



Version 24 June 2018

Theodore Water Pty Ltd

Drainage Contract: Theodore Channel Scheme

Standard Conditions: Version 1.0

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Background

- (a) This is a 'drainage services document' for the purposes of section 738JB of the Water Act and an agreement between the Scheme Owner and a customer who only requires Drainage Services (and not water distribution services) from the Scheme Owner (**Drainage Services Customer**).
- (b) It sets out the terms and conditions on which the Scheme Owner will provide Drainage Services in the Declared Drainage Area to the Drainage Services Customer.
- (c) This Agreement takes effect as a contract between the Scheme Owner and a Drainage Services Customer:
 - (i) by the operation of section 738JB of the Water Act;
 - (ii) in the circumstances in paragraph (d)(ii) or (d)(iii) below; or
 - (iii) by agreement with the Scheme Owner.
- (d) You are a Drainage Services Customer if:
 - (i) (**on the LMA Start Date**): you are a person to whom drainage services are provided but who will not, on the LMA Start Date, be the holder of a water allocation the subject of a Distribution Supply Contract under section 738I of the Water Act; or
 - (ii) (**incoming entity**): you are not the holder of a water allocation to whom water is to be supplied under the Distribution Operations Licence but you have been transferred or granted a legal, beneficial or leasehold interest in all or part of any land which is located within the Declared Drainage Area;
 - (iii) (**expiry or termination of a Distribution Supply Contract**): you were a Distribution Supply Customer under a Distribution Supply Contract which has expired or terminated and, immediately before the expiry or termination of that Distribution Supply Contract, you were the owner or lessee of, or occupied, land all or part of which is located within the Declared Drainage Area; or
 - (iv) (**by agreement**): if you and the Scheme Owner have otherwise agreed and entered into this Agreement.

Definitions

Agreement	This agreement.
Commencement Date	<p>If this Agreement took effect:</p> <ul style="list-style-type: none"> (a) in accordance with section 738JB(5) of the Water Act, the LMA Start Date; (b) in the circumstances set out in paragraph (d)(ii) of the Background, the first day the Customer acquired the legal, beneficial or leasehold interest (as applicable) in the Customer's Drainage Land; (c) in the circumstances set out in paragraph (d)(iii) of the Background, the date on which the Distribution Supply Contract terminated or expired; or (d) by agreement with the Scheme Owner, the date the last party executed this Agreement or such other date as agreed by the parties.
Channel Scheme	<ul style="list-style-type: none"> (a) The Theodore channel scheme is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Dawson Valley water supply scheme. (b) For paragraph (a), the Dawson Valley water supply scheme is the irrigation infrastructure by which water is supplied from Theodore Weir to the customers.
Customer	See the definition of Drainage Services Customer.
Customer's Drainage Land	<p>If the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area, that part of the land:</p> <ul style="list-style-type: none"> (a) for which the Customer is the owner or lessee; or (b) in respect of which the Customer occupies, (as applicable) which is located within the Declared Drainage Area.
Declared Drainage Area	The Dawson Valley drainage area, shown on AP4145 or such updated map defining the current Declared Drainage Area as may be published on the Scheme Owner's Website from time to time to reflect any agreement between the Scheme Owner and the

	owner of the relevant land within the Declared Drainage Area to exclude all or part of that land from the Declared Drainage Area.
	The Declared Drainage Area may be varied in accordance with clause 6.1.
Distribution Operations Licence	The distribution operations licence under the Water Act held by the Scheme Owner.
Distribution Supply Contract	A supply contract for water distribution services with the Scheme Owner for the Channel Scheme. It includes a supply contract for the Channel Scheme for the purposes of section 738I of the Water Act.
Distribution Supply Customer	The customer under a Distribution Supply Contract.
DOL Area	The area to which the Distribution Operations Licence relates.
Drainage Charges	Subject to clause 5, \$28.10 for each hectare of land within the Customer's Drainage Land or such other amount as agreed and set out in schedule 1.
Drainage Contract	A contract for Drainage Services with the Scheme Owner for the Channel Scheme. It includes a drainage services contract for the Channel Scheme for the purposes of section 738JB of the Water Act.
Drainage Network	The Dawson Valley irrigation drainage network within the Declared Drainage Area which forms part of the Channel Scheme provided to remove storm runoff from certain storm events.
Drainage Services	Surface drainage via the Drainage Network as described below. The Drainage Network has been provided to remove storm runoff from certain storm events. The Customer is required to discharge water from its farm block(s) through the drainage inlet provided. New drainage inlets are funded by the Customer but become the property of the Scheme Owner for ongoing maintenance.
Drainage Services Customer or Customer	Has the meaning given in paragraph (a) of the Background. The circumstances in which an entity may become a Drainage Services Customer are outlined in paragraph (d) of the Background.
Excluded Drainage Area	Has the meaning given in clause 6.1(a).
Excluded Drainage Area Agreement	Has the meaning given in clause 6.1(a).

