

## Professional Services Contract (Single Use)

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Seqwater

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[Supplier name to be inserted following award of contract]

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Contract Number:

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Project:

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Example

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## Parties

Queensland Bulk Water Supply Authority trading as Seqwater ABN 75 450 239 876 of Level 8, 117 Brisbane Street, Ipswich, QLD 4305 (Seqwater)

The **Service Provider** specified in the Contract Particulars (**Service Provider**)

## Background

- A The Service Provider has represented to Seqwater that it has the skills, resources and personnel to perform the Services and agrees to provide the Services to Seqwater on the terms of this Contract.
- B Seqwater agrees to purchase the Services from the Service Provider in accordance with this Contract.

## Agreed terms

### 1. Interpretation

#### 1.1 Definitions

In this Contract:

**Best Practice Principles** means the best practice principles with respect to quality, safe workplaces in the Queensland Procurement Policy and any associated guidance mentioned in the Queensland Procurement Policy to support the application of the Best Practice Principles.

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday or special holiday in Ipswich, Queensland.

**Capped Amount** means the amount specified in the Contract Particulars that is the maximum amount Seqwater will be liable for under **clause 22.6(b)**.

**Claim** means any claim (including in tort), action, proceeding or investigation of any nature or kind and includes the allegation of a claim.

**Confidential Information** means information disclosed by (or obtained from), one Party (Discloser) to (or by) the other Party (Recipient) that:

- (a) is by its nature confidential;
- (b) is designated by the Discloser as confidential; or
- (c) the Recipient knows or ought reasonably to know is confidential,

and includes:

- (d) information comprised in or relating to any Intellectual Property Rights of the Discloser;
- (e) information relating to the business, affairs or financial position of the Discloser including information relating to the assets or liabilities of the Discloser and any other matter that does or may affect the financial position or reputation of the Discloser;

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- (f) information relating to the internal management and structure of the Discloser, or the personnel, policies and strategies of the Discloser;
- (g) information of the Discloser to which the Recipient has access that has any actual or potential commercial value to the Discloser or to the person or corporation which supplied that information;
- (h) any information which may have come to a Party's knowledge in the course of negotiations or otherwise (including after the date of this Contract) concerning the operations, dealings, transactions, contracts, Intellectual Property Rights, commercial or financial arrangements or affairs of the other Party which the other Party has identified as confidential or which the first identified Party ought reasonably know should be treated as confidential; and
- (i) information relating to the officers, employees, contractors or suppliers of the Discloser, and like information, including any personal or sensitive information of individuals,

but does not include any such information that is in the public domain other than through a breach of an obligation of confidentiality.

**Conflict of Interest** means the Service Provider having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with its obligations to Seqwater such that an independent observer might reasonably question whether the professional actions or decisions of the Service Provider are or might be influenced by their own interests.

**Contract** means the agreement evidenced by this document and any other document incorporated by express reference.

**Contractor Supply Affiliate** means a related body corporate of the Service Provider or a subcontractor involved in the provision of the Services.

**Contract Material** means all Material (including any Deliverable) which is:

- (a) prepared, or required to be prepared, by or on behalf of the Service Provider under this Contract; or
- (b) delivered, or required to be delivered, by or on behalf of the Service Provider to Seqwater under this Contract.

**Contract Particulars** means the contract particulars set out in **Schedule 1**.

**Contract Price** means an amount calculated in accordance with **clause 11**, as may be adjusted in accordance with this Contract.

**Control:**

- (a) has the same meaning given to that term in section 50AA of the *Corporations Act 2001 (Cth)*; or
- (b) if the Service Provider is not an entity within the meaning of the *Corporations Act 2001 (Cth)*, a circumstance in which effective control is or may be exercised over the Service Provider.

**Deliverable** means any Material or other goods that the Service Provider delivers or is required to deliver under this Contract, including any Deliverable specified in the Contract Particulars.

**Dispute** means a difference, disagreement or dispute between the Parties arising out of or relating to this Contract, or the breach, termination, validity or subject matter of it, or as to any Claim in tort, in equity or pursuant to any Law.

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**Documentation** means the comprehensive reports, diagrams, drawings, working papers, manuals, installation instructions (where applicable), reference material and other relevant publications and aids referred to in this Contract or brought into existence as a result of the Services, including electronic versions, if provided by a Party, and includes any revisions, replacements and additions.

**Dumped Goods** has the meaning given to that term in the Queensland Procurement Policy.

**Electronic Signature** means an electronic method of signing that identifies the person and indicates their intention to sign this Contract.

**Ethical Supplier Mandate** means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" (as that document may be updated, reviewed, amended or replaced from time to time).

**Ethical Supplier Requirements** means:

- (a) all requirements which must be satisfied to meet the Ethical Supplier Threshold;
- (b) fulfilling any commitments given to Seqwater in relation to Local Benefits and the Best Practice Principles;
- (c) the Service Provider, or any Contractor Supply Affiliates, not, at any time after the Ethical Supplier Requirements Start Date:
  - (i) breaching the Supplier Code of Conduct;
  - (ii) supplying, procuring, or using, Dumped Goods;
  - (iii) being sanctioned under the Ethical Supplier Mandate; or
  - (iv) accruing 20 demerit points under the Ethical Supplier Mandate.

**Ethical Supplier Requirements Start Date** means 1 August 2019.

**Ethical Supplier Threshold** means, the ethical supplier threshold referred to in Principle 2 of the Queensland Procurement Policy, as it may be updated or replaced from time to time.

**Expenses** means the expenses (if any) set out in the Contract Particulars which the Service Provider may be entitled to at the sole discretion of Seqwater.

**Force Majeure Event** means an event:

- (a) which is outside of the reasonable control of the Party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that Party by reasonable diligence or precautionary measures,

and includes natural disasters (including flood, earthquake, storm or cyclone), health epidemics and pandemics, acts of terrorism, riots, civil disturbances, industrial disputes, lockouts and strikes (of any kind, other than lockouts or strikes involving that Party, its agents, employees or suppliers).

**Government Agency** means any government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Heavy Vehicle Law** means all Laws relating to the regulation of the use of heavy vehicles on roads and all related road transport Laws.

**Insolvency Event** means any of the following:

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- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

**Intellectual Property Rights** means all registered and unregistered rights in Australia and throughout the world in respect of copyright, trade or service marks, designs, patents, circuit layouts, indications of source or appellations of origin, trade secrets, know-how and confidential information.

**Key Personnel** means any person identified as Key Personnel in the Contract Particulars, as amended in accordance with this Contract.

**KPIs** means the key performance indicators set out in the Performance Measurement Framework.

**Laws** means:

- (a) all laws including rules of common law and equity, statutes, regulations, determinations, by-laws, ministerial directions, subordinate legislation, ordinances, mandatory codes, standards and guidelines, writs, orders, injunctions and judgements; and
- (b) any Government Agency requirement or authorisation (including conditions in respect of any authorisation) with which the Service Provider is legally required to comply.

**Local Benefits** has the meaning given to that term in the Queensland Procurement Policy.

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**Loss** means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

**Material** includes plant, equipment, hardware, machinery, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, Documentation and anything else which is in a material, including electronic, form.

**Modern Slavery** includes any conduct which constitutes modern slavery under any Modern Slavery Laws, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage.

**Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth) and Divisions 270 and 271 of the Criminal Code 1995 (Cth).

**Notice of Dispute** means a written notice of a Dispute identifying and providing details of the Dispute.

**Option Extension Period** means the option extension period specified in the Contract Particulars.

**Party** means a party to this Contract.

**Performance Measurement Framework** means the performance measurement framework set out in **Schedule 2**.

**Personal Information** means information or an opinion (including where forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Privacy Laws** means the Laws relating to the protection of Personal Information.

**Queensland Procurement Policy** means the Queensland Procurement Policy as published from time to time.

**Related Body Corporate** has the meaning given to that term in section 9 of the *Corporations Act 2001 (Cth)*.

**Related Entity** means, in respect of a Party, a Related Body Corporate of the Party, and any present or future corporation or other business entity Controlled by that Party.

**Reporting Periods** means the reporting periods set out in the Performance Measurement Framework.

**Schedule of Rates** means the schedule of fees and prices referenced in the Contract Particulars. The Schedule of Rates may include Expenses.

**Seqwater Property** means any Material or other goods or property provided by Seqwater to the Service Provider in connection with this Contract.

**Seqwater Representative** means the Seqwater representative nominated in the Contract Particulars or any other person nominated by Seqwater from time to time.

**Service Provider Material** means any Material other than Contract Material supplied by the Service Provider that is:

- (a) used by either Party in connection with any Services;
- (b) incorporated with or referenced by any Contract Material; or
- (c) necessary or useful to understand, interpret or use in any manner whatsoever, any Contract Material.

**Service Provider Personnel** means employees and approved contractors engaged by the Service Provider to assist the Service Provider to perform the Services, including the Key Personnel.

**Service Provider Representative** means the service provider representative specified in the Contract Particulars or as notified to Seqwater by the Service Provider from time to time in writing.

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**Services** means professional services of the type specifically described in the Contract Particulars, including all Deliverables.

**Specifications** means the specifications (if any) for the Services or a Deliverable specified in the Contract Particulars.

**Start Date** means the date specified in the Contract Particulars.

**Supplier Code of Conduct** means the supplier code of conduct available at <https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/search-for-procurement-policies-resources-tools-and-templates/queensland-government-supplier-code-of-conduct-2023> and as updated and amended from time to time.

**Term** means the term specified in the Contract Particulars and as otherwise extended in accordance with this Contract, subject to any earlier termination.

**Unlawful Environmental Harm** means unlawful environmental harm or unlawful environmental nuisance, as those terms are defined in the Environmental Protection Act 1994 (Qld).

