



# **FITZROY RIVER BARRAGE**

## **STANDARD SUPPLY CONTRACT FOR WATER ALLOCATION**

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This is the standard supply contract for the supply of water from the Fitzroy River Barrage Storage Area by Fitzroy River Water pursuant to a water allocation under the Water Act 2000.

## **Background**

- A. Substantial changes have been made to the legislative provisions affecting local government operations and the regulatory framework for the storage and delivery of water in Queensland.
- B. As a result of these changes:
  - (i) Rockhampton Regional Council is the holder of a Resource Operations Licence pursuant to the *Water Act 2000* for water infrastructure in the Regulated Area, namely the Fitzroy River Barrage; and
  - (ii) Fitzroy River Water is the name of the commercial business unit of Rockhampton Regional Council responsible for the administration and management of the Resource Operations Licence; and
  - (iii) The Customer holds, or is entitled to hold, a water entitlement under the *Water Act 2000* for the taking of water from the Regulated Area.
- C. The entitlement of the Customer to take water arises from the holding of a water entitlement under the *Water Act 2000* and not from this Agreement.

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**1. Storage and Taking of Water**

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Fitzroy River Water must store water in and allow the Customer to take water from the Regulated Area, as Fitzroy River Water reasonably estimates will satisfy the likely demand of the Customer from time to time. The Customer accepts that the storage of water by Fitzroy River Water and the taking of water by the Customer is subject to:

- (a) the Resource Operations Licence;
- (b) the Customer's Water Entitlement;
- (c) Fitzroy River Water's estimate of the likely demand of other customers for water from within the Regulated Area;
- (d) the availability of water from the Regulated Area;
- (e) the capacity of the Fitzroy River Barrage;
- (f) the provisions of the Act; and
- (g) this Agreement.

**2. Overall Statutory Framework for Services**

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In the performance of this Agreement, Fitzroy River Water and the Customer acknowledge that, under the Act, each is required to comply with:

- (a) the Act;
- (b) the Water Resource Plan;
- (c) the Resource Operations Plan;
- (d) the Resource Operations Licence;
- (e) the Strategic Asset Management Plan; and
- (f) trading rules set out in the Resource Operations Licence.

**3. Fitzroy River Water's Obligations**

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- (a) Fitzroy River Water shall use reasonable endeavours to promptly repair any damage to or malfunction in the Meter of which details are notified to Fitzroy River Water;
- (b) Fitzroy River Water shall use reasonable endeavours in storing water within the Regulated Area;
- (c) Fitzroy River Water shall allow the Customer to take water from the Regulated Area in accordance with this Agreement;
- (d) Where consultation is required under this Agreement Fitzroy River Water shall:
  - (i) consult fairly and reasonably with the Customer or any entity representing the Customer; and
  - (ii) allow the Customer a reasonable opportunity to participate in any such consultation;
- (e) Fitzroy River Water shall, at approximately annual intervals, during this Agreement publish a report comparing the performance of Fitzroy River Water with the Service Targets; and

- (f) Fitzroy River Water shall publish Service Targets for the Regulated Area and revise these from time to time having regard to changes to customer needs determined through customer consultation, changes in industry practice and procedures.

#### **4. Customer's Obligations**

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##### **4.1 The Customer:**

- (a) may take only the water the Customer is entitled to take under the Customer's Water Entitlement through the Customer's Nominated Works;
- (b) in taking water, must comply with:
  - (i) the approval under clause 10.3 including the configuration, specifications of and maximum diversion rate from the Customer's Nominated Works;
  - (ii) this Agreement;
  - (iii) each State Direction;
  - (iv) the Fitzroy River Water Rules referred to in Clause 9.1; and
  - (v) The Resource Operations License.
- (ba) must comply with the Special Conditions in Schedule 3;
- (c) must not, by any act or omission, cause Fitzroy River Water to breach the Resource Operations Licence;
- (d) must not take more than the Customer's Water Entitlement in any water year;
- (e) must ensure that the Customer's Nominated Works are appropriately positioned to take water under this Agreement, having regard to storage, bank and stream conditions;
- (f) bears the risks of:
  - (i) destruction of or damage to the Customer's Nominated Works from an Event of Force Majeure or resulting from Fitzroy River Water's releasing, supplying or storing water, under this or any other agreement or the Resource Operations Licence;
  - (ii) Supply Water Losses;
  - (iii) the exercise of a Statutory Right;
  - (iv) any action taken under a State Direction; and
  - (v) destruction of or damage to the Meter from any cause whatsoever except where the destruction or damage is due to faulty materials used or faulty workmanship during the manufacture of the Meter; and
- (g) during the Term must maintain in full force and effect and comply with the terms of:
  - (i) the Customer's Water Entitlement; and
  - (ii) the Customer's Development Permit.

##### **4.2 The Customer acknowledges the Act and Resource Operations Plan make available, subject to the provisions of the Act and the Resource Operations**

Plan, various water management strategies. The Customer may seek to pursue one or more of the water management strategies to avoid a breach of clause 4.1(d) by the Customer. Fitzroy River Water gives no warranty that an application by the Customer to adopt any of the water management strategies will be granted or approved. Water management strategies referred to in this clause 4.2 may include, for example, an application for a seasonal water assignment.

**5. Separate Agreements**

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

- (a) default by the Customer under any such agreement constitutes default by the Customer under each such agreement;
- (b) amounts owing by Fitzroy River Water under one agreement may be set off against amounts owing by the Customer under every other agreement;
- (c) any security provided in connection with an agreement may be used by Fitzroy River Water as if given as security for obligations under all agreements and for all debts due by the Customer to Fitzroy River Water; or
- (d) a failure to pay any debt due by the Customer to Fitzroy River Water when due, is a default under each such agreement.