Index Number	The Consumer Price Index – All Groups for Brisbane, published from time to time by the Australian Bureau of Statistics or, where suspended or discontinued, a comparable index nominated by the President of the Queensland Law Society or, in the absence of such nomination, as determined by the Scheme Owner, acting reasonably.
Indexation Date	The meaning given in clause 5.1.
Law	<p>(a) The principles of law or equity established by decisions of Australian courts;</p> <p>(b) any legislation, statutes, acts, rules, orders, regulations, by-laws, local laws, policies or ordinances which are enacted, issued or promulgated by the State, a Minister, a corporation or authority constituted for a public purpose or a local authority; and</p> <p>(c) requirements made or arising under or under any of the matters referred to in paragraph (a) or (b) above.</p> <p>Without limiting the above, Law includes the Water Legislation and Water Instruments.</p>
LMA Start Date	1 October 2018, being the day on which local management arrangements commence for the Channel Scheme and the declared transfer day for the Channel Scheme under section 722 of the Water Act.
Scheme Distribution Rules	The Scheme Distribution Rules published on the Scheme Owner's Website as amended from time to time.
Scheme Owner	Theodore Water Pty Ltd (ACN 615 708 944).
Scheme Owner's Website	www.theodorewater.com.au
Water Act	The Water Act 2000 (Qld).
Water Instrument	<p>Each of the following which may, from time to time, apply to the DOL Area under the Water Act:</p> <p>(a) Water Plan;</p> <p>(b) operations manual;</p> <p>(c) water management protocol;</p> <p>(d) resource operations licence;</p> <p>(e) distribution operations licence; and</p>

(f) water licence,

(where a term in this definition is not otherwise defined in this Agreement, it has the meaning given in the Water Act).

Water Legislation

The Water Act and the Water Supply Act.

Water Plan

The water plan, if any, from time to time under the Water Act, which applies to the DOL Area.

Water Supply Act

The Water Supply (Safety and Reliability) Act 2008 (Qld).

Standard conditions

1 Drainage Services

- (a) If the Customer is the owner or lessee of, or otherwise occupies, land all or part of which is located within the Declared Drainage Area and the Customer is not a party to a Distribution Supply Contract:
 - (i) the Scheme Owner must supply the Drainage Services in respect of the Customer's Drainage Land; and
 - (ii) the Customer must pay the Drainage Charges, in accordance with this Agreement.
- (b) The Customer accepts that the provision of Drainage Services by the Scheme Owner is subject to:
 - (i) the Water Instruments and the Water Legislation;
 - (ii) the Customer discharging water through the approved drainage inlet provided; and
 - (iii) this Agreement.

2 Overall statutory framework

In the performance of this Agreement, the Scheme Owner and the Customer acknowledge that, under the Water Legislation, each party is required to comply with the Water Legislation (including the Water Instruments as applicable).

3 Charges and payment

- (a) The Customer must pay the Drainage Charges to the Scheme Owner for the Drainage Services.
- (b) Drainage Charges are calculated and payable in advance for the relevant period in which the invoice is rendered.
- (c) The Scheme Owner may, unless otherwise required by Law, render an invoice to the Customer at the end of each quarter or as published in the Scheme Distribution Rules.
- (d) The Customer must pay invoices within 30 days after the date of the invoice.
- (e) Where the Customer notified the Scheme Owner of a dispute about the invoice under clause 8, the Customer must pay to the Scheme Owner the undisputed amount in accordance with this clause 3. Once the dispute is resolved, the agreed amount outstanding must be paid within 30 days.

4 Term

This Agreement commences on the Commencement Date and continues unless terminated in accordance with its terms.