**Work Health and Safety Law** means all Laws relating to work, health and safety.

## 1.2 Construction

In this Contract:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract, includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;

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- (k) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (l) a reference to a right includes a benefit, remedy, discretion or power;
- (m) a reference to time is to Australian Eastern Standard Time (AEST);
- (n) a reference to writing includes:
  - (i) any mode of representing or reproducing words in tangible and permanently visible form; and
  - (ii) words created or stored in any electronic medium and retrievable in perceivable form;
- (o) where this document contemplates that a person may elect, determine, approve, nominate, decide or consider any matter or thing, that person may make such election, determination, approval, nomination, decision or consideration in its absolute discretion and without being required to act reasonably or to give reasons, unless this document expressly requires otherwise;
- (p) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (q) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (r) where a Party is constituted by two or more persons, then:
  - (i) the obligations of that Party bind each of those persons jointly and severally;
  - (ii) any liability of that Party is borne by each of those persons jointly and severally; and
  - (iii) a right of that Party may be exercised by those persons jointly.

## 2. Term

### 2.1 Term

Subject to any earlier termination, this Contract continues for the Term.

### 2.2 Term Extension

- (a) Seqwater may, at its absolute discretion, extend the Term for the Option Extension Period by giving the Service Provider written notice at least 30 days prior to the expiry of the applicable Term.
- (b) Without affecting Seqwater's rights under **clause 2.2(a)**, the Parties may agree to extend the Term for a period different to an Option Extension Period.
- (c) If the Term of this Contract is extended in accordance with **clause 2.2(a)** or **clause 2.2(b)**, this Contract continues in force for the duration of the extended Term with the deletion of any Option Extension Period that has already been exercised by Seqwater under **clause 2.2(a)**.

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## 3. Services

### 3.1 Provision of Services

The Service Provider agrees to:

- (a) perform the Services for Seqwater;
- (b) deliver the Deliverables to Seqwater; and
- (c) supply such Materials and other resources necessary to meet its obligations,

on the terms of this Contract.

### 3.2 No guarantee

The Service Provider acknowledges that its appointment by Seqwater under this Contract is non-exclusive and Seqwater may engage other persons to provide Seqwater with the Services without notice to the Service Provider.

## 4. General obligations of the Service Provider

### 4.1 Performance obligations

Without limiting any other obligation of the Service Provider under this Contract, the Service Provider must:

- (a) provide, manage and maintain sufficient resources, including human resources, equipment and facilities, to enable it to fulfil its obligations under this Contract;
- (b) inform itself of Seqwater's requirements;
- (c) perform its obligations in a timely, diligent and professional manner;
- (d) exercise a standard of care and perform to a level of skill commensurate with that which would be expected of a qualified person experienced in the provision of services of the nature being required by Seqwater;
- (e) perform the Services in accordance with Seqwater policies and procedures;
- (f) provide the Services and Deliverables:
  - (i) free from all defects and fit for the purpose required by this Contract;
  - (ii) in accordance with the Specifications;
  - (iii) of acceptable quality (where 'acceptable quality' is as defined in The Australian Consumer Law in schedule 2 of the *Competition and Consumer Act 2010* (Cth)); and
  - (iv) in compliance with all statutory requirements, and any other requirements referred to in **clause 10.3**;
- (g) perform the Services in accordance with any programme or other timing requirements of Seqwater;
- (h) perform the Services in Australia, unless Seqwater has consented to the Services being performed outside Australia;

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- (i) comply with all reasonable directions given by Seqwater from time to time;
- (j) not do or cause or allow to be done anything that would cause Seqwater to breach any Laws or materially or adversely affect Seqwater's business or any property of Seqwater;
- (k) not cause Unlawful Environmental Harm;
- (l) in its performance of the Services, not infringe any Intellectual Property Rights; and
- (m) ensure that all Service Provider Personnel:
  - (i) comply with all reasonable directions given by Seqwater from time to time;
  - (ii) comply with any other requirements set out in this Contract; and
  - (iii) where applicable, work under Seqwater's supervision and as directed by the Seqwater Representative or nominee, at the Seqwater premises specified in this Contract.

## 4.2 Compliance with Laws

The Service Provider must:

- (a) comply with all Laws applicable to the performance of its obligations under this Contract; and
- (b) obtain and maintain, solely at the Service Provider's own expense, any licences, accreditations, authorisations, consents, approvals and permits that the Service Provider or Service Provider Personnel are required to possess by any applicable Laws in order to perform its obligations under this Contract.

## 4.3 Compliance with Modern Slavery Laws

- (a) The Service Provider warrants and agrees that:
  - (i) it has not engaged, and will not engage, in any Modern Slavery practices;
  - (ii) it has taken all steps reasonably necessary to satisfy itself that its supply chains do not involve any Modern Slavery practices or risks; and
  - (iii) it complies with and will continue to comply with Modern Slavery Laws.
- (b) Without limiting any other provision of this Contract, the Service Provider must provide to Seqwater, within 3 days of a request from Seqwater, all details in relation to potential Modern Slavery practices or risks, including without limitation details in relation to:
  - (i) the Service Provider's structure, operations and supply chains;
  - (ii) risks of Modern Slavery practices in the Service Provider's structure (including in respect of entities controlled by the Service Provider) and supply chains;
  - (iii) actions taken by the Service Provider to assess and address any Modern Slavery risks, including due diligence and remediation processes, and details of the Service Provider's assessment as to the effectiveness of such actions;

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- (iv) policies, codes of conduct and training relating to Modern Slavery;
- (v) if the Service Provider is a 'reporting entity' for the purposes of any Modern Slavery Laws, any reports or other documents it is required to prepare under that legislation; and
- (vi) any other matters relating to Modern Slavery risks as may be reasonably required by Seqwater.

#### 4.4 Ethical Supplier Requirements

- (a) The Service Provider:
  - (i) warrants that neither it nor any Contractor Supply Affiliate has, prior to the date of this Contract, breached the Ethical Supplier Requirements; and
  - (ii) must at all times after the date of this Contract comply, and ensure the Contractor Supply Affiliates comply, with the Ethical Supplier Requirements.
- (b) The Service Provider must notify Seqwater of any breach of the warranty or obligation in **clause 4.4(a)** as soon as reasonably practicable after the Service Provider becomes aware of the breach.
- (c) The Service Provider must provide Seqwater with:
  - (i) any information it reasonably requires at any time:
    - (A) in order for Seqwater to confirm the Service Provider's compliance with **clause 4.4(a)**; or
    - (B) relating to any breach of **clause 4.4(a)**; and
  - (ii) consent to obtain relevant compliance information from any regulators and/or law enforcement agencies.
- (d) Where Seqwater reasonably suspects that the Service Provider is not complying with the Ethical Supplier Requirements, Seqwater may by notice require the Service Provider to show cause, by the date specified in the notice (which must not be less than 10 Business Days), why Seqwater should not terminate this Contract. If the Service Provider fails to show cause by the date specified in the notice, Seqwater may, in addition to any other rights under this Contract, notify the Queensland Procurement Policy Compliance Unit of the failure the Service Provider to show cause.
- (e) The Service Provider acknowledges that if it or any of the Contractor Supply Affiliates (regardless of whether the conduct of the Service Provider or the Contractor Supply Affiliate is in connection with the Contract) do or cause to be done anything which is a type of non-compliance under the Ethical Supplier Mandate (regardless of whether the non-compliance is connected with the Contract), the Service Provider can be liable for the imposition of a demerit or sanction under the Ethical Supplier Mandate.

#### 4.5 Provision of necessary equipment

- (a) Unless otherwise agreed with Seqwater, the Service Provider must, at its cost, provide and maintain in good and safe working order, all necessary plant and equipment to provide the Services during the Term in accordance with this Contract.

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- (b) If any plant or equipment of the Service Provider used to perform the Services suffers a failure or ceases normal operation and this may impair delivery or performance of the Services, the Service Provider must:
- (i) immediately notify Seqwater providing detailed information about the failure and any other information reasonably requested by Seqwater; and
  - (ii) use its best endeavours to promptly and efficiently repair or replace the relevant plant or equipment as soon as possible.

#### 4.6 Liaison

The Service Provider Representative will act as the point of contact for the Service Provider, and the Service Provider warrants that the Service Provider Representative is authorised to represent the Service Provider.

## 5. Work Health and Safety

### 5.1 General Safety Obligations

- (a) Without limiting any other provision of this Contract, the Service Provider must:
- (i) ensure that the provision of the Services is carried out in accordance with the Work Health and Safety Law, Seqwater work health and safety policies and procedures and any other safety requirements identified in this Contract; and
  - (ii) without limiting **clause 5.1(a)(i)**, itself discharge, and ensure the Service Provider Personnel discharge, their respective duties under Work Health and Safety Law.
- (b) The Service Provider must, and must ensure that Service Provider Personnel:
- (i) comply with Seqwater's directions (or any other person Seqwater nominates as having the authority to give directions) (**Seqwater's Nominee**) in connection with health and safety;
  - (ii) consult fully with Seqwater and Seqwater's Nominee in respect of:
    - (A) any matter relevant to health and safety; and
    - (B) without limiting **clause 5.1(b)(i)**, how the provision of the Services can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the provision of the Services; and
  - (iii) to the extent the provision of the Services involves the Service Provider accessing any site owned, occupied or controlled by Seqwater or any contractor engaged by Seqwater, complete a full site induction program which complies with the requirements of this Contract, Work Health and Safety Law and Seqwater's policies and procedures before commencing the Services.

### 5.2 Obligations in respect of design

- (a) Without limiting **clause 5.1**, to the extent the Services involve the provision of any design of plant, substances or structures, the Service Provider must:

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- (i) give adequate information to Seqwater and any contractor that the Service Provider is aware has been engaged by Seqwater in connection with the manufacture, construction or supply of plant, substances or structures to which the design relates (**Relevant Contractor**) including, without limitation, all information required to be given under Work Health and Safety Laws; and
  - (ii) ensure, as far as is reasonably practicable, that the Service Provider consults with Seqwater and any Relevant Contractor about risks to health or safety arising from or in connection with the design, the manufacture, construction or supply of the plant, substances or structures to which the design relates or the place where that manufacture, construction or supply is to be carried out.
- (b) The Service Provider must give to Seqwater and any Relevant Contractor a detailed written report identifying any risks to health and safety arising from or in connection with the design or the manufacture, construction, supply, operation or ownership of plant, substances or structures to which the design relates.
  - (c) The Service Provider must ensure that, as far as is reasonably practicable, the plant, substance or structure is designed to be without risks to the health and safety of any person.