**6. Other Services**

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Fitzroy River Water must provide, when required under this Agreement, or may provide if requested by the Customer:

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

**7. Charges**

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**7.1 Water Charges**

The Customer must pay Fitzroy River Water:

- (a) the Water Charges; and
- (b) the relevant Other Charges for the Other Services.



**7.2 Invoicing**

Fitzroy River Water may, unless otherwise required by Law, issue an invoice to the Customer for:

- (a) Water Charges at approximately quarterly intervals or at such other intervals as may be published in the Fitzroy River Water Rules; and
- (b) Other Charges after performance of the Other Services to which the Other charges relate.

**7.3 Calculation and Payment of Charges**

- (a) The Allocation Fixed Charge shall be calculated and payable quarterly in advance for the relevant period in which the invoice is rendered.
- (b) Consumption Charges shall be calculated and payable quarterly in arrears for the period for which meter readings have been taken on behalf of Fitzroy River Water.
- (c) Other Charges for Other Services shall be calculated and payable in arrears after performance of the services.

**7.4 Rules about Invoicing and Meter Reading**

For the sake of certainty, the Fitzroy River Water Rules may include rules:

- (a) varying the timing for periodic issuing of invoices;
- (b) varying the timing for periodic reading of meters;
- (c) for the calculation of Water Charges when meter readings are not taken on the last day of a Water Year including, but not limited to, pro rata calculation on a daily or some other basis; and
- (d) for the calculation of Water Charges if the Commencement Date does not coincide with the start of a Water Year or the termination of this Agreement does not coincide with the end of a Water Year.

**7.5 Re-invoicing after Errors**

Where an error is discovered in any invoice:

- (a) Fitzroy River Water may issue a subsequent invoice within 2 years from the date of the invoice containing the error;
- (b) in the case where the subsequent invoice requires the customer to make a payment to Fitzroy River Water, payment shall be in accordance with clause 7.6 of this Agreement;
- (c) in the case where Fitzroy River Water is required to reimburse the customer, reimbursement may be effected by carrying forward the reimbursable amount to be set-off against amounts payable on future invoices or otherwise payable to Fitzroy River Water; and
- (d) if the error is such that Fitzroy River Water is to reimburse the customer and there are to be no future invoices and there are no amounts otherwise payable to Fitzroy River Water the reimbursable amount is to be paid as a direct refund to the customer.

**7.6 Payment**

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

**7.7 Interest on Arrears**

Any amounts specified in clause 16.1, if not paid by the Customer when due, will accrue interest at the Overdue Rate calculated on a daily basis and compounded at the end of each calendar month, from the date of the invoice to the date the unpaid amount is paid. Interest payable under this clause may be included by Fitzroy River Water in an invoice subsequently issued to the Customer.

**8. Term**

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**8.1 Initial Term**

This Agreement commences on the Commencement Date and terminates on the Termination Date.

**8.2 Changes to Contract Conditions**

The Customer acknowledges that some provisions of this Agreement may be rendered inappropriate over time and accept that Fitzroy River Water may initiate consultation with the Customer or any group representing customers within the Regulated Area with a view to establishing new terms and conditions.

**8.3 Notice of New Terms**

Where, after consultation with the Customer or a group representing customers within the Regulated Area, Fitzroy River Water has determined new terms and conditions which should apply to the Contract Services, Fitzroy River Water may by written notice given to the Customer 3 months prior to a Review Date, notify the Customer of the new terms and conditions.

**8.4 Customer's Response to New Terms**

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

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

**9. Fitzroy River Water Rules and Charges**

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**9.1 Fitzroy River Water Rules**

Fitzroy River Water may make and amend the Fitzroy River Water Rules concerning the Regulated Area, including:

- (a) implementing Fitzroy River Water's rights and obligations as the holder of the Resource Operations Licence;
- (b) setting out, clarifying or amending the rights and obligations of Fitzroy River Water and the Customer under this Agreement;
- (c) setting the Minimum Charge, the Allocation Fixed Charge Rate and the Consumption Charges Rate for each Review Date; and
- (d) the calculation of the volume of water taken from the Regulated Area,

provided that the Fitzroy River Water Rules,

- (e) are not inconsistent with the Resource Operations Licence and this Agreement;
- (f) are not inconsistent with the Strategic Asset Management Plan; and
- (g) have been the subject of consultation with the Customer or any group representing customers within the Regulated Area.

## **9.2 Fitzroy River Water Charges**

- (a) Subject to any amendment or adjustment provided for in this contract, until the Termination Date, the Minimum Charge, Allocation Fixed Charge Rate and Consumption Charges Rate payable by the Customer are set out in Item 1 Schedule 2.
- (b) Fitzroy River Water may make or amend the Minimum Charge, Allocation Fixed Charge Rate and Consumption Charges Rate payable by the Customer on and from any Review Date in the manner set out in clause 9.3.
- (c) If Fitzroy River Water offers a service described in clause 6 and no amount is set out in Item 1 Schedule 2 as the charge payable by the Customer for the service then the price shall be determined as follows:
  - (i) if Fitzroy River Water offers to supply the service at a fixed price then that price; or
  - (ii) if Fitzroy River Water offers to supply the service without having fixed a price then a reasonable price having regard to the cost (including administration and overhead costs) to Fitzroy River Water in providing the service.

## **9.3 Process to make or amend the Consumption or Allocation Fixed Charges Rate**

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

## **9.4 PPI Adjustment**

The Charges must be adjusted on each 1 July that is not a Review Date in accordance with the formula set out in Item 2 Schedule 2.

**9.5 Fitzroy River Water may amend Charges**

Notwithstanding clauses 9.2 and 9.4 of this Agreement, Fitzroy River Water may make or amend the Other Charges concerning the Regulated Area and shall publish particulars of such Other Charges from time to time.