5 Changes to the Drainage Charges

5.1 Index review of the Drainage Charges

As and from each 1 July (**Indexation Date**), the Drainage Charges will be increased by the proportion by which the Index Number last published for the quarter commencing the 1 April occurring immediately before the Indexation Date has increased, over the Index Number published for the quarter commencing on the 1 April immediately before the last Indexation Date (provided that, in the case of the first Indexation Date, the 1 April referred to in this clause 5.1 will be the 1 April immediately before the Commencement Date).

6 Declared Drainage Area

6.1 Variation to Declared Drainage Area

- (a) If the Customer is the owner of land all or part of which is located within the Declared Drainage Area, the Customer and the Scheme Owner may agree in writing that all or part of the relevant part of the land owned by the Customer which is located within the Declared Drainage Area (**Excluded Drainage Area**) is excluded from the Declared Drainage Area (**Excluded Drainage Area Agreement**).
- (b) If there is an Excluded Drainage Area Agreement:
 - (i) the Declared Drainage Area is deemed to exclude the Excluded Drainage Area and the Scheme Owner must promptly publish on the Scheme Owner's Website an updated map of the Declared Drainage Area to reflect the exclusion of the Excluded Drainage Area;
 - (ii) the Scheme Owner ceases to have any obligation to provide the Drainage Services to the extent they relate to the Excluded Drainage Area; and
 - (iii) the Customer ceases to be obliged to pay the Drainage Charges in respect of the Excluded Drainage Area,provided that nothing in this clause 6.1 limits or relieves the Customer from any obligation to pay any Drainage Charges which may be invoiced or incurred before the date on which the Excluded Drainage Area Agreement is made.
- (c) Unless otherwise agreed in the Excluded Drainage Area Agreement, an Excluded Drainage Area Agreement has the effect of permanently excluding the Excluded Drainage Area from the Declared Drainage Area.

6.2 Changes to Customer's Drainage Land

- (a) The Customer must ensure that, if it:
- (i) transfers (including a transfer by operation of law) any legal, beneficial or leasehold interest in all or part of the Customer's Drainage Land;
 - (ii) grants any beneficial or leasehold interest in all or part of the Customer's Drainage Land; or
 - (iii) grants or transfers any other rights of occupation in all or part of the Customer's Drainage Land,
- to another entity (**incoming entity**), the Customer must ensure that:
- (iv) if the incoming entity is also the holder of a water allocation to whom water is to be supplied under the Distribution Operations Licence, the incoming entity either:
 - (A) is a party to an existing Distribution Supply Contract with the Scheme Owner; or
 - (B) enters into a Distribution Supply Contract with the Scheme Owner or otherwise becomes a party to a Distribution Supply Contract pursuant to section 738I of the Water Act; or
 - (v) if the incoming entity is not also the holder of a water allocation to whom water is to be supplied under the Distribution Operations Licence, the incoming entity enters into a Drainage Contract with the Scheme Owner.
- (b) Without limiting clause 6.2(a), unless and until there is a valid and effective Distribution Supply Contract or Drainage Contract in place with the incoming entity, the Customer remains liable to the Scheme Owner in respect of all Drainage Charges as if the Customer is the owner of all of the Customer's Drainage Land.

6.3 Provision if multiple rights to recover Drainage Charges

- (a) If, in respect of any part of the Customer's Drainage Land (**Relevant Area**), the Scheme Owner has a right to recover the Drainage Charges for that relevant area from more than one entity (**Liable Entities**) under a Distribution Supply Contract or Drainage Contract then, subject to clause 6.3(b), the Scheme Owner agrees that it will seek to first recover the Drainage Charges for the Relevant Area from the entity which is the owner of the Relevant Area.
- (b) The owner of the Relevant Area may, by notice to the Scheme Owner and with the relevant Liabe Entity's consent, direct the Scheme Owner to seek to first recover the Drainage Charges for the Relevant Area from the Liabe Entity nominated in the notice. A notice under this clause 6.3(b) must include a copy of the consent signed by the relevant Liabe Entity nominated in the notice.

- (c) Nothing in this clause 6.3 adversely impacts the Scheme Owner's right to recover the Drainage Charges for the Relevant Area from the Customer if a Liable Entity has failed to pay, or the Scheme Owner has failed to recover, the Drainage Charges for the Relevant Area from a Liable Entity.