### 5.3 Disclosure of Information

The Service Provider must provide to Seqwater, and also to any person who the Service Provider is aware has been or will be engaged by Seqwater to undertake any activities relating to the provision of the Services, all information relevant to the provision of the Services:

- (a) required to be disclosed by the Service Provider in the discharge of the Service Provider's duties under Work Health and Safety Law; or
- (b) received (or which should have been received) by the Service Provider or any of the Service Provider Personnel from any other person required to disclose the information to the Service Provider or any of the Service Provider Personnel in the discharge of that person's duties under Work Health and Safety Law.

## 6. Personnel

### 6.1 Performance of Services

The Service Provider will provide the Services using only Service Provider Personnel.

### 6.2 Change to personnel

Seqwater may, acting reasonably, require the Service Provider to remove some or all of the Service Provider Personnel from providing the Services. The Service Provider will immediately at no additional cost to Seqwater promptly and efficiently arrange for:

- (a) the removal of those Service Provider Personnel; and
- (b) replacement of those personnel with personnel acceptable to Seqwater.

### 6.3 Dedicated use of Key Personnel

- (a) The Service Provider will ensure that Key Personnel are available to meet the requirements specified in this Contract.

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- (b) Subject to **clause 6.2**, the Service Provider may only replace Key Personnel with the prior written consent of Seqwater, or due to the death of, serious illness or change of employment in respect of, the relevant Key Personnel.

#### 6.4 Key Personnel warranties

The Service Provider represents and warrants that the Key Personnel:

- (a) possess and will use the specific skills, qualifications and experience required to perform the Services in accordance with this Contract;
- (b) possess the specific skills, qualifications and experience:
- (i) referred to in their resumes or other work history documents provided to Seqwater;
  - (ii) attached to the Contract Particulars (if any); and
  - (iii) specified in the Contract Particulars (if any); and
- (c) within the last ten years have not been convicted of, and are not being investigated or prosecuted for, any offence involving fraud or dishonesty, or any other offence (except for minor traffic offences) which is punishable by imprisonment.

#### 6.5 Service Provider not to employ Seqwater employees

The Service Provider must not, without the prior written consent of Seqwater, during and for six months after the Term, engage, employ or seek to engage or employ (including via a Related Entity) any person who was an employee of Seqwater during the Term or induce another person to do any of those things.

## 7. On-site Services

### 7.1 Security, policies and procedures

- (a) Subject to **clause 7.1(e)**, the Service Provider must comply with, and must ensure that all Service Provider Personnel comply with:
- (i) Seqwater's security requirements and Seqwater's other policies and procedures (notified or otherwise provided to the Service Provider from time to time); and
  - (ii) all Laws including, but not limited to, Work Health and Safety Law and Heavy Vehicle Law,
- at all times when present at any premises of Seqwater as if the Service Provider Personnel were employees of Seqwater.
- (b) The Service Provider and Service Provider Personnel must, prior to entering any premises of Seqwater, successfully complete all inductions and sign all undertakings required by Seqwater.
- (c) Seqwater may, acting reasonably, direct the Service Provider to remove any of the Service Provider Personnel from its premises.
- (d) When performing the Services at Seqwater premises, the Service Provider must:

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- (i) take all measures to protect people and property;
  - (ii) avoid unnecessary interference with the passage of people and vehicles; and
  - (iii) prevent nuisance or unreasonable disturbance or noise.
- (e) Nothing in this **clause 7.1** limits or restricts the duty of the Service Provider to perform the Services to the standards of workplace safety applicable to the Services.

## 7.2 Notification

If, in performing the Service Provider's obligations, an event occurs which:

- (a) results in personal injury, death or damage to property of:
  - (i) the Service Provider or the Service Provider Personnel;
  - (ii) Seqwater or the personnel of Seqwater; or
  - (iii) a third party; or
- (b) results in or may result in Unlawful Environmental Harm or an offence under the Heavy Vehicle Law; or
- (c) results in or may result in a breach of any Modern Slavery Laws or the Service Provider's obligations under **clause 4.3**;

the Service Provider must immediately inform Seqwater of the event and provide such details as Seqwater reasonably requires.

## 8. Deliverables

### 8.1 Documentation

The Service Provider must, for the purposes of enabling Seqwater to have full use, operation and maintenance of the Deliverables, provide at no additional cost to Seqwater, at least one copy of the Documentation in an editable, native file, electronic format that is readable by Seqwater's generally available software products (as advised to the Service Provider), upon supply of the Deliverable to Seqwater.

### 8.2 Acceptance

Seqwater's inspection, testing or acceptance of a Deliverable or any Services does not affect its rights to claim for any Loss suffered because of the Service Provider's breach of warranty or breach of any other obligations under this Contract.

### 8.3 Title

Title in each Deliverable passes to Seqwater on the earlier of delivery of that Deliverable to Seqwater or payment of the Contract Price.

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## 8.4 Risk

The Service Provider bears the risk of any Loss of or to any Deliverables until delivery of those Deliverables has been completed in accordance with this Contract.

## 9. Seqwater Property

### 9.1 No transfer of property

Seqwater Property remains the property of Seqwater and nothing in this Contract transfers any right, title or interest in Seqwater Property to the Service Provider.

### 9.2 Use of Seqwater Property

The Service Provider will not use or modify Seqwater Property other than:

- (a) in accordance with this Contract; or
- (b) as directed by Seqwater.

### 9.3 Preservation of Seqwater Property

The Service Provider will care for and maintain Seqwater Property in accordance with the directions of Seqwater and, where no specific directions are provided by Seqwater, in accordance with standards of care reasonably applicable to the Seqwater Property in question.

### 9.4 Return of Seqwater Property

- (a) The Service Provider will hand over to Seqwater any Seqwater Property, within seven days of a request by Seqwater. For electronic materials, the Service Provider will provide them to Seqwater in an editable, native file format and on media, both as reasonably required by Seqwater.
- (b) If the Service Provider fails to deliver up all things in accordance with **clause 9.4(a)**, Seqwater may enter the Service Provider's premises during normal business hours on not less than 12 hours' prior notice to collect any Seqwater Property and the Service Provider will permit or assist a person authorised by Seqwater to do so.

## 10. Warranties

### 10.1 Service warranties

The Service Provider represents and warrants that:

- (a) it will perform the Services in a professional, efficient and workmanlike manner and to recognised industry standards applicable in Australia to the Services;
- (b) it has the skills, experience, personnel and resources necessary to perform the Services in accordance with this Contract;
- (c) all Services and Deliverables (and any workmanship and Materials used in the Deliverables) will:
  - (i) be free from all defects and fit for the purpose required by this Contract;

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- (ii) be in accordance with the Specifications;
  - (iii) be of acceptable quality (where 'acceptable quality' is as defined in The Australian Consumer Law in schedule 2 of the *Competition and Consumer Act 2010* (Cth)); and
  - (iv) comply with all statutory and other requirements referred to in **clause 10.3**;
- (d) all Deliverables will be free and clear of all charges, securities, liens and encumbrances at delivery;
  - (e) if any Deliverables are supplied to Seqwater by description, each of those Deliverables will correspond with that description;
  - (f) if any Deliverables are supplied to Seqwater by reference to a sample or demonstration model, each of those Deliverables will correspond to that sample or demonstration model in quality, state and condition;
  - (g) facilities for the repair of the Deliverables and spare parts for the Deliverables are and will continue to be readily available and accessible to Seqwater;
  - (h) without limiting any other obligations of the Service Provider under this Contract, it will exercise the standard of skill, care and diligence in the supply of all Services which would be expected of a competent, qualified and experienced provider of the Services; and
  - (i) it will have good and marketable title to all Deliverables.

## 10.2 Service Provider warranties

The Service Provider represents and warrants that:

- (a) the execution of this Contract has been properly authorised;
- (b) it has full corporate power to execute, deliver and perform its obligations under this Contract;
- (c) to its knowledge there are no Claims pending or threatened against it, or by it, which may have a material effect on its performance or the subject matter of this Contract;
- (d) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to perform its obligations under this Contract and will comply with any conditions imposed by such licences, authorisations, consents, approvals and permits; and
- (e) it will not represent that it is authorised to act on behalf of Seqwater, except where expressly authorised to do so in writing by Seqwater.

## 10.3 Warranties implied by Law

Nothing in this Contract excludes or limits the liability of the Service Provider under any term, condition, guarantee, warranty or remedy implied by any applicable Laws.

## 10.4 No express representations or warranties by Seqwater

The Service Provider represents and warrants that no representations or warranties were made or given to it by Seqwater or any other person in relation to this Contract.

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## 11. Fees

### 11.1 Contract Price

- (a) The Contract Price must be calculated in accordance with the Schedule of Rates.
- (b) Where a Contract Price includes Expenses, the Expenses must be itemised in accordance with information on Expenses included in the Schedule of Rates. Unless otherwise agreed in writing and set out in the Contract Particulars, Expenses must be approved by Seqwater in writing prior to being incurred by the Service Provider and no mark up (or administration charge) can be levied against any Expenses.
- (c) The Service Provider must allow in the Contract Price for the provision of all Materials and other work necessary for the performance of the Services and delivery of any Deliverables. Any such Materials and other work must be undertaken and provided by the Service Provider at its cost and will not entitle the Service Provider to make any Claim against Seqwater other than for the Contract Price.
- (d) Except as set out in **clause 13** in respect of GST, all taxes, duties and charges imposed or levied in Australia or overseas in connection with the Services will be borne by the Service Provider and will not cause any increase to the Contract Price.
- (e) Currency fluctuations do not affect the Contract Price and any Losses associated with such fluctuations are borne by the Service Provider.

### 11.2 Fee arrangements

- (a) Fees for the Services must be charged as specified in the Contract Particulars.
- (b) Where Services are to be performed on a time costed basis, the Service Provider must:
  - (i) perform the Services in a reasonable number of person hours; and
  - (ii) provide to Seqwater for approval on a weekly basis, or at such other intervals as the Parties agree, details of the work performed by the Service Provider Personnel (including position title, hours spent, and task performed) as well as total fees accrued to date.

### 11.3 No other charges

Except as otherwise expressly set out in the Contract Particulars:

- (a) the Contract Price is the only amount payable by Seqwater to the Service Provider in relation to the subject matter of the Contract;
- (b) no other costs, fees, charges or other payments will become payable by Seqwater to the Service Provider unless Seqwater has given its prior written approval of those amounts; and
- (c) any Services or Deliverables approved by Seqwater in writing to be performed or prepared by the Service Provider before the Start Date will be taken to have been performed or prepared under the terms of this Contract, and will be included in the Contract Price.

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## 12. Payment and Invoices

### 12.1 Contract Price payable

- (a) Subject to this **clause 12** and **clause 13** and any other right to set-off which Seqwater may have, Seqwater must pay to the Service Provider the Contract Price for Services supplied by the Service Provider in accordance with the Contract Particulars.
- (b) Seqwater will only be liable to the Service Provider for the Contract Price and Expenses in relation to the Services and Deliverables that meet the requirements of this Contract.

### 12.2 Payment

- (a) Unless otherwise agreed by the Parties, Seqwater must pay any correctly rendered undisputed invoices within 30 days after the date of receipt of that invoice.
- (b) Despite any other provisions of this Contract, payment under this **clause 12.2** is not:
  - (i) evidence of the value of any Services or Deliverables;
  - (ii) evidence that any Services or Deliverables have been satisfactorily performed or delivered in accordance with the Contract;
  - (iii) an admission of Seqwater's liability;
  - (iv) acceptance or approval of the Service Provider's performance; or
  - (v) an admission that the Contract Price or Expenses invoiced were properly incurred in accordance with this Contract.

### 12.3 Content of invoices

An invoice will be correctly rendered for the purposes of **clause 12.2(a)** if:

- (a) the amount claimed in the invoice is proportional to the Services performed or Deliverables delivered to Seqwater and is otherwise correctly calculated and due for payment in accordance with the Contract;
- (b) the invoice specifies:
  - (i) the Services and Deliverables to which the invoice relates;
  - (ii) the relevant Seqwater Representative;
  - (iii) the relevant Contract; and
  - (iv) the manner in which the Contract Price has been calculated;
- (c) the invoice contains appropriate reductions for any sums required to be reduced or offset in accordance with this Contract;

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- (d) the invoice is a “GST Invoice” within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (e) the invoice complies with all applicable Laws.

## 12.4 Disputed invoices

- (a) Where Seqwater considers that an invoice has not been correctly rendered, Seqwater may notify the Service Provider setting out the reasons and identifying any amounts in dispute within 30 days of receiving the disputed invoice.
- (b) If Seqwater disputes the amount of any invoice, Seqwater may withhold or suspend payment of any disputed part of the disputed invoice until the dispute is resolved.
- (c) In the event of a dispute about an invoice, the Service Provider must:
  - (i) cancel the invoice and issue a new invoice for the undisputed amount; and
  - (ii) continue to perform its obligations under this Contract while the dispute is being resolved.
- (d) In the event that any amounts in dispute under a disputed invoice are found to be payable by Seqwater, the Service Provider must add the amount agreed between the Parties to the next correctly rendered invoice.
- (e) Seqwater must:
  - (i) pay any non-disputed amounts in accordance with this Contract; and
  - (ii) promptly pay the amounts invoiced under **clause 12.4(d)**.

## 12.5 Underpayments and overpayments

- (a) If any part of an invoice is found to have been rendered incorrectly after payment has been made by Seqwater, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Service Provider, as the case may be from the next correctly rendered invoice issued by the Service Provider.
- (b) Without limiting recourse to other available means, any overpayments by Seqwater may be offset against any amount subsequently due by Seqwater to the Service Provider.

## 12.6 Set-off

Seqwater may, acting reasonably, set-off any debt or sum owing to Seqwater by the Service Provider against any amount payable by Seqwater under this Contract.

# 13. GST

## 13.1 Construction

In this **clause 13**:

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- (a) words and expressions which are not defined in this Contract but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

### 13.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Contract are exclusive of GST.

### 13.3 Payment of GST

If GST is payable on any supply made by a Party (or any entity through which that Party acts) (**supplier**) under or in connection with this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### 13.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 13.3** in addition to and at the same time that the consideration for the supply is to be provided.

### 13.5 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 13.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

### 13.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier, the amount payable by the recipient under **clause 13.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

### 13.7 Reimbursements

Where a Party is required under this Contract to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

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## 14. Conflict of Interest, commissions and collusion

### 14.1 Conflict of Interest

- (a) The Service Provider warrants that, to the best of its knowledge, as at the Start Date, neither the Service Provider nor any of its officers, employees, agents or subcontractors have, or are likely to have a Conflict of Interest in the performance of the Service Provider's obligations under this Contract.
- (b) If a Conflict of Interest or risk of Conflict of Interest arises during the Term, the Service Provider must immediately give notice of the Conflict of Interest, or the risk of it, to Seqwater.

### 14.2 Commissions and incentives

- (a) The Service Provider must ensure that none of:
  - (i) the Service Provider;
  - (ii) a Related Entity of the Service Provider; or
  - (iii) the Service Provider Personnel or the personnel of a Related Entity of the Service Provider,
 receives any money, payment or thing of value (including any disclosed or undisclosed commission, rebate, allowance or other benefit) relating in any way to the performance of the Service Provider's obligations under this Contract unless approved in writing by Seqwater, other than payment of salaries, wages and entitlements in the ordinary course of business by an employer to its employees.
- (b) The Service Provider must not, and must ensure that its officers, employees, agents and subcontractors do not, give or offer anything to Seqwater or any officer or employee of Seqwater, or to a parent, spouse, child or associate of an officer or employee of Seqwater, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence Seqwater's actions in relation to this Contract.
- (c) If Seqwater discovers at any time during the Term that the Service Provider has breached **clause 14.2(a)**, Seqwater may, in addition to any other action, elect to terminate this Contract in accordance with **clause 22.2**.

### 14.3 Collusion

- (a) Except as expressly disclosed to Seqwater in writing, the Service Provider represents and warrants to Seqwater:
  - (i) that no offer to Seqwater was or will be prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract);
  - (ii) it has not provided or received any benefit (including money) nor entered into any contract, arrangement or understanding to provide or receive any benefit from any competitor relating in any way to this Contract; and

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- (iii) at the time of entering this Contract, the Service Provider and all corporations and persons associated with the Service Provider, including directors and senior management, are not and have never been subject to proceedings relating to anticompetitive conduct in Australia.
- (b) The Service Provider acknowledges that Seqwater enters into this Contract in reliance on the representations and warranties in **clause 14.3(a)**.
- (c) If the Service Provider breaches **clause 14.3(a)**, Seqwater may, in addition to any other action, elect to terminate this Contract in accordance with **clause 22.2**.

## 15. Non-compliant Services

- (a) If the Services (and any Deliverables) contain any error, inconsistency, omission or any defect (**non-compliance**), the Service Provider must immediately notify Seqwater.
- (b) If Seqwater is not satisfied, acting reasonably, that the Services (and any Deliverable) comply in all respects with the requirements of this Contract, the Service Provider must at its cost rectify or remedy the non-compliance promptly, and in any event, within the reasonable time Seqwater may notify to the Service Provider.
- (c) If the Service Provider does not rectify or remedy any non-compliance in accordance with this **clause 15**, Seqwater may do so itself or arrange for others to do so at the Service Provider's cost and the Service Provider must pay to Seqwater (as a debt due and owing under this Contract) all reasonable costs and expenses incurred by Seqwater in rectifying or remedying the non-compliance without prejudice to any of Seqwater's other rights.
- (d) Seqwater's rights under this **clause 15** do not in any way change or affect the Service Provider's obligations under this Contract or affect Seqwater's rights to claim for any Loss Seqwater may suffer because of the Service Provider's failure to fulfil its obligations under this Contract or to exercise other rights under this Contract, including under **clause 22**.

## 16. Suspension of Services

### 16.1 Notice

Without limiting any of Seqwater's other rights, Seqwater may at any time (for any reason, including Seqwater's convenience and regardless of whether there has been any default on the part of the Service Provider) by giving written notice to the Service Provider:

- (a) suspend all or part of the Services; or
- (b) direct that one or more of the Service Provider Personnel are no longer required;

and following receipt of the notice the Service Provider must:

- (c) comply with that notice;
- (d) reduce (or cease) work in accordance with the notice, including undertaking any consequential action; and
- (e) immediately take all steps necessary to minimise the loss suffered by it as a result of the notice.

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## 16.2 Allowable delays

If the Services are suspended by Seqwater for any reason beyond the Service Provider's reasonable control, then the time requirements applying to the Services will be extended by the reasonable period notified by Seqwater at any time, but the Service Provider will have no claim for any delay costs (unless Seqwater agrees otherwise in writing) except to the extent provided for in **clause 22.6**.

## 17. Intellectual property

### 17.1 Assignment of Intellectual Property Rights

The Service Provider assigns to Seqwater all Intellectual Property Rights in and in connection with all Contract Material as such Contract Material is created, provided that, in respect of any future copyright applicable to any Contract Material contemplated by this Contract, the Service Provider assigns such future copyright to Seqwater.

### 17.2 Further assurance

To the extent necessary to give effect to **clause 17.1**, the Service Provider must promptly on request by Seqwater:

- (a) cooperate with and assist Seqwater in connection with the recording of the assignment of any Intellectual Property Rights assigned under **clause 17.1** with any statutory or government body anywhere in the world; and
- (b) execute all documents and do all things necessary to vest absolute right, title and interest in the Intellectual Property Rights assigned under **clause 17.1** in the name of Seqwater or a nominee specified by Seqwater.

### 17.3 Licence to Seqwater

The Service Provider grants to Seqwater a perpetual, irrevocable, non-exclusive, worldwide, royalty-free and transferable licence (with right to sub-license without notice to or consent of the Service Provider) to all Intellectual Property Rights in and in connection with the Service Provider Material to enable Seqwater to receive the full benefit and use of the Services.

### 17.4 Moral rights

The Service Provider must obtain from all individual authors of the Contract Material:

- (a) consent in writing authorising Seqwater, its licensees and successors in title to exercise all rights comprised in any copyright works comprising the Contract Material including the right to use, deal with, publicly perform, communicate, reproduce, transmit, publish, exhibit, modify or adapt those works:
  - (i) without attribution of authorship or performer to the author or performer;
  - (ii) bearing the name of the Service Provider, Seqwater, the relevant project of Seqwater or any other person as directed by Seqwater; and
  - (iii) even if it results in "derogatory treatment" under section 195AJ of the *Copyright Act 1968* (Cth) which may be prejudicial to the author or performer of the copyright works;
- (b) an unconditional and irrevocable waiver to the extent permitted by Law, of all and any moral rights in respect of such copyright works to which the author or performer may be or may become entitled overseas; and

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- (c) an acknowledgment that the consents and waivers in this **clause 17.4** are genuinely given and not obtained from the author or performer under duress by the Service Provider, Seqwater or any third party.

## 17.5 Intellectual property warranties

The Service Provider represents and warrants that:

- (a) the Service Provider Material and the Contract Material will not infringe the Intellectual Property Rights or other rights of any third party;
- (b) it has the right and authority to grant the rights granted under **clauses 17.1** and **17.3**; and
- (c) exercise of the rights granted by the Service Provider under **clauses 17.1** and **17.3** by Seqwater will not infringe the Intellectual Property Rights or other rights of any third party.

## 18. Confidentiality

### 18.1 Confidentiality

Subject to **clauses 18.2** to **18.5**:

- (a) each Party must keep the terms of this Contract confidential;
- (b) each Party must not, during or after the Term, disclose Confidential Information directly or indirectly to any third party; and
- (c) the Service Provider must not use the Confidential Information of Seqwater other than for the purpose of fulfilling its obligations to Seqwater.

### 18.2 Exceptions

A Party may make any disclosure in relation to this Contract:

- (a) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (b) to comply with the Law, or a requirement of a regulatory body (including any relevant stock exchange);
- (c) to any of its employees to whom it is necessary to disclose the information;
- (d) to obtain the consent of a third party to a term of, or to an act under, this Contract;
- (e) to enforce its rights or to defend a Claim or action under this Contract;
- (f) to a Related Entity, on receipt of its undertaking to keep the information disclosed confidential; or
- (g) if the information disclosed has come into the public domain through no fault of the Party making the disclosure.

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### 18.3 Public announcements

Except as required by Law or a regulatory body (including a relevant stock exchange), all press releases and other public announcements in connection with this Contract may only be disclosed as agreed by the Parties.

### 18.4 Disclosure by Seqwater

The Service Provider acknowledges that Seqwater, its officers, employees, agents and subcontractors may use, and disclose any of the information provided by the Service Provider, about the Service Provider, this arrangement, or the Deliverables, to its responsible Ministers and Government Agencies, for any purpose in connection with this arrangement.

### 18.5 Right to information and disclosure

- (a) If disclosure under the *Right to Information Act 2009* (Qld) or general disclosure of information provided by the Service Provider in connection with this Contract, would be of concern to the Service Provider because it would disclose Confidential Information, the Service Provider should inform Seqwater.
- (b) The Service Provider acknowledges that Seqwater cannot guarantee that any information provided by the Service Provider will be protected from disclosure under the *Right to Information Act 2009* (Qld).
- (c) Despite any other provision of this Contract, Seqwater is entitled to publish on the [Queensland Government Chief Procurement Office website](#) under QTenders, or by any other means, the following details:
  - (i) name and address of Seqwater;
  - (ii) a description of the goods and services;
  - (iii) commencement date or award date;
  - (iv) value of the Contract;
  - (v) name and address of the Service Provider;
  - (vi) procurement method used; and
  - (vii) where the total value of the goods and services is \$10 million or more, Seqwater is entitled to publish the following additional information:
    - (A) invitation details;
    - (B) contract overview; and
    - (C) reasons for non-disclosure of procurement results (if applicable).

### 18.6 Confidentiality deed

Upon request by Seqwater, the Service Provider must obtain from its Service Provider Personnel or subcontractors engaged for the purposes of this Contract a confidentiality deed in a form acceptable to Seqwater.

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## 18.7 Return or destruction of Material

- (a) Subject to **clause 18.7(b)**, on expiry or termination of this Contract or on written notice from either Party (**Discloser**) at any time, the other Party (**Recipient**) will within 10 Business Days:
- (i) at the election of the Discloser, return to the Discloser or destroy or procure the destruction of all Material containing Confidential Information of the Discloser in the possession, power or control of the Recipient (whether or not created by the Discloser or the Recipient); and
  - (ii) delete, or procure the deletion of, any Confidential Information of the Discloser that has been entered into a computer, database or other electronic means of data or any other information storage medium by or on behalf of the Recipient; and
- following such request, the Recipient must not, and must procure that its personnel do not, use or make any further disclosure of any Confidential Information of the Discloser for any purpose, except to the extent permitted by **clause 18.7(b)**.
- (b) **Clause 18.7(a)** does not apply to any Confidential Information to the extent that the Recipient is required by Law or the rules of any Government Agency to retain a copy of that Confidential Information.

## 19. Privacy

### 19.1 Obligations of Service Provider

The Service Provider must:

- (a) if:
- (i) the Service Provider will in any way deal with Personal Information for Seqwater; or
  - (ii) the activities of the Service Provider under this Contract will involve:
    - (A) the transfer of Personal Information to or from Seqwater; or
    - (B) the provision of services to a third party for Seqwater,

comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) as if the Service Provider was Seqwater and the Service Provider acknowledges that it is a bound contracted service provider for the purposes of the *Information Privacy Act 2009* (Qld);

- (b) ensure that Personal Information obtained from or on behalf of Seqwater is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information obtained from or on behalf of Seqwater other than for the purpose of performing its obligations to Seqwater under this Contract, unless required or authorised by Law;
- (d) not disclose Personal Information obtained from or on behalf of Seqwater without the prior written consent of Seqwater, unless required or authorised by Law;
- (e) not transfer any Personal Information obtained from or on behalf of Seqwater outside of Australia without the prior written consent of Seqwater;

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- (f) ensure that access to Personal Information obtained from or on behalf of Seqwater is restricted to those of the Service Provider's Personnel who require access in order to perform their duties;
- (g) ensure that the Service Provider's Personnel do not access, use or disclose Personal Information obtained from or on behalf of Seqwater other than in the performance of their duties and that they are aware of the Service Provider's obligations under this **clause 19.1** and comply with the same obligations imposed on the Service Provider under this **clause 19.1**;
- (h) ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Service Provider has under this **clause 19.1**, including this obligation in relation to subcontracts;
- (i) fully cooperate with Seqwater to enable Seqwater to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (j) immediately notify Seqwater if the Service Provider becomes aware that Personal Information obtained from or on behalf of Seqwater is:
  - (i) or may be required or authorised by Law to be disclosed; or
  - (ii) impacted in any way by a cybersecurity or data breach, whether it requires mandatory reporting to a regulator under relevant legislation or not, and whether Personal Information was accessed, disclosed, or lost or not; and
- (k) comply with any reasonable directions, guidelines, determinations or recommendations of Seqwater in relation to privacy issues, to the extent that they are not inconsistent with the requirements of Privacy Laws.

## 19.2 Deed of privacy

Upon request by Seqwater, the Service Provider must obtain from the Service Provider's Personnel a deed of privacy in a form reasonably acceptable to Seqwater.

## 19.3 Notification of breach

The Service Provider must immediately notify Seqwater upon becoming aware of any breach of this **clause 19**.

## 19.4 Legislation

Nothing in this **clause 19** is intended to limit any obligation of a Party under the *Privacy Act 1988* (Cth) or the *Information Privacy Act 2009* (Qld) (as applicable), that the Party may have as an organisation with respect to Personal Information.

# 20. Variation

## 20.1 Notice to vary

If a Party wishes to vary the terms of this Contract, that Party must give notice of the variation to the other Party and must include in the notice:

- (a) details of the proposed variation; and
- (b) proposed consequential variations (if any) to the Schedule of Rates or the Contract Price.

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## 20.2 Agreed variations

- (a) This Contract may only be varied by a letter or deed of variation signed by each Party, with such letter or deed to be prepared by Seqwater.
- (b) Unless otherwise agreed by the Parties, any variation made in accordance with **clause 20.2(a)** will commence once it has been signed by both Parties. The Service Provider must not commence new or varied Services until there is evidence of the agreed variation in writing which is acceptable to both Parties.

## 21. Dispute resolution

### 21.1 Notice of Dispute

- (a) Subject to **clause 21.3**, the Service Provider and Seqwater will adhere to the following procedure in respect of any Dispute prior to either of them commencing litigation.
- (b) If a Dispute between the Parties arises, then either Party may give the other Party a Notice of Dispute.
- (c) The Seqwater Representative and Service Provider Representative will meet within 7 days after receipt by a Party of the Notice of Dispute at a mutually convenient time and place or by telephone conference.
- (d) If the Seqwater Representative and Service Provider Representative cannot resolve the Dispute to their satisfaction in writing within 14 days after receipt by a Party of the Notice of Dispute, then either of them may give notice of the inability to resolve the Dispute to that Party's most senior executive or his or her delegate (**Nominated Executive**). Within 14 days (or other period agreed between the Parties) after receipt of the notice of the inability to resolve the Dispute, the Nominated Executives of both Parties will meet at a mutually convenient place or by telephone conference and attempt to resolve the Dispute.
- (e) Each Party must ensure that its Nominated Executive has the authority to negotiate and agree (even if such agreement is subject to conditions such as the approval of the Party's board or governing body) to a resolution of the Dispute on behalf of the Party.
- (f) If the Nominated Executives cannot resolve the Dispute to their satisfaction in writing, within 30 days after a notice is issued under **clause 21.1(d)**, then either Party may proceed in accordance with its remedies at law.
- (g) Notwithstanding the existence of a Dispute, each Party will, subject to this Contract, continue to perform its obligations under this Contract.