**10. Customer Obligations – Fitzroy River Barrage and Customer’s Nominated Works**

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**10.1 Customer not to Damage**

The Customer shall not damage or by any act or omission permit damage to the Fitzroy River Barrage.

**10.2 Customer to Notify Damage**

The Customer, promptly on becoming aware of any actual or threatened damage to or malfunction in the Fitzroy River Barrage, must notify Fitzroy River Water:

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

**10.3 Customer’s Nominated Works to be Approved**

Prior to the installation or alteration of the Customer's Nominated Works the Customer must obtain the prior written approval of Fitzroy River Water to the Customer's Nominated Works, including the meter location, configuration, specifications of and maximum diversion rates for any pump included in the Customer's Nominated Works, which approval may not be unreasonably withheld.

**10.4 Access to be free of Declared Pests**

- (a) The Customer acknowledges damage may be suffered by the environment and third parties if Declared Pests are transferred from place to place within the State of Queensland.
- (b) To avoid the risk of harm to the environment and third parties the Customer shall:
  - (i) ensure there is available at all times motor vehicle access from a Public Road to the Meter and the Customer's Nominated Works which is free of Declared Pests; and
  - (ii) keep Fitzroy River Water informed of the place where access complying with clause 10.4(b)(i) is available.

**11. Meter/Measurement**

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**11.1 Meter Installation**

- (a) A Meter acceptable to Fitzroy River Water must be acquired and installed, within the Customer’s Nominated Works or the Regulated Area at the Customer's expense.
- (b) The Customer may:
  - (i) request Fitzroy River Water to install the Meter in accordance with clause 6;

- (ii) arrange for a person not a party to this Agreement to install the Meter; or
- (iii) install the Meter itself.
- (c) Any person installing a Meter must install it correctly in accordance with an approval given to the Customer under Clause 10.3 of this Agreement.
- (d) Where, in the reasonable opinion of Fitzroy River Water, a meter installed pursuant to section 11.1(a) of this Agreement requires replacement or upgrading, Fitzroy River Water may replace or upgrade the meter or require the Customer to replace or upgrade the meter.
- (e) The replacement or upgrading of a meter pursuant to clause 11.1(d) shall be at Fitzroy River Water's expense unless the requirement to replace or upgrade the meter arises out of a breach of Clause 11.2 of this Agreement by the Customer, in which case the replacement or upgrading of the meter shall be at the Customer's expense.

### **11.2 No Actions Affecting Meter**

The Customer must not:

- (a) damage or by any act or omission permit damage to the Meter; or
- (b) do or omit to do anything which may affect:
  - (i) the accuracy of any Meter used by Fitzroy River Water in connection with this Agreement;
  - (ii) the operation of the Customer's Nominated Works or any Meter used by Fitzroy River Water so as to render inaccurate the recording of the volume of water taken; or
  - (iii) the capacity of the Customer's Nominated Works to take water.

### **11.3 Ownership of Meter**

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

### **11.4 Meter Readings**

When directed by Fitzroy River Water or as required by the Fitzroy River Water Rules (including where the Customer is taking water under a Statutory Right), the Customer must:

- (a) take readings (including date, time and volume readings) from the Meter;
- (b) advise Fitzroy River Water (by telephone, fax or email to enquiries@rrc.com.au) of the reading within 24 hours of taking the reading;
- (c) maintain written records of such readings; and
- (d) provide copies of such records to Fitzroy River Water (upon request).

### **11.5 Access to Read, Test, Repair, Calibrate**

- (a) At all reasonable times, the Customer must ensure that Fitzroy River Water, and any person nominated or authorised by Fitzroy River Water, has safe and convenient access to the Meter and the Customer's

Nominated Works for the purposes of reading, inspecting, testing, repairing and calibrating the Meter and to determine if the Customer is complying with this Agreement. The Customer shall give Fitzroy River Water copies of any keys necessary to gain access to the Meter and the Customer's Nominated Works.

- (b) If in the reasonable opinion of Fitzroy River Water access to the Meter or Customer's Nominated Works is unsafe then:
  - (i) Fitzroy River Water may give the Customer a notice requiring works to be performed by the Customer within a reasonable time to make the access safe; or
  - (ii) Fitzroy River Water may undertake any works it considers reasonably necessary to make the access safe.
- (c) The cost of works performed, whether by the Customer or Fitzroy River Water, under clause 11.5(b) shall be borne by the Customer.

#### **11.6 Disclosure of Records**

(a) *By Fitzroy River Water*

The Customer authorises Fitzroy River Water to make available to the Regulator, a holder of a Resource Operations Licence in the Regulated Area and any other person as required under any Law and, with the consent of the Customer, any person proposing a dealing with the Customer's Water Entitlement, such information and records concerning the Customer, the Customer's Water Entitlement, the Meter and the volumes of water taken as may be required by Law or to which the Customer consents or which may be required for the proposed dealing.

(b) *By the Regulator or other holder*

The Customer authorises the Regulator and a holder of a Resource Operations Licence in the Regulated Area with whom the Customer has a contract for the supply of water to make available to Fitzroy River Water such information and records concerning the Customer, the water entitlement of the Customer under such other contract and a copy of such other contract, as may be required to enable Fitzroy River Water to determine whether the Customer has complied with this Agreement or to enable Fitzroy River Water to issue an invoice to the Customer.

(c) *By electricity supplier*

The Customer authorises any electricity supplier to supply to Fitzroy River Water, particulars of electricity consumption by the Customer for the taking of water.

#### **11.7 Report Malfunctions, Damage**

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

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

**11.8 Removal of Meter on Termination**

- (a) On Termination of this Agreement under clause 19.1, Fitzroy River Water may remove the Meter and seal off the Customer's Nominated Works at the cost of the Customer.