7 Termination

- (a) The parties may, by written agreement, terminate this Agreement.
- (b) If there is a Distribution Supply Contract between the Customer and the Scheme Owner, this Agreement is deemed to have been terminated by agreement on the date on which the Distribution Supply Contract between the Customer and the Scheme Owner became effective.

8 Amendments

- (a) This Agreement may be amended by agreement between the Scheme Owner and the Customer.
- (b) For the avoidance doubt, the Scheme Owner may, in its discretion, update any template Drainage Contract which may, from time to time, be published on the Scheme Owner's Website.

9 Dispute resolution

9.1 Activation

- (a) The objective of this clause 9 is to provide an effective and equitable process for the resolution of disputes and to encourage the participants to discuss and resolve the matter.
- (b) If a dispute arises under this Agreement any party may give written notice to the party with whom the dispute exists.

9.2 Appointment of representative

- (a) The notice given in accordance with clause 9.1(b) must designate a representative with the appropriate authority to negotiate the dispute.
- (b) Within five business days of receipt of the notice referred to in clause 9.1(b), the recipient must designate a representative with similar authority.

9.3 Discussions

The representatives must promptly discuss the dispute, following whatever investigation each considers appropriate.

9.4 Negotiation of procedures

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

9.5 Methods of resolution

A party receiving a request under clause 9.4 must promptly discuss the following and other related subjects with the party making the request:

- (a) the mode of proceeding, whether by negotiation, mediation, conciliation, expert appraisal, expert determination or mini-trial;
- (b) the responsibility for payment of the costs of the mode agreed under clause 9.5(a);
- (c) the procedure and timetable for exchange of documents and other information relating to the dispute;
- (d) procedural rules and a timetable for the conduct of the selected mode of proceeding; and
- (e) a procedure for selection and compensation of any neutral adviser, expert or mediator that may be employed by the parties in dispute.

9.6 Exchange of information

The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement under this clause 9 is to attempt to settle a dispute between the parties.

9.7 Termination of dispute resolution procedure

Any party may terminate the dispute resolution procedure provided by this clause 9 at any time and pursue other available remedies.

10 GST

- (a) In this clause the following definitions apply:
 - (i) GST means the goods and services tax as imposed by the GST Law.
 - (ii) GST Amount means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%) together with any related interest, penalties, fines or other charge.
 - (iii) GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if that Act does not exist for any reason, any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
 - (iv) Input Tax Credit has the meaning given to that term by the GST Law.
 - (v) Tax Invoice has the meaning given to that term by the GST Law.
- (b) The parties agree that:
 - (i) all Payments have been calculated without regard to GST;

- (ii) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
- (iii) any reference to a cost or expense in this Agreement excludes any amount for GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and
- (iv) the payee will provide to the payer a Tax Invoice if clause 10(b)(ii) applies.

11 Notices

11.1 Notices

- (a) Any notice given under this Agreement must be:
 - (i) in writing addressed to the intended recipient; and
 - (ii) signed by a person duly authorised by the sender.
- (b) A notice must be given by being:
 - (i) personally delivered or left at the party's current business address for notices;
 - (ii) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
 - (iii) sent by email to the party's current email address for notices.

11.2 Particulars for notices

The particulars for delivery of notices are:

- (a) for the Scheme Owner:
 - (i) the business address;
 - (ii) the postal address; or
 - (iii) the email address,for delivery of notices to the Scheme Owner as nominated in the Scheme Distribution Rules and published on the Scheme Owner's Website from time to time; and
- (b) for the Customer:
 - (i) the business address;
 - (ii) the postal address; or
 - (iii) the email address,

for delivery of notices to the Customer as nominated by the Customer and notified in writing to the Scheme Owner (and, if the Customer has not, by the Commencement Date, nominated and notified in writing to the Scheme Owner any one or more of the particulars for delivery of notices, the Customer must promptly do so after the Commencement Date).

11.3 Communications by post

Subject to clause 11.5, a communication is given if posted:

- (a) within Australia to an Australian postal address, six business days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten business days after posting.

11.4 Notices by email

Subject to clause 11.5, a Notice is given if sent by email on the first to occur of the following:

- (a) when it is dispatched by the sender to the recipient's email address, unless the sender receives an automatic notification that the e-mail has not been received (other than an out of office greeting for the named addressee); and
- (b) the sender receiving a message from the intended recipient's information system confirming delivery of the email.