### 21.2 Exchange of information

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this **clause 21** is to attempt to settle the Dispute between the Parties. No Party may use any information or documents obtained through the dispute resolution process established by this **clause 21** for any purpose other than an attempt to settle a Dispute between the Parties.

### 21.3 Court proceedings

A Party must not start court proceedings unless they have first complied with this **clause 21**. Nothing in this **clause 21.3** will be construed to prevent a Party from starting court proceedings earlier to avoid the expiry of any

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applicable limitations period, to preserve a superior position with respect to other creditors, or to obtain urgent interlocutory relief.

## 22. Termination

### 22.1 Termination by Seqwater for convenience

Seqwater may at any time terminate this Contract for its convenience and in its absolute discretion by giving the Service Provider at least ten Business Days' written notice.

### 22.2 Termination by Seqwater for cause

Without limiting any other right of Seqwater at Law, if the Service Provider:

- (a) suffers an Insolvency Event;
- (b) fails to show reasonable cause by the date specified in a notice given under **clause 4.4(d)**;
- (c) fails to carry out an instruction or direction by or on behalf of Seqwater within the time specified or, if no time is specified, within a reasonable time; or
- (d) breaches any of its obligations under this Contract and, where the failure is capable of remedy, fails to remedy that breach within the time, which must be reasonable, specified in a notice to remedy from Seqwater,

Seqwater may, by written notice to the Service Provider, immediately terminate this Contract.

### 22.3 Termination by Service Provider for cause

Without limiting any other right of the Service Provider at Law, if Seqwater breaches any of its obligations under this Contract and, where the failure is capable of remedy, fails to remedy that breach within the time specified in a notice to remedy from the Service Provider (provided that the time specified in the notice is reasonable), the Service Provider may, by written notice to Seqwater, immediately terminate this Contract.

### 22.4 Ipso Facto Laws

The Parties agree:

- (a) the rights of a Party under this Contract (including **clause 22.2(a)**) are subject to the operation of sections 415D to 415G, 434J to 434M and 451E to 451H of the Corporations Act 2001 (Cth) (**Ipso Facto Laws**); and
- (b) to the extent of any inconsistency between any provision of this Contract and the Ipso Facto Laws, the relevant provision of this Contract will be read down or severed from this Contract, so as to maintain as far as possible, the original effect and intent of this Contract.

### 22.5 Consequences of termination or expiry of this Contract

- (a) The expiry or termination of this Contract does not affect any accrued rights or liabilities of either Party, including perpetual licences granted to Seqwater.
- (b) Any obligations which are expressed to or, by their nature, survive expiry or termination of this Contract, will survive expiry or termination of this Contract and are enforceable at any time at law or in equity.

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- (c) On expiry or termination of this Contract, the Service Provider must promptly refund any amounts paid by Seqwater in respect of any:
- (i) Deliverable that has not been delivered; and
  - (ii) Services that have not been provided,
- by the date of expiry or termination.
- (d) If this Contract is terminated for any reason, Seqwater may reject any Services and Deliverables that have not been accepted by the effective date of termination and the Service Provider must promptly refund any amounts paid by Seqwater for those Services and Deliverables.
- (e) If this Contract is terminated in accordance with **clauses 22.2** or **23** or pursuant to Seqwater's rights at Law:
- (i) Seqwater will not be obliged to make any further payments to the Service Provider under this Contract; and
  - (ii) the Service Provider is liable for and indemnifies Seqwater against any Loss suffered by Seqwater as a result of the termination, including any additional costs incurred by Seqwater in obtaining the relevant Services (or similar products or services) from an alternative supplier.

## 22.6 Payments on termination or suspension of Contract

If this Contract is terminated or suspended, other than in accordance with **clauses 22.2, 22.3** or **23** or pursuant to Seqwater's rights at Law, Seqwater will be liable for:

- (a) payments payable under the Contract for Services performed and Deliverables delivered before the date the termination or suspension takes effect; and
- (b) any reasonable costs actually and unavoidably incurred by the Service Provider that:
  - (i) are, in Seqwater's reasonable opinion, directly attributable to the termination or suspension; and
  - (ii) do not exceed in aggregate the Capped Amount.

## 23. Change in Control

### 23.1 Change in Control or transfer of ownership

- (a) The Service Provider must promptly notify Seqwater in writing of any:
  - (i) change in Control or proposed change in Control; or
  - (ii) action to reconstruct or amalgamate itself or a holding company or proposed action to reconstruct or amalgamate itself or a holding company,

during the Term.
- (b) If the Service Provider gives a notice under **clause 23.1(a)**, Seqwater may:

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- (i) require that the Service Provider promptly provide Seqwater with reasonable assurance about its ability to continue to meet its obligations under this Contract, including requiring that the Service Provider or a Related Entity of the Service Provider provide security or additional security; or
  - (ii) if Seqwater considers, in its absolute discretion that the change in Control or relevant reconstruction or amalgamation action prejudices or is likely to prejudice Seqwater's interests, including its reputation, immediately terminate this Contract by giving the Service Provider notice.
- (c) If the Service Provider:
- (i) fails to provide notice in accordance with **clause 23.1(a)**; or
  - (ii) fails to comply with a requirement under **clause 23.1(b)(i)**,

Seqwater may immediately suspend or terminate this Contract by giving the Service Provider notice.

## 24. Indemnities

### 24.1 Service Provider's indemnities

The Service Provider indemnifies Seqwater and its employees, agents and contractors (**Those Indemnified**), against all Claims, liabilities, Losses, damages, costs and expenses (including legal fees, costs and disbursements) made or awarded against, or suffered or incurred by, Those Indemnified arising from or incurred in relation to:

- (a) breach of this Contract (including breach of any warranty or guarantee) by the Service Provider;
- (b) any negligent or fraudulent act or omission of the Service Provider or any Service Provider Personnel;
- (c) personal injury to or the death of any person arising out of or in relation to the performance of the Services, or the supply of Deliverables, by the Service Provider;
- (d) Loss of or to any property, or Unlawful Environmental Harm, arising out of or in relation to the performance of any Services by the Service Provider (including Loss of or to the property of Seqwater and any third party); and
- (e) any actual or alleged infringement of Intellectual Property Rights arising out of or in relation to the performance of any Services or the supply of any Deliverables by the Service Provider to Seqwater,

except to the extent that Those Indemnified contributed to the Loss or Claim, in which case, the Service Provider's liability to indemnify Seqwater will be reduced in proportion to that contribution.

### 24.2 Conduct of indemnified Claims

- (a) If a Claim to which **clause 24.1** applies is made against Seqwater, the following procedures apply:
  - (i) Seqwater must give the Service Provider written notice of the Claim;
  - (ii) Seqwater must provide the Service Provider with such assistance as it reasonably requests in conducting the defence of the Claim at the Service Provider's expense; and

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- (iii) the Service Provider may elect to have control of the defence of proceedings relating to the Claim and all negotiations for its settlement.
- (b) Failure by Seqwater to comply with the indemnification procedures in this **clause 24.2** does not relieve the Service Provider of any obligation to indemnify Seqwater in respect of any Loss or Claim.
- (c) If the Service Provider exercises its option under **clause 24.2(a)(iii)**, the Service Provider must:
  - (i) conduct the defence of any proceedings relating to the Claim diligently using competent counsel and in such a way as not to bring the reputation of Seqwater into disrepute;
  - (ii) consult with Seqwater and keep Seqwater informed of all material matters;
  - (iii) obtain Seqwater's prior written approval before any settlement is made in respect of the Claim; and
  - (iv) comply at all times with any reasonable direction given by Seqwater, at the Service Provider's expense.
- (d) If the Service Provider fails to promptly exercise its option under **clause 24.2(a)(iii)**, Seqwater may defend the Claim at the Service Provider's expense, in such manner as it may deem appropriate.

### 24.3 No Claims in respect of employee entitlements

The Service Provider and the Service Provider Personnel have no Claim upon Seqwater in respect of:

- (a) remuneration to employees (if any) including superannuation, leave, other entitlements, taxes or duties;
- (b) Claims under workers' compensation, industrial relations or anti-discrimination legislation; and
- (c) Claims under any other law affecting or relating to the relationship between an employer and employee.

## 25. Insurance

### 25.1 Insurance obligations

The Service Provider must, from the Start Date and for the duration of the Term (or for such longer period as specified in the Contract Particulars), effect and have in place the following insurance with insurers authorised and licensed to operate in Australia:

- (a) professional indemnity insurance for at least the amount and for the period referred to in the Contract Particulars;
- (b) public liability insurance for at least the amount and for the period referred to in the Contract Particulars;
- (c) workers compensation insurance as required by Law; and
- (d) any other insurance specified in the Contract Particulars.

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## 25.2 Insurance policies

The Service Provider must ensure that its insurance policies provide that insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured.

## 25.3 Professional Standards

If the Service Provider is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld), the Service Provider must, in addition to any requirements of the relevant occupational association, hold and maintain the minimum level of insurance as specified in the Contract Particulars.

## 25.4 Workers compensation insurance

The Service Provider must ensure that each of its subcontractors has workers compensation insurance as required by any Laws.

## 25.5 Service Provider to provide evidence of cover

- (a) The Service Provider will provide Seqwater with certificates of currency for each of the insurance policies the Service Provider is required to effect under this Contract within 7 days after:
- (i) the date of this Contract;
  - (ii) a renewal or amendment of a policy; or
  - (iii) a request by Seqwater.
- (b) If the Service Provider fails to produce evidence of insurance pursuant to **clause 25.5(a)**, the Service Provider will be in breach of this Contract until the Service Provider produces evidence of compliance with its insurance obligations.

## 25.6 Warranty

The Service Provider warrants that any exclusions and deductibles that may apply to the insurance policies it holds in accordance with this Contract, will not impact on the Service Provider's ability to meet any claim or otherwise prejudice Seqwater's rights under this Contract.

## 25.7 Service Provider to keep Seqwater informed

The Service Provider must promptly inform Seqwater in writing:

- (a) if any insurance policy required by this Contract is materially modified or cancelled; and
- (b) on becoming aware of any occurrence relevant to the Services or this Contract which may give rise to a claim under any insurance policy required by this Contract and must keep Seqwater fully informed of subsequent developments concerning any such claim.

## 25.8 Service Provider acts or omissions

The Service Provider must not do or permit anything to be done (including any omission) which:

- (a) may result in any insurance being vitiated or rendered void or voidable; or

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- (b) would give rise to an entitlement by an insurer to avoid payment of part or all of any claim.

## 26. Force majeure

### 26.1 No liability for breach during Force Majeure Event

Subject to **clauses 26.2** and **26.3**, a Party will not be liable for any delay in or for any failure to perform its obligations under this Contract to the extent that the Party is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.

### 26.2 Obligations on Party claiming Force Majeure

A Party prevented from performing any of its obligations under this Contract by a Force Majeure Event must:

- (a) continue to perform all unaffected obligations;
- (b) use reasonable endeavours to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the other Party;
- (c) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as possible; and
- (d) notify the other Party as soon as it is no longer affected by the Force Majeure Event.

### 26.3 Option to terminate

If a Force Majeure Event substantially prevents, hinders or delays performance of this Contract for a period in excess of 20 Business Days then either Party may, at its option, immediately terminate this Contract in whole or in part by written notice to the other Party.

### 26.4 No relief for Service Provider from performance

The Service Provider will not be relieved from performance of its obligations under this Contract following the occurrence of a Force Majeure Event if such obligations could have been performed by invoking disaster recovery procedures reasonably expected of a competent, qualified and experienced provider of the Deliverables.

### 26.5 Priority

In the event of any shortage of Materials or other resources necessary for the Service Provider to meet its obligations under this Contract caused by a Force Majeure Event, the Service Provider warrants that it will apply the Materials or other resources to the provision of services on a pro rata basis among its customers, including Seqwater.

## 27. Subcontracting

### 27.1 Restriction on subcontracting

- (a) The Service Provider must not subcontract the whole or any part of the performance of its obligations under this Contract unless Seqwater has given its prior written approval to the proposed subcontracting and the proposed subcontractor.
- (b) Seqwater may provide written approval of the proposed subcontracting and the proposed subcontractor at its discretion and subject to such conditions as Seqwater determines.

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- (c) Any subcontract entered into by the Service Provider must be in writing and duly executed by the Service Provider and the approved subcontractor.

## 27.2 Subcontracts to be provided to Seqwater

The Service Provider must provide a copy of any subcontract it enters into, or proposes to enter into, with any subcontractor where under that subcontract it is proposed or contemplated that any of the Services will be performed by the subcontractor.

## 27.3 Service Provider remains liable for subcontractors

The Service Provider will not be relieved of any of its liabilities or obligations under this Contract by virtue of any subcontract or any approval to a subcontractor given by Seqwater. The Service Provider acknowledges and agrees that it will be liable to Seqwater for all acts and omissions of a subcontractor, or any employee or agent of a subcontractor, as fully as if they were the acts or omissions of the Service Provider.

## 27.4 Service Provider responsible for subcontractors

The Service Provider is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for supervising and managing the subcontractor to ensure that the work performed by the subcontractor meets the requirements of Seqwater and all applicable Laws, including Work Health and Safety Law and Heavy Vehicle Law.

# 28. Assignment

## 28.1 Assignment by Seqwater

Seqwater may assign any of its rights, or may novate its rights and obligations, under this Contract without consent of the Service Provider. The Service Provider must execute all documents necessary to give effect to any novation or assignment permitted under this **clause 28.1**.

## 28.2 Restriction on assignment by the Service Provider

- (a) The Service Provider must not assign any of its rights, or novate its rights and obligations, under this Contract without the prior written consent of Seqwater.
- (b) Seqwater's consent under **clause 28.2(a)** must not be unreasonably withheld.
- (c) Any purported dealing in breach of **clause 28.2(a)** is void and of no effect.

# 29. Notices

## 29.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract:

- (a) must be in writing, expressed in the English language;
- (b) must be addressed as set out in the Contract Particulars;

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- (c) must be signed by (or in the case of email, sent by) the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address of the addressee, in accordance with **clause 29.1(b)** except that communications pursuant to **clause 22** cannot be sent by email; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of priority post sent to an address in the same country) on the third Business Day after the date of posting;
  - (ii) (in the case of priority post sent to an address in another country) on the fifth Business Day after the date of posting by airmail;
  - (iii) (in the case of delivery by hand) on delivery; and
  - (iv) (in the case of email) on the day and at the time the delivery receipt confirmation is received (provided there is no out of office or delivery failure notice),

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## 29.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Contract may be served by any method contemplated by this **clause 29** or in accordance with any applicable Law, except for an initiating process or document which must not be sent by email.

## 30. Performance measurement

### 30.1 Application

Clauses 30.2 to 30.4 only apply if stated in **Schedule 2**.

### 30.2 Performance measurement

- (a) The Service Provider must:
  - (i) make and keep accurate records of its performance against the KPIs; and
  - (ii) provide Seqwater with reports of the Service Provider's performance against the KPIs for the relevant Reporting Period (**Performance Report**).
- (b) Each Performance Report must be:
  - (i) provided within 10 Business Days of the end of the relevant Reporting Period; and
  - (ii) in a format reasonably acceptable to Seqwater.

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- (c) Seqwater may, in accordance with **clause 31.1** require an audit or inspection of the Service Provider's records in order to verify the accuracy of the Performance Report.

### 30.3 Amendment of KPIs and Reporting Periods

The Parties may agree in writing to vary the KPIs or Reporting Periods.

### 30.4 Purpose of KPIs

- (a) Seqwater may use the Performance Reports for any purpose, including in connection with any decision to:
- (i) extend the Term for the Option Extension Period; or
  - (ii) contract with the Service Provider for any goods or services.
- (b) The Parties agree that:
- (i) a failure by the Service Provider to meet any KPI:
    - (A) will not be a breach of this Contract unless such failure is a breach of another provision of this Contract; and
    - (B) is not a precondition to Seqwater becoming entitled to exercise, and the KPIs in no way limit, Seqwater's rights under or in relation to this Contract; and
  - (ii) the Service Provider will not be entitled to any abatement, incentive or other benefit by meeting or exceeding, or otherwise by reference to, the KPIs.

## 31. General

### 31.1 Audit and inspection

- (a) Upon Seqwater giving no less than seven days' notice to the Service Provider, the Service Provider must, during normal business hours or as otherwise agreed between the Parties, permit and provide persons nominated by Seqwater (**Auditors**) access to the Service Provider's premises, books, records, documents, computer systems, equipment and other property and Materials to verify compliance by the Service Provider with its obligations under this Contract and the capacity of the Service Provider to continue to comply with its obligations in the future.
- (b) The Auditors may inspect and make copies of books, records, documents and other Materials, and the Service Provider will provide the Auditors with the necessary facilities and resources to enable them to do so.

### 31.2 No authority to bind Seqwater

The Service Provider does not have the authority to bind Seqwater by contract or otherwise. The Service Provider will not represent to any party that the Service Provider is an employee or agent of Seqwater.

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### 31.3 Seqwater may act

Seqwater may, either itself or by a third party, perform an obligation which the Service Provider was obliged to perform but which it failed to perform. The reasonable costs, expenses and damages suffered or incurred by Seqwater in performing such an obligation will be a debt due from the Service Provider to Seqwater.

### 31.4 Duty

- (a) The Service Provider as between the Parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Seqwater) on or relating to this Contract, any document executed under them or any dutiable transaction evidenced or effected by them.
- (b) If Seqwater pays any such duty, the Service Provider must pay that amount to Seqwater on demand.

### 31.5 Legal costs

Each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Contract.

### 31.6 Waiver and exercise of rights

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Contract.
- (b) A waiver or consent given by a Party under this Contract is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of this Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.
- (d) A Party is not liable for any Loss incurred by any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (e) This **clause 31.6** survives expiry or termination of this Contract.

### 31.7 Rights cumulative

Except as expressly stated otherwise in this Contract, the rights of a Party are cumulative and are in addition to any other rights of that Party.

### 31.8 Consents

A consent required under this Contract from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its absolute discretion) thinks fit, unless this Contract expressly provides otherwise.

### 31.9 Further acts and documents

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

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### 31.10 Severance

- (a) Any provision of this Contract that is or becomes illegal is severed from this Contract.
- (b) If at any time a provision of this Contract is severed, or is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

### 31.11 International Sale of Goods Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

### 31.12 Governing law and jurisdiction

- (a) This Contract is governed by and must be construed according to the law applying in Queensland.
- (b) Each Party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 31.12(b)(i)**.

### 31.13 Counterparts and electronic signature

- (a) This Contract may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.
- (b) If this Contract is signed by any person using an Electronic Signature, the Parties:
  - (i) agree to enter into this Contract in electronic form; and
  - (ii) consent to either or both parties signing this Contract using an Electronic Signature.

### 31.14 Entire Agreement

This Contract supersedes all previous agreements for its subject matter and embodies the entire agreement between the Parties.

### 31.15 Relationship of the Parties

Nothing in this Contract is intended to create a partnership, joint venture or agency relationship between the Parties.