**11.9 Estimate**

- (a) If, for any period during the current Water Year or the most recently completed Water Year only:
  - (i) Fitzroy River Water has reasonable grounds to believe that the Meter is or was not measuring accurately;
  - (ii) no Meter is installed;
  - (iii) access to the Meter was not obtained for any reason; or
  - (iv) Fitzroy River Water has reasonable grounds to believe the Customer has not strictly complied with the requirements of clauses 11.2, 11.4 or 11.7;

for the purpose of determining applicable Consumption Charges, Fitzroy River Water may make an estimate of the volume of water taken by the Customer over that period.

- (b) In making such estimate, Fitzroy River Water must consult with the Customer, act reasonably and may have regard to any relevant matter including water ordered by the Customer, the Customer's prior water use history, hours pumped, electricity consumed, industry practice or the area under irrigation. Any estimate made by Fitzroy River Water under this clause may be issued as a separate invoice by Fitzroy River Water and shall bind the Customer.

**11.10 Customer to Assist**

The Customer shall:

- (a) upon request by Fitzroy River Water supply to Fitzroy River Water any relevant document or information in the possession or control of the Customer which would assist Fitzroy River Water in making an estimate under clause 11.9;
- (b) permit Fitzroy River Water or any person authorised by Fitzroy River Water to have access to and read any electricity meter recording electricity used in connection with the taking of water; and
- (c) permit Fitzroy River Water or any person authorised by Fitzroy River Water to have access to the land of the Customer for any purpose reasonably associated with the performance of this Agreement or carrying out its responsibilities under the Resource Operations Licence.

**11.11 Testing and Calibrating at Request of Customer**

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

**11.12 Cost of Repairing or Replacing Meter**

The Customer must pay Fitzroy River Water the cost (including administration and overhead costs) of repairing or replacing a destroyed or damaged Meter where the risk is borne by the Customer under clause 4.1(f)(v).

**12. Non-release Authorisations**

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**12.1 Suspension or Restriction of Supply**

Fitzroy River Water may suspend or restrict the taking of water from the Regulated Area:

- (a) during maintenance or replacement of the Fitzroy River Barrage;
- (b) where Fitzroy River Water 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 Fitzroy River Water, such taking:
  - (i) may cause or contribute to damage to the property, livestock, crops or assets of any person (including Fitzroy River Water or the Customer);
  - (ii) may cause or contribute to loss of life or injury to persons;
  - (iii) may cause or contribute to an adverse effect on public health;
  - (iv) is likely to constitute a breach by Fitzroy River Water of its obligations under the Resource Operations Licence, any Law or an agreement;
  - (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;
- (e) where provided for under the Fitzroy River Water Rules; or
- (f) when the Barrage Storage Level is below EL 0.9m AHD.

**12.2 Direction Not to Take Water**

- (a) Where the Customer:
  - (i) has committed a material breach of this Agreement; or
  - (ii) is in arrears for payment of any Water Charges or Other Charges for more than 2 months; or
  - (iii) has breached this Agreement and has not reimbursed Fitzroy River Water for costs incurred by Fitzroy River Water in rectifying the breach; or
  - (iv) has not provided the security required under clause 20; or
  - (v) has breached any of clauses 4.1, 11.2, 11.5 or 11.10,

Fitzroy River Water may direct the Customer or any person diverting or taking the Customer's Water Entitlement, not to divert or take water under the Customer's Water Entitlement.



- (b) When the Barrage Storage Level is below EL 0.9m AHD, Fitzroy River Water may direct the Customer or any person diverting or taking the Customer's Water Entitlement, not to divert or take water under the Customer's Water Entitlement.
- (c) However, nothing in this clause 12.2 shall limit the rights of Fitzroy River Water under this Agreement or otherwise against the Customer for any breach.

**12.3 If Customer does Not Comply with Direction Not to Take Water**

- (a) Where Fitzroy River Water considers that the Customer, or a person to whom the direction is given, has not complied with or will not comply with a direction under clause 12.2, Fitzroy River Water may take all reasonable steps to ensure that the Customer or other person complies with the direction, including making modifications to the Meter or the Customer's Nominated Works to prevent the Customer or other persons taking water from the Regulated Area.
- (b) The Customer shall permit FRW or any person authorised by FRW to have access to the land of the Customer for the purposes set out in this clause 12.3.

**13. Water Quality**

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**13.1 No Warranty by Fitzroy River Water**

Fitzroy River Water makes no representation and gives no warranty:

- (a) about the quality of water within the Fitzroy River Barrage or the Regulated Area;
- (b) that any actions, measures or steps will be taken by Fitzroy River Water to prevent any adverse effects on the quality of water in the Regulated Area or after its release or taking by or on behalf of the Customer; or
- (c) that water within Fitzroy River Barrage, the Regulated Area or available for diversion or taking at the Customer's Nominated Works is potable or suitable for any purpose (whether or not it is a purpose to which Fitzroy River Water knows the Customer may put the water).

**13.2 Customer to Satisfy Itself About Water Quality**

The Customer shall satisfy itself about the quality of water by testing or other means prior to diverting or taking any water pursuant to this Agreement.

**13.3 Customer to Indemnify**

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

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

**13.4 Release by Customer**

The Customer releases Fitzroy River Water from all claims, actions, demands, proceedings and liability which it may have or claim to have or but for this release might have had against Fitzroy River Water connected with the quality of water within the Fitzroy River Barrage, the Regulated Area or diverted or taken by or on behalf of the Customer.

**14. Assignment/Subcontracting by Fitzroy River Water**

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**14.1 Assignment by Fitzroy River Water**

Fitzroy River Water may assign its rights and obligations under this Agreement 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 the Customer to be bound by the provisions of this Agreement.

**14.2 Fitzroy River Water may Subcontract**

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

**15. Amendment, Transfer, Seasonal Water Assignment, Lease of or Addition to Customer's Water Entitlement**

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**15.1 Notice of Application**

If the Customer:

- (a) applies for a change to a water allocation, a transfer, seasonal water assignment, lease or dealing with a water allocation for the Customer's Water Entitlement; or
- (b) applies for or enters a contract to acquire, takes a seasonal water assignment of, leases or to deal with a water entitlement for the Regulated Area;

in whole or in part then the Customer shall give written notice of the application to Fitzroy River Water promptly after the application or contract is made.

**15.2 Effect of Approval**

Where the amendment, transfer, seasonal water assignment, lease of or dealing with the whole or part of the Customer's Water Entitlement or of another water entitlement for the Regulated Area, is approved, Fitzroy River Water shall, subject to:

- (a) the payment of all moneys and debts payable to Fitzroy River Water under this Agreement;
- (b) Fitzroy River Water and the transferee, assignee or lessee or other party entering into a further supply contract or an amendment to that customer's agreement on terms acceptable to Fitzroy River Water in its absolute discretion; and

- (c) Fitzroy River Water and the Customer entering into either a further supply contract or an amendment to this Agreement on terms acceptable to Fitzroy River Water in its absolute discretion,

give notice of the existence of a supply contract to the Registrar when that supply contract is made, and where all of the Customer's Water Entitlement has been transferred, release the Customer from this Agreement.

**15.3 Transfer, Seasonal Water Assignment or Lease Outside the Regulated Area**

Clauses 15.1 to 15.2 apply only to an amendment, a transfer, seasonal water assignment, lease or dealing within the Regulated Area.

**15.4 Fitzroy River Water's Duty Unaffected**

Where, under the Act, Fitzroy River Water is to approve the amendment, transfer, seasonal water assignment or lease referred to in this clause, Fitzroy River Water shall carry out its responsibility under the Act strictly in accordance with the terms of the Act and any other Law binding on it without regard to this Agreement.

**15.5 Further or Amended Supply Agreement**

Where Fitzroy River Water is to approve the amendment, transfer, seasonal water assignment or lease then its statutory responsibility is not to affect or impede the exercise of its discretion in relation to making or amending a supply contract.

**16. Power of Sale**

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**16.1 Due and Punctual Payment**

The Customer charges to Fitzroy River Water the Customer's Allocation with 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 5;
- (c) all debts (including amounts which become a debt due to Fitzroy River Water under the Act) from time to time due by the Customer to Fitzroy River Water;
- (d) the Termination Amount payable by the Customer under clause 19.2.

**16.2 Exercise of Statutory Power**

Where the Customer is in breach of this Agreement or if Fitzroy River Water is entitled to terminate this Agreement under clause 19.1, Fitzroy River Water may, subject to giving notice as required by the Act, sell the Customer's Allocation.

**16.3 Further Powers**

Where Fitzroy River Water is entitled to sell the Customer's Allocation, Fitzroy River Water may also, amend, lease or grant a seasonal water assignment of the whole or part of the Customer's Allocation.

**16.4 Manner of Dealing**

Without limitation, any Dealing by Attorney may be made:

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

**16.5 Application of Sale Proceeds**

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 the liability of the Customer to Fitzroy River Water for all amounts specified in clause 16.1 of this Agreement;
- (c) thirdly, in discharging the liability, if any, of the Customer in relation to the Customer's Allocation to the chief executive under the Act;
- (d) fourthly, in discharging, in accordance with the priorities of their registered interests, any liability owing by the Customer to a person who has a registered interest recorded over the Customer's Allocation on the Water Allocations Register;
- (e) fifthly, in payment to the Customer.

**16.6 Power of Attorney**

- (a) For valuable consideration and by way of security the Customer irrevocably appoints the Chief Executive Officer of Fitzroy River Water its attorney to:
  - (i) do anything which the Customer is obliged to do under or in relation to this Agreement but has failed to do;
  - (ii) do anything which the Customer is entitled to do under the Act in relation to the Customer's Allocation;
  - (iii) amend, sell, grant a seasonal water assignment or lease the Customer's Allocation and do and execute all acts, deeds, documents and things as shall be necessary to give effect to such amendment, sale, assignment or lease.
- (b) Without limitation, the Attorney may at any time:
  - (i) do anything which in the opinion of Fitzroy River Water or the 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, seasonal water assignment and other assurance or lease of any of the Customer's Allocation in favour of any purchaser, assignee, lessee or any nominee; and
  - (ii) delegate his powers (including delegation).

- (c) No Attorney may act under this clause:
  - (i) unless notice required by clause 16.2 has been given; or
  - (ii) inconsistently with this Agreement.
- (d) To the extent permitted by Law, no Attorney will be liable:
  - (i) for any conduct or delay (including negligence) in the exercise or non-exercise of any power; or
  - (ii) for any loss (including consequential loss) which results, except where the liability arises from the fraud or wilful misconduct of the Attorney.
- (e) No party to any sale, seasonal water assignment or lease and no person asked to register a Dealing by Attorney is bound to enquire:
  - (i) whether the Customer has breached this Agreement or whether this Agreement has become enforceable;
  - (ii) whether a person who is, or purports or is purported to be, an Attorney is duly appointed;
  - (iii) as to the amount of any moneys and whether such moneys are due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing by Attorney.

**17. Substantial Destruction or Damage to Fitzroy River Barrage**

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This Agreement shall terminate where in Fitzroy River Water's reasonable opinion, Fitzroy River Water is no longer able to control the level of water in, or supply of water from the Regulated Area or the rate of release from the Fitzroy River Barrage because the Fitzroy River Barrage or water infrastructure of the holder of another resource operations licence are substantially destroyed or damaged. As soon as is reasonably practicable after Fitzroy River Water has formed the opinion, Fitzroy River Water shall notify the Customer and this Agreement shall terminate from the date stated by Fitzroy River Water in that notice to the Customer.

**18. Limitation of Liability and Release**

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**18.1 Extent of Liability for Losses**

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

- (a) any breach of this Agreement by Fitzroy River Water;
- (b) any error in the data, assumptions or methodology for a standard, plan or licence issued by a Regulator; or
- (c) complying with a State Direction.

**18.2 Customer has Remedies under Act**

Fitzroy River Water and the Customer acknowledge and agree that clause 18.1 is not intended to limit or affect action which the Customer may take against

Fitzroy River Water under the Act or for the wilfully negligent acts of Fitzroy River Water.

### **18.3 Releases by Customer**

The Customer releases Fitzroy River Water from all claims, actions, demands, proceedings and liability which it may have or claim to have or but for this release might have had against Fitzroy River Water 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 Fitzroy River Water, including for example, the storing or releasing of water where such action is necessary for Fitzroy River Water 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 actions of Fitzroy River Water in remedying a breach of this Agreement by the Customer or a breach of an agreement for the delivery of water which Fitzroy River Water 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 Fitzroy River Water 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;
- (d) the circumstances in which the Customer bears the risk as stated in clause 4.1(f).

### **18.4 Indemnity by Customer**

The Customer must indemnify Fitzroy River Water against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Fitzroy River Water arising out of the circumstances in which the Customer releases Fitzroy River Water under clause 18.3.

## **19. Default and Termination**

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### **19.1 Termination**

Fitzroy River Water may terminate this Agreement, without affecting Fitzroy River Water's accrued rights, by giving a notice to the Customer of its intention to terminate on any of the following grounds:

- (a) the Customer (being a natural person) has become a bankrupt.
- (b) the Customer (being a corporation) becomes Insolvent.
- (c) the Customer breaches a provision of this Agreement and has not remedied that breach within a reasonable period, having regard to the nature of the breach, after service of notice of the breach from Fitzroy River Water of its intention to terminate.
- (d) the Customer does not hold a Customer's Water Entitlement.

### **19.2 Payment on Termination for Breach by Customer**

Where this Agreement is terminated as a consequence of a breach by the Customer, the Customer shall pay to Fitzroy River Water the Termination

Amount. However, nothing in this clause shall limit any other rights of Fitzroy River Water under this Agreement or otherwise against the Customer in relation to any such breach.

**19.3 Termination Amount**

The Customer acknowledges that the Termination Amount represents 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 Fitzroy River Water for the Fitzroy River Barrage having regard to the quantities of water supplied and the persons supplied from the Fitzroy River Barrage. Fitzroy River Water reserves the right to undertake a formal assessment of the Termination Amount, at the cost of the Customer.

**20. Security**

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**20.1 Request for Security**

Fitzroy River Water may request the provision of security if:

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

**20.2 Provision of Security**

The Customer must provide, promptly after a request in writing by Fitzroy River Water, a security of an amount at least equal to one quarter of the total of the Allocation Fixed Charge and the Consumption Charges which are payable under this Agreement on the assumption that in the Water Year in which the notice is given the Customer took the whole of the Customer's Water Entitlement.

**20.3 Form of Security**

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

**20.4 No Services without Security**

Fitzroy River Water is not obliged to provide any services under this Agreement until:

- (a) the security is provided to Fitzroy River Water; and
- (b) thereafter, if Fitzroy River Water uses the security to pay amounts owing by the Customer under this Agreement, until the Customer has provided further security so that the total security is for an amount not less than the amount calculated under clause 20.2.

**20.5 Release of Security**

Upon the termination of this Agreement and the payment of all moneys owing (whether or not then due or owing contingently or prospectively) Fitzroy River Water shall release the security to the Customer.

**21. Dispute Resolution**

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**21.1 Activation**

If a dispute arises under this Agreement (apart from a dispute in relation to Charges set under clause 9 or termination of this Agreement pursuant to clause 19.1), 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.

**21.2 Appointment of representative**

Within five business days of receipt of the notice referred to in clause 21.1, the recipient shall designate a representative with similar authority.

**21.3 Discussions**

Following whatever investigation each party's representative considers appropriate, the representatives shall promptly discuss the dispute.

**21.4 Negotiation of procedures**

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

**21.5 Methods of resolution**

A party receiving a request under clause 21.4 shall promptly discuss the following matters 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 procedure and timetable for exchange of documents and other information relating to the dispute;
- (c) procedural rules and a timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute;
- (e) each party's contribution to the cost of the agreed mode of proceeding.

**21.6 Exchange of information**

The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement under this clause 21 is to attempt to settle a dispute between the parties.

**21.7 Termination**

Any party may terminate the dispute resolution procedure provided by this clause 21 at any time and pursue other available remedies.

**22. Native Title**

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**22.1 Existence of Native Title**

If, under any Law relating to Native Title the commencement or performance of this Agreement is affected by Native Title or any requirement under such Law,



then this Agreement and Fitzroy River Water's obligations under this Agreement are subject to any such requirement.

**23. GST**

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The parties agree that:

- (a) all Payments have been calculated without regard to GST;
- (b) Fitzroy River Water will comply with its obligations under the *Trade Practices Act 1975* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
- (d) any reference to a cost or expense in this Agreement excludes any amount for GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and
- (e) the payee will provide to the payer a Tax Invoice if subclause (c) applies.

