|  |  |
| --- | --- |
| [Drafting note: use this template when the bore assessment outcome stipulates compensation as a Make Good Measure] | |
| Make Good Agreement  **COMPENSATION**  [Insert name of tenure holder]  **Alt[**ABN/ACN/ARBN**]** [number]  and  [Insert name(s) of bore owner]  **Alt[**ABN/ACN/ARBN**]** [number]  [Insert Agreement ID(s)]  [Agreement number]  *Refer to the Guidance Notes before using this template.*  *Visit* [***www.gfcq.org.au***](https://www.gfcq.org.au/) *or email* [***enquiries@gfcq.org.au***](mailto:enquiries@gfcq.org.au) *to receive a copy.* | |
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| REFERENCE SCHEDuLE |

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| 1. Agreement particulars |

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| --- | --- |
| Item | Particulars |
|  |  |
| Agreement ID | [Insert the unique number/identifier for the agreement] |
| Agreement Date | [Insert the date the last of the Parties executes this Agreement] |
| Tenure | [Insert description of tenure eg PL 123] |
| Tenure Holder | [Insert name and ACN of tenure holder]Attention: [Insert name of contact person for notices]Address: [Insert]Telephone: [Insert]Fax: [Insert]Email: [Insert] |
| Bore Owner | [Insert name and ABN/ACN of bore owner]Address: [Insert]Telephone: [Insert]Fax: [Insert]Email: [Insert] |
| Bore(s) | Means the following water bore(s), as identified on the Map provided in this Agreement, for which the taking of, or interference with water is authorised under section 363 of the Act, and being registered on the Queensland Government’s Groundwater Database:[Insert bore registration numbers][The list can be a single bore or multiple bores, as appropriate] |
| Land | Lot [insert] on Plan [insert], County of [insert] Parish of [insert], Title Reference [insert]. |
| Bore Assessment Outcome | The outcome of the Bore Assessment undertaken on [insert date] is that the Bore(s) has an Impaired Capacity. |

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| 1. Make Good Measures |

This section sets out the Make Good Measures that will be provided by the Tenure Holder in accordance with clause 6 of the General Conditions.

1. compensation

[Drafting note: clause 1(a) can be replaced with clause(s) that accommodate a multi-staged payment schedule if desired – drafting of replacement clause(s) is at the Tenure Holder’s discretion.]

* + 1. The Tenure Holder shall pay $[Insert] to the Bore Owner within 30 Business Days of the Agreement Date, by way of electronic funds transfer or as otherwise agreed with the Bore Owner.
    2. The compensation identified in clause 1(a) above is not subject to GST.
    3. The compensation amount will be paid to:

|  |  |
| --- | --- |
| **Bank account details** | |
| Account Name | [TO BE COMPLETED BY BORE OWNER] |
| Bank | [TO BE COMPLETED BY BORE OWNER] |
| BSB | [TO BE COMPLETED BY BORE OWNER] |
| Account Number | [TO BE COMPLETED BY BORE OWNER] |

* + 1. [OPTIONAL: The Bore Owner shall apply the compensation amount provided under clause 1(a) above to fund any and all activities and works associated with the construction, drilling and operation of a new water bore:
       1. on the Land at a location chosen by the Bore Owner; and
       2. which is completed in, and produces water from, the [Insert Target Aquifer].

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| 1. Map |

1. [Drafting note: insert map showing location of Bore(s) and access routes, if applicable.]

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| SPECIAL CONDITIONS |

This section sets out any additional conditions agreed between the Bore Owner and the Tenure Holder.

[Drafting note: the following clause is optional if clause 1(d) in Section 2 of the Reference Schedule (Make Good Measures) is used]

1. decommissioning the bore(s)
   * 1. The Bore Owner will complete the drilling and installation of the new water bore(s) referred to in clause 1(d) of Section 2 of the Reference Schedule (Make Good Measures) within [INSERT ESTIMATED TIMEFRAME] of the Agreement Date.
     2. The Bore Owner will provide written notification to the Tenure Holder within 10 business days of completing the drilling and installation of the new water bore(s) in accordance with clause 1(a) above.
     3. The Tenure Holder will permanently decommission the Bore(s):
        1. in compliance with all applicable Laws including the Queensland government’s ‘*Code of Practice for the construction and abandonment of petroleum wells and associated bores in Queensland*’ (as updated from time to time); and
        2. within [INSERT ESTIMATED TIMEFRAME] after the notification provided under clause 1(b) above.
     4. The Tenure Holder will provide a written notification to the Bore Owner within 10 business days of completing the decommissioning works under this clause.
     5. If requested by the Bore Owner, the Tenure Holder will provide to the Bore Owner a copy of the bore decommissioning report that the Tenure Holder is required to provide to the Queensland government as part of its mandatory reporting requirements.
     6. If the Tenure Holder and/or the Bore Owner, acting reasonably, fail to satisfy clauses 1(a) and/or 1(c)(ii) above, the Parties will meet to agree on a revised timeframe for completion, and will document the revised completion date.