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### 31.16 Disclaimers in documents

The Service Provider must not, and must ensure that its subcontractors and sub-consultants (including its Service Provider Personnel) do not, in relation to any design, document, report, drawing, diagram or Deliverable relating to the Services:

- (a) include within any such design, document, report, drawing, diagram or Deliverable, or
- (b) otherwise seek to assert or enforce (excluding **clause 17**),

any kind of limitation of liability, disclaimer, restriction as to use or reliance or any provision relating to Intellectual Property Rights (**Disclaimer**) that is inconsistent with a provision of this Contract and any such Disclaimer will be void and of no effect.

### 31.17 Survival

Termination or expiry of this Contract will not affect the operation of **clauses 10, 13, 17, 18, 19, 22, 24** and **25** or any rights or remedies already accrued to either Party under, or in respect of any breach of, this Contract.

## 32. Trustee provisions

### 32.1 Trustee Warranty

If the Service Provider enters into this Contract as the trustee of a trust, the Service Provider in its personal capacity and in its capacity as trustee of the [insert name of trust] (**Trust**) warrants that:

- (a) the Trust is validly created and is in existence;
- (b) the Trust has not been determined, wound up or ceased to exist and will remain in force during the Term and the Service Provider has no knowledge of any event or circumstance which may give rise to the termination, winding up or cessation of the Trust;
- (c) the Service Provider is the sole trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Service Provider under this Contract;
- (d) the Service Provider has the power to enter into and observe its obligations under this Contract in its capacity as trustee of the Trust;
- (e) the Service Provider has all authorisations necessary to:
  - (i) enter into this Contract;
  - (ii) perform its obligations under this Contract; and
  - (iii) allow those obligations to be enforced against it,(including all authorisations under the trust deed of the Trust);
- (f) the Service Provider is not in material default under the trust deed of the Trust;

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- (g) the Service Provider is entitled to be indemnified out of the property of the Trust in relation to all of the obligations and liabilities incurred by the Service Provider under this Contract and the property of the Trust is sufficient to satisfy that right in full and the Service Provider has not released or disposed of its equitable lien over the property of the Trust;
- (h) there is no limitation on the Service Provider's right of indemnity against the property of the Trust other than when there has been a breach of trust, breach of duty or fraud on the part of the Service Provider; and
- (i) the Service Provider is not acting in breach of its duties as trustee of the Trust such that its entry into this Contract or the performance or carrying out of its obligations would cause the Service Provider to not be indemnified out of the property of the Trust.

### 32.2 Liability of the Service Provider

The Service Provider is liable under this Contract in its personal capacity and as trustee of the Trust.

### 32.3 Change of trustee

For the purposes of **clause 23.1(a)**, a change of Control will also be deemed to occur if:

- (a) the Service Provider ceases to act as trustee of the Trust;
- (b) another person is appointed as trustee of the Trust; or
- (c) the trust deed for the Trust is amended so that the Service Provider would no longer be able to make any of the warranties in **clause 10.1**.

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## Schedule 1 - Contract Particulars

This schedule is subject to the terms and conditions of the Contract and should be read in conjunction with those terms and conditions.

<b>Seqwater Representative</b>	Name: (insert name) Position: (insert position) Address: (insert address) Telephone number: (insert number) Email: (insert address)
<b>Service Provider</b>	Name: (insert Service Provider name) ABN: (insert ABN) Address: (insert address)
<b>Service Provider Representative</b>	Name: (insert name) Position: (insert position) Address: (insert address) Telephone number: (insert number) Email: (insert address)
<b>Start Date</b>	(insert Start Date) <b>OR</b> The last date of execution of this Contract by both Parties
<b>Term (clause 2.1)</b>	(insert Term) <i>Drafting Note: Where the Contract is being entered into as a temporary arrangement, terms should be kept to short periods of time where possible. A variation can be entered into if the parties wish to extend the Term.</i>
<b>Option Extension Period/s (clause 2.2)</b>	(insert options if applicable)
<b>Particulars for delivery of notices (clause 29.1)</b>	<p><b>Seqwater</b></p> <p>Delivery address: Level 8, 117 Brisbane Street, Ipswich, QLD 4305 Postal address: PO Box 328, Ipswich QLD 4305 Email: (insert address) Attention: (insert name of Seqwater Representative)</p> <p><b>Service Provider</b></p> <p>Delivery address: (insert address) Postal address: (insert address) Email: (insert address) Attention: (insert name of Service Provider Representative)</p>

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<b>Services (clause 3)</b>	(insert detailed description of the Services) <b>OR</b> The Services set out in <b>Annexure A to Schedule 1</b>
<b>Deliverables (clause 8)</b>	(insert detailed description of Deliverables) <b>OR</b> The Deliverables referred to in the Specifications
<b>Specifications</b>	(insert detailed description of Specifications) <b>OR</b> The Specifications set out in <b>Annexure A to Schedule 1</b>
<b>Key Personnel (clause 6.3)</b>	(insert names of Key Personnel) <b>OR</b> The persons named in attached list
<b>Schedule of Rates</b>	(insert Schedule of Rates) <b>OR</b> The Schedule of Rates set out in <b>Annexure B to Schedule 1</b>
<b>Contract Price (clause 11.1)</b>	\$(insert amount) GST inclusive <b>OR</b> refer to amounts in the Schedule of Rates
<b>Fee Arrangements (clause 11.2)</b>	<p><b>Drafting note: Delete the option below that is not applicable.</b></p> <p><b>Fixed fee:</b> \$(insert amount)</p> <p><b>Drafting note: The total fixed fee should equal the Contract Price above.</b></p> <p><b>Time cost basis:</b> Time cost basis at a rate of (insert hourly, daily, monthly rate). The maximum number of (hours/daily/months) that may be charged is (insert maximum, if any).</p>
<b>Capped Amount (clause 22.6(b))</b>	The lower amount of: (i) (insert percentage)% of the Contract Price; or (ii) \$(insert fixed amount).
<b>Insurance (clause 25)</b>	
<b>Professional Indemnity Insurance</b>	<p>Amount: \$(insert amount) for each occurrence <i>[Minimum is \$10,000,000. If nothing stated, \$10,000,000.]</i></p> <p><b>Drafting note: Limit is subject to project risk assessment.</b></p> <p>Period: 7 years from the end of the Term or termination of this Contract.</p> <p><b>OR</b></p> <p>Service Provider is a member of a scheme approved under the <i>Professional Standards Act 2004</i> (Qld)</p> <p>Yes <input type="checkbox"/></p> <p><i>[Attach a copy of the applicable scheme.]</i></p>
<b>Public Liability Insurance</b>	<p>Amount: \$(insert amount) for each occurrence <i>[Minimum is \$20,000,000. If nothing stated, \$20,000,000.]</i></p> <p><b>Drafting note: Limit is subject to project risk assessment.</b></p>

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<b>Workers Compensation</b>	As required by Law.
<b>Other</b>	Cover: (insert type of insurance) Amount: \$(insert amount) for each occurrence Period: (insert period) <i>[If nothing stated, Nil.]</i>
<b>Tax Invoice Details (clause 13.5)</b>	Payee: Queensland Bulk Water Supply Authority trading as Seqwater ABN 75 450 239 876 Attention: <a href="mailto:payables@seqwater.com.au">payables@seqwater.com.au</a> CC: (insert name)@seqwater.com.au Contract number: (insert contract number) Please quote the contract order number (which will be provided to you post contract execution) on all invoices to ensure prompt payment.

Example

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## Annexure A to Schedule 1 - Services

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# Annexure B to Schedule 1 - Schedule of Rates

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## Schedule 2 - Performance Measurement Framework

<p><b>Application of Performance Management Framework</b></p>	<p><input type="checkbox"/> Clauses 30.2 to 30.4 apply.</p> <p><input type="checkbox"/> Clauses 30.2 to 30.4 do not apply.</p> <p><i>[If neither box is checked, clauses 30.2 to 30.4 do not apply.]</i></p>
<p><b>KPIs</b></p>	<p><i>Drafting note: Commercial services to insert relevant KPIs. See Contract User Guide for further information.</i></p> <p>Insert relevant KPIs / examples</p> <ul style="list-style-type: none"> <li>• Safety</li> <li>• Deliverables</li> <li>• Quality of Services / Deliverables</li> <li>• Service Provider Personnel</li> <li>• Budget</li> <li>• Innovativeness</li> </ul> <p><b>OR</b></p> <p>To be determined by the Parties after the Start Date.</p>
<p><b>Reporting Periods</b></p>	<p>The Service Provider must report its performance against the KPIs [annually / quarterly / monthly] starting on the date that is [the first anniversary of / three months after / one month after] the Start Date.</p> <p><b>OR</b></p> <p>The Service Provider must report its performance against the KPIs for the following periods:</p> <ul style="list-style-type: none"> <li>• (insert date) to (insert date)</li> <li>• (insert date) to (insert date)</li> <li>• (insert date) to (insert date)</li> <li>• (insert date) to (insert date)</li> </ul>

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Executed as an agreement.

**Executed by QUEENSLAND BULK WATER SUPPLY  
AUTHORITY TRADING AS SEQWATER ABN 75 450  
239 876** by its duly authorised officer in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of witness in full (print)

\_\_\_\_\_  
Name and position of authorised officer in full  
(print)

Date:

[Note: If the Service Provider is a Trustee and an Individual use the execution clause below]

Signed by **[NAME]** as trustee for **[INSERT NAME OF  
TRUST]** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of **[NAME]**

\_\_\_\_\_  
Name of Witness

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Date:

[Note: If the Service Provider is a Trustee and a Company use the execution clause below]

**Executed** by **X ACN X** as trustee for **[INSERT NAME OF TRUST]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of \*Director/\*Sole Director and Sole Company Secretary

Signature of \*Director / \*Secretary

Name of \*Director / \*Sole Director and Sole Company Secretary

Name of \*Director / \*Secretary

(\*Please delete the inapplicable)

Date:

Example

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