**24. Miscellaneous**

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**24.1 Obligations for the Benefit of Third Parties**

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

**24.2 Notices**

Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient:
  - (i) for Fitzroy River Water, at the address of its office nominated in the Fitzroy River Water Rules or if not nominated, PO Box 1860, Rockhampton Q 4700;
  - (ii) for the Customer, at the address last known to Fitzroy River Water or shown in the register that records the details of the Customer's Allocation.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by the Customer will be taken to have been given when received at the above address;
- (d) in the case of a notice by Fitzroy River Water forwarded by mail, will be taken to have been given 4 days after posting by Fitzroy River Water;
- (e) if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

**24.3 Entire Agreement**

This Agreement contains the entire agreement of the parties concerning its subject matter namely the Services of Fitzroy River Water to the Customer in relation to the Customer's Water Entitlement and supersedes all earlier agreements. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties concerning its subject matter.

**24.4 Amendment**

This Agreement may be amended:

- (a) by another agreement executed by all parties; or
- (b) as reasonably required by Fitzroy River Water, after consultation, where there has been a change in any Law, the Resource Operations Licence, or the Strategic Asset Management Plan.

**24.5 No Waiver**

Failure to exercise, delay in exercising or a single or partial exercise of any right, power or remedy under this Agreement will not operate as a waiver, nor will it preclude any other or further exercise of that or any other right, power or remedy.

**24.6 Stamp Duty and Costs**

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

**24.7 Further Assurances**

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

**24.8 Details from Register**

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

**24.9 Costs of Approval**

Where information or an approval is to be provided by Fitzroy River Water under this Agreement or by Law, the Customer shall pay to Fitzroy River Water an administration charge for the information or dealing with the approval in accordance with the charge published in the Fitzroy River Water Rules.

**24.10 Allocation of Payments**

To the extent permitted by Law, Fitzroy River Water may apply payments by the Customer towards payment of such moneys, debts and amounts referred to in clause 16.1 as Fitzroy River Water determines in its absolute discretion.

**24.11 Council's right as a local authority**

Nothing in this Agreement shall prejudice or affect Rockhampton Regional Council's rights, powers, duties and obligations in the exercise of its function as a local authority.

**25. Definitions/Interpretation**

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**25.1 Definitions**

**Act** means the *Water Act 2000*.

**Allocation Fixed Charge** means an amount calculated by multiplying the Allocation Fixed Charge Rate by the Customer's Allocation for each Water Year.

**Allocation Fixed Charge Rate** means:

- (a) in respect of the relevant Water Year the rate set out in Item 1 Schedule 2 or the rate determined in accordance with clauses 9.2(b) and 9.3; and
- (b) adjusted in accordance with clause 9.4.

**Barrage Storage Level** means the height of water in the Barrage ponded area as measured on FRW's SCADA system. This level will be recorded in metres AHD.

**Charges** means:

- (a) Allocation Fixed Charge Rate;
- (b) Consumption Charges Rate;
- (c) Minimum Charge; and
- (d) Other Charges.

**Commencement Date** means the date of commencement stated in the Customer's Schedule.

**Consumption Charges** means an amount calculated by multiplying the Consumption Charges Rate by the volume of water taken by the Customer in the relevant Water Year.

**Consumption Charges Rate** means:

- (a) in respect of the relevant Water Year the rate set out in Item 1 Schedule 2 or the rate determined in accordance with clauses 9.2(b) and 9.3; and
- (b) adjusted in accordance with clause 9.4.

**Contract Services** means the services described in clause 1.

**Customer** means the person identified in the Customer's Schedule.

**Customer's Allocation** means the water allocation for the Regulated Area held by the Customer as stated in the Customer's Schedule as amended under clause 15.

**Customer's Development Permit** means any development permit required to be held by the Customer for the Customer's Nominated Works under the *Sustainable Planning Act 2009*.

**Customer's Nominated Works** means the works used or nominated by the Customer for taking water as may be varied during the Term under clause 10.3.

**Customer's Schedule** means the schedule described as such which is included in this Agreement.

**Customer's Water Entitlement** means the Customer's Allocation and includes each additional water entitlement of the Customer which Fitzroy River Water has agreed, under clause 15, may be the subject of this Agreement.

**Dealing by Attorney** means for a water entitlement, any amendment, sale, lease or seasonal water assignment.

**Declared Pest** means:

- (a) a thing declared to be a declared pest under Section 36 or Section 37 of the *Land Protection (Pest and Stock Route Management) Act 2002 (Qld)*;
- (b) a thing the movement of which is prohibited under Section 9 of the *Plant Protection Act 1989 (Qld)*; and
- (c) any thing which by legislation must not be transported from one place to another.

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

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades or revolution;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain 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 Fitzroy River Barrage or the Customer's Nominated Works are constructed; or
- (h) the prevention of access to repair damage to or malfunction of the Fitzroy River Barrage, the Meter or the Customer's Nominated Works caused by any of the events set out above.

**Fitzroy River Water** means Rockhampton Regional Council.

**Fitzroy River Water Rules** means the rules and guidelines made and amended from time to time under clause 9.1.

**Fitzroy River Barrage** means the water infrastructure described in the Resource Operations Licence situated at AMTD 59.6 km on the Fitzroy River.

**GST** means the goods and services tax as imposed by the GST Law;

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

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, means any

Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

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

**Law** means:

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

**Meter** means a meter to measure the volume of water taken at the Customer's Nominated Works and which includes any valve and associated item nominated by Fitzroy River Water.

**Minimum Charge** means:

- (a) in respect of each Water Year, the amount set out in Item 1 Schedule 2 or made or amended under clauses 9.2(b) and 9.3; and
- (b) adjusted in accordance with clause 9.4.

**ML** means megalitre.

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

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

**Other Charges** means the charges for the Other Services:

- (a) set out in Item 1 Schedule 2; or

(b) determined under clause 9.2(c) and as adjusted under clause 9.4.

**Other Services** means the services identified in clause 6 and any services which Fitzroy River Water indicates, in the Fitzroy River Water Rules, that it will provide.

**Overdue Rate** means the rate of interest specified from time to time pursuant to the *Local Government Regulation 2012* as the maximum rate of interest payable on overdue rates, or in the absence of such a rate being specified, the rate of interest specified from time to time by Rockhampton Regional Council as the rate of interest payable on overdue rates.