11.5 After hours communications

If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), the notice will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

12 Miscellaneous

12.1 Existence of native title

If, under any Law relating to native title (as that term is defined *Native Title Act* 1993 (Cth)) the commencement or performance of this Agreement is affected by native title (as that term is defined *Native Title Act* 1993 (Cth)) or any requirement under such Law, then this Agreement and the Scheme Owner's obligations under this Agreement are subject to any such requirement.

12.2 Entire agreement

This Agreement contains the entire agreement of the parties concerning its subject matter, namely the arrangements between the Scheme Owner and the Customer in relation to the Drainage Services. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties concerning its subject matter.

12.3 Severance of invalid or illegal terms

- (a) Subject to clause 12.3(c), if:

- (i) any term of this Agreement (**relevant term**) is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever; or
 - (ii) a term of a Distribution Supply Contract or Drainage Contract which is the same or substantially the same as the relevant term (**equivalent template term**) is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever,
- then:
- (iii) the relevant term is severed from this Agreement; and
 - (iv) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies without reliance on the part severed.
- (b) The Scheme Owner must promptly notify the Customer if it becomes aware that an equivalent template term is or has become invalid, void, voidable or otherwise unenforceable for any reason whatever.
- (c) If:
- (i) this Agreement took effect by agreement between the Customer and the Scheme Owner;
 - (ii) an equivalent template term is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever; and
 - (iii) the basis on which the equivalent template term is or becomes invalid, void, voidable or otherwise unenforceable for any reason does not apply to this Agreement,

then, notwithstanding clause 12.3(a), the Customer and the Scheme Owner may agree in writing that the relevant term will not be severed from this Agreement.

12.4 No waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

12.5 Stamp duty and costs

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

12.6 Further assurances

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

12.7 Rights cumulative

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

12.8 Consents

Except as expressly stated otherwise in this Agreement, the Water Legislation or Water Instruments, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

12.9 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12.10 Counterparts and effect of execution

- (a) If this Agreement, is entered into by agreement of a Customer and the Scheme Owner, this document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) This Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.
- (c) Unless otherwise required by the Scheme Owner, this Agreement may be executed in any way permitted by Law, including as permitted by the *Electronic Transactions Act 1999* (Cth).

13 Interpretation

In interpreting this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in this Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;

- (e) clause headings and 'explanatory notes' are inserted for convenience only and do not affect the interpretation of this agreement;
- (f) references to "dollars" and "\$" are references to Australian dollars;
- (g) references to time are references to time in the location of the DOL Area;
- (h) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it, and includes any subordinate legislation issued under that legislation or as it may be modified, re-enacted or substituted;
- (i) a reference to a governmental authority includes any successor authority;
- (j) a reference to paragraphs, subclauses, clauses and Schedules is a reference to paragraphs, subclauses, clauses and Schedules of this Agreement;
- (k) a reference to any agreement (including this Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced, from time to time;
- (l) a term used in the Water Act or Water Supply Act has the same meaning when used in this Agreement;
- (m) a reference to **conduct** includes any omission and any representation, statement or undertaking, whether or not in writing;
- (n) where the customer comprises two or more persons, the liability under this Agreement is joint and several.

Schedule 1

Additional details if contract by agreement

1 Customer details	Name:	[insert]
	ACN / ABN (if applicable):	[insert]
	Address:	[insert]
2 Customer's particulars for delivery of notices	Business address:	[insert]
	Postal address:	[insert]
	Email:	[insert]
3 Commencement Date (if not the date of this Agreement)	[insert]	
4 Location of the Customer's Drainage Land	[insert]	
5 Drainage Charges		

Executed as a deed.

Execution by the **Scheme Owner**:

.....
Name of Director (print)

Execution by the **Customer**:

.....
Name of Director (print)

[By the sole director who is also the sole company secretary of an Australian incorporated company]

Executed by [Customer])
)

.....
Sole Director and Sole Company
Secretary

.....
Name of Sole Director and Sole Company
Secretary (print)

[By a duly authorised officer of an Australian incorporated company]

Executed by [Customer] by its duly)
authorised officer in the presence of:)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

[If the Customer is an individual]

Signed by [Customer] in the presence)
of:)

.....

.....
Witness

.....
Name of Witness (print)

[insert other appropriate execution block for Customer if required]