount per megalitre for open water used in excess of the Customer's nominal water allowance set by LBW, based upon periodic readings taken by LBW from the Customer's pump flow meter;
- (d) in the event of malfunction of the pump flow meter, 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 or hour clock readings (where fitted). However, LBW may, in its sole discretion, waive any assumed usage charge (either whole or in part);
- (e) non-commercial, stock and garden licence holders will be subject to a nominal annual usage charge, where a water meter is not installed and periodic readings are not undertaken by LBW.
- 6.3 The Customer acknowledges that title to the pump flow meter lies with LBW and that ownership of it shall at all times remain with LBW.
- 6.4 Any costs incurred in respect of materials associated with the installation or modification of the pump flow meter in order to comply with LBW's requirements pursuant to the open water supply approval, are not included in the charges referred to in clause 6.2 above and may be additionally recovered by LBW from the Customer in which case, clause 10.4 below shall apply.
- 6.5 The Customer shall promptly notify LBW of any malfunction of, or damage to, the pump flow meter.
- 6.6 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.
- 6.7 The Customer must not modify any infrastructure installed pursuant to this Agreement without first obtaining LBW's consent to such modification. Where modifications are carried out with LBW's consent the Customer agrees to LBW entering the land and reinstating the infrastructure in accordance with the Agreement and to recover the costs of such reinstatement from the Customer as a liquidated debt pursuant to clause 10.4 of this Agreement.
- 6.8 The amount stated as due and owing on any invoice issued by LBW to the Customer for such repairs or reinstatement works shall be conclusive evidence of that amount which is payable by the Customer to LBW on the due date.

6.9 In the event of any inconsistency between these terms and conditions and the terms and conditions of any open water supply approved by LBW or existing licence or permit issued by LBW or its predecessors to the Customer whereby the Customer is allowed to pump open water for irrigation purposes, then these terms and conditions shall prevail.

## **7. Suspension or termination of Agreement**

7.1 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 supply of open water to the Customer;
- (c) any breach of open water supply criteria and/or conditions by the Customer;
- (d) any failure by the Customer to comply with a direction issued by LBW pursuant to clause 15 below;
- (e) despite clause 9 below, LBW being unable to enter the Customer's land for any of the purposes outlined therein;
- (f) any failure by the Customer to comply with clause 16.8 below;
- (g) Any failure by the Customer to comply with the conditions set out in Annexure A;
- (h) the land set out in Schedule A receiving the benefit of water supplied from a water allocation entitlement save and except for where such water supply is approved by LBW.

7.2 Prior to suspension or termination of 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;
- (c) state the date of when the proposed suspension or termination is to start and (if appropriate) end;

(d) where applicable and at the sole discretion of LBW, 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.

## **8. Open water operations**

8.1 There is no guarantee of an open water supply and it may be necessary to introduce rosters from time to time to ensure equitable distribution of the available supply

8.2 A flow meter is installed to the satisfaction of LBW on all permitted pump/s, and access is allowed for LBW's employees, agents or contractors to such meter/s for maintenance and accounting purposes

8.3 The Customer agrees to notify LBW before commencing pumping and when pumping ceases - by phone at least. (It is essential that this requirement be strictly adhered to, so that LBW can distribute water to as many channel users as possible, especially during periods of limited supply.)

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

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

8.6 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.

8.7 Pumping any water from inside LBW's defined authority area to outside LBW's authority area without express written approval from LBW, will result in an immediate termination of this Agreement.

8.8 LBW may undertake annual maintenance shutdowns for up to and beyond a two-week period. LBW will notify Customers at least one week prior to any impending shutdown periods. Customers may be prohibited from taking water during any advised shutdown periods.

## **9. Land access**

9.1 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.

9.2 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.

9.3 Specifically, the Customer is to ensure that access to the pump and water flow meter installed pursuant to this Agreement is maintained in a safe manner and is safely accessible at all times.

9.4 The Customer shall be responsible for gaining all necessary approvals and easements when constructing infrastructure on LBW and/or third party land.

## 10. Payment of rates and charges

10.1 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.

10.2 For invoices issued by LBW to the Customer for assessable land used for sugarcane crops:

(a) the invoice will reflect the value of any miller contribution;

(b) the Customer may elect to pay the invoiced amount by 3 equal instalments to be deducted from sugarcane monies payable by the miller to the Customer on 30 September, 31 October and 30 November, and shall direct the miller in writing (with a copy provided to LBW) to pay such monies directly to LBW on the last day of each of those months; and

(c) if no sugarcane monies become payable by the miller to the Customer (or insufficient monies are payable to satisfy the invoiced amount), the Customer agrees to pay all or any part of the monies due and owing within 30 days after LBW issues a written demand for such payment and clause 10.1(b) above shall otherwise apply.

10.3 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.

10.4 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 9 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.

## 11. Security of payment

11.1 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.

## 12. Urgent action

12.1 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.

## 13. Limitation of liability

13.1 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.

13.2 Without limiting the generality of clause 13.1 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.

13.3 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.

13.4 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.

13.5 To the extent permitted by law, any right, duty or liability which may arise by implication of statute, common law or otherwise, the Customer releases LBW, and its employees, agents and representatives from any and all liability, damage, loss, cost or expense incurred by the Customer (whether or not due to the negligence or other acts or omissions of LBW) relating to third party infrastructure installed on any real property in which LBW has an interest is hereby expressly negated and excluded.

## 14. Dispute resolution

14.1 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.

14.2 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.

## 15. LBW Policies

- 15.1 The Customer agrees to be bound by LBW's published policies as amended from time to time.
- 15.2 The Customer agrees to comply with direction given by LBW in pursuance of its policies upon LBW giving reasonable notice of the direction.
- 15.3 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.
- 15.4 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.
- 15.5 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.
- (a) the date of granting of an open water supply even where the Agreement is executed at a later date; or
- (b) where the water is supplied by LBW pursuant to a surface water permit or open water licence from the date of execution of this Agreement.
- 16.7 The signatory to this Agreement warrants that they have authority to bind the Customer to this Agreement.
- 16.8 The signatory to this Agreement warrants that the information provided in the Open Water Supply Application is true and correct. The signatory and/or the Customer must advise LBW in writing of any change to the information provided within the Open Water Supply Application within one month of such change occurring.

## **16. General**

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.
- 16.6 This Agreement is to take effect from:

**Annexure A – Open Water Supply Conditions**



**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> )             |               |
| Property Descriptions serviced by Open Water             |               |
| 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. |     |             |                    |                    |