**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.

**PPI** means the Producer Price Indexes, Australia published by the Australian Bureau of Statistics in Catalogue 6427.0, Table 17, road and bridge construction (3101) Queensland.

**Quarterly** means a period of 3 consecutive months commencing on 1 July, 1 October, 1 January and 1 April in each Water Year.

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

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

**Resource Operations Licence** means:

- (a) the resource operations licence; or
- (b) the interim resource operations licence,

under the Act held by Fitzroy River Water and described in the Customer's Schedule;

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

**Review Date** means:

- (a) 1 July 2024;
- (b) each 1 July at 5 yearly intervals after 1 July 2024 until the termination of this Agreement; and
- (c) any date notified in writing to the Customer by Fitzroy River Water if the Resource Operations Plan is amended or a new Resource Operations Plan is made.

**Services** means Contract Services and Other Services.

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

- (a) making water available in nominated timeframes at nominated locations;
- (b) notification for and timing of interruptions to supply;
- (c) frequency and duration of interruptions to supply;
- (d) timing and duration of planned maintenance;
- (e) response times to applications made under this Agreement.

**State Direction** means the requirements of any notice published or any regulation made under the Act or any present or future requirement, instruction,

direction or order made under any Law which is binding on or which would customarily be observed by a reasonable and prudent holder of the Resource Operations Licence and/or owner/operator of the Fitzroy River Barrage and any modification, extension or replacement thereof from time to time in force.

**Statutory Right** means the right to take water (other than the Customer's Water Entitlement) under the Act.

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

**Supply Water Losses** means the water lost after release, supply or being taken from the Regulated Area or otherwise rendered unavailable to be taken, diverted or used by the Customer 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 Fitzroy River Water 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.
- (g) breaches of the Water Resource Plan, the Resource Operations Plan or the Fitzroy River Water Rules 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;

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

- (a) where the Customer holds a water allocation for the Regulated Area, for the period of 10 years after the date of termination; or
- (b) in any other case for the lesser of:
  - (i) the period of 10 years after the date of termination; or
  - (ii) the unexpired period of any fixed term supply agreement.

**Termination Date** means the date set out in Item 5 Schedule 1;

**Water Charges** means the greater of:

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

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

**Water Year** means the period 1 July to 30 June.

## **25.2 Interpretation**

In interpreting this Agreement, unless the context otherwise requires:

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



**Schedule 1 - Customer's Schedule**

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The following items 1 to 5 constitute the Customer's Schedule.

**1. Customer Details**

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Customer's Allocation: \_\_\_\_\_

Customer's Allocation Identifier: \_\_\_\_\_

Customer's Account Number: \_\_\_\_\_

**Customer 1**

Customer's Name: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Allocation Share: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

ABN: \_\_\_\_\_

ARBN: \_\_\_\_\_

**Customer 2**

Customer's Name: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Allocation Share: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

ABN: \_\_\_\_\_

ARBN: \_\_\_\_\_

**2. Customer Allocation Particulars**

---

Regulated Area: **Fitzroy River Barrage**

Location for taking water: \_\_\_\_\_

Purpose: **Agriculture / Industry / Domestic**

Priority Group **Medium**

Holder of Allocation: \_\_\_\_\_

(If not the same person in customer details provided above)

**3. Customer’s Nominated Works – Fitzroy River Barrage**

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Customer’s Nominated Works: \_\_\_\_\_

**Meter Details**

Number of meters: \_\_\_\_\_

Size of meter: \_\_\_\_\_

Meter number: \_\_\_\_\_

Location of meter: \_\_\_\_\_

**Pump Details:**

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Size: Inlet: \_\_\_\_\_ Outlet: \_\_\_\_\_

Power: Electric  Motor

Main Pipe Discharge Diameter: \_\_\_\_\_

**4. Commencement Date**

---

.....(day) .....(month) .....(year)

**5. Termination Date**

---

.....**30**.....(day) .....**June**.....(month) .....**2024**...(year)

**Schedule 2 - Charges**

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The following items 1 and 2 constitute the Charges Schedule.

**1. Water and Other Charges**

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Water Year	2019/20	2020/21	2021/22	2022/23	2023/24
Allocation Fixed Charge Rate (per ML)	\$31.65	\$31.65	\$31.65	\$31.65	\$31.65
Consumption Charges Rate (per ML)	-	-	-	-	-
Minimum Charge (per Water Year)	\$249.30	\$249.30	\$249.30	\$249.30	\$249.30

Charges for connection/meter supply \$(to be determined under clause 9.2(c))

Charge for disconnection \$(to be determined under clause 9.2(c))

Charge for additional meter reading \$(to be determined under clause 9.2(c))

Charges for meter testing services \$(to be determined under clause 9.2(c))

**2 PPI Adjustment**

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The formula to be used for the adjustment of charges under clause 9.4 is:

$$\frac{B \times PPI_n}{PPI_{Base}}$$

Where

B = the amount of the relevant charge in the relevant Water Year for which the charge is being determined.

PPI<sub>n</sub> = the PPI Index Number for the March quarter which ended immediately prior to the relevant Water Year for which the charge is being determined.

PPI<sub>Base</sub> = the PPI Index Number for the March quarter 2019.

**Schedule 3 – Special Conditions**

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Nil

**Signed as an agreement.**

..... Date / /  
**Customer 1**

..... Date / /  
**Customer 2**

**In the presence of**

..... Date / /  
Witness

.....  
Witness Name and Address

**For and on behalf of Fitzroy River Water**

..... Date / /  
Dr Jason Plumb  
Manager, Fitzroy River Water  
Signing on Behalf of the Chief Executive Officer of Rockhampton Regional Council