[Drafting note: the following clause is optional if clause 1(d) in Section 2 of the Reference Schedule (Make Good Measures) is *not* used]

1. DECOMMISSIONING THE BORE(S)
   * 1. The Tenure Holder will permanently decommission the Bore(s):
        1. in compliance with all applicable Laws including the Queensland government’s ‘*Code of Practice for the construction and abandonment of petroleum wells and associated bores in Queensland*’ (as updated from time to time); and
        2. within [INSERT ESTIMATED TIMEFRAME] of the Agreement Date.
     2. The Tenure Holder will provide a written notification to the Bore Owner within 10 business days of completing the decommissioning works under this clause.
     3. If requested by the Bore Owner, the Tenure Holder will provide to the Bore Owner a copy of the bore decommissioning report that the Tenure Holder is required to provide to the Queensland government as part of its mandatory reporting requirements.
     4. If the Tenure Holder, acting reasonably, fails to satisfy clause 2(a)(ii) above, the Parties will meet to agree on a revised timeframe for completion, and will document the revised completion date.

[Drafting note: the following two clauses are optional if clauses 1 or 2 in the Special Conditions (Decommissioning the Bore(s) are used]

1. Conduct and Access
   * 1. The Bore Owner consents to the Tenure Holder carrying out the Activities on the Land and grants the Tenure Holder a non-exclusive right of access to do so.
     2. The Tenure Holder will comply with the Conduct and Access Rules provided under Special Condition 4 (Conduct and Access Rules) when carrying out the Activities on the Land.
     3. The Tenure Holder acknowledges it has a General Biosecurity Obligation when carrying out the Activities on the Land.
     4. The Tenure Holder may access the Land and carry out the Activities itself, and it may exercise its rights under this Agreement through its employees, secondees, agents, contractors, subcontractors, licensees, financier or any Related Bodies Corporate.
2. Conduct and Access Rules
   * 1. The Tenure Holder must ensure that:
        1. employees or contractors carrying out the Activities have read these conduct and access rules, and the Land Access Code issued by the Department of Natural Resources, Mines and Energy (as updated from time to time); and
        2. a copy of these conduct and access rules and the Land Access Code is kept near where Activities are being conducted on the Land. This may include, but is not limited to, keeping the documents in a site office or a vehicle.
     2. The Parties acknowledge and agree that the following conditions apply for accessing the Land and conducting the Activities.

| Item | Description |
| --- | --- |
| **Directions to Property** | [INSERT]  Refer to the **Map** |
| **Contacts** | In case of emergency phone [EMERGENCY CONTACT]  [EMERGENCY CONTACT NAME] [EMERGENCY CONTACT NUMBER] |
|  | Land Access Support Line [CONTACT NUMBER] |
|  | Land Access Consultant  [LAC NAME] [LAC CONTACT NUMBER] |
| **Fencing & Reseeding Details** | [INSERT] |
| **Gate Management** | [INSERT] |
| **Stock Impact Details** | [INSERT] |
| **Weed Hygiene Protocol** | [INSERT] |
| **Biosecurity Plan** | [INSERT] |
| **Registered Underground Infrastructure** | http://www.moretonbay.qld.gov.au/uploadedImages/moretonbay/development/building/plans/DialBeforeYouDig.jpg  [INSERT] |
| **Non - Registered Underground Infrastructure** | [INSERT] |
| **Important Considerations** | [Drafting note: these are examples of the types of considerations that could be included. They can be amended or replaced as required]   * Vehicles will not travel in excess of [XX] km/h within [XXX]m of any dwelling on the Land. Maximum speed across the Land not to exceed [XX] km/h with a view to minimising dust and noise. * Report any infrastructure damage or any property damage promptly to Land Access Support Line. * Remove all waste products and litter from the Land. * Stay on access tracks at all times. Do not use if likely to damage tracks e.g. recent rainfall / wet weather. * All vehicles must be identifiable with suitable badging. * Smoking only in designated smoking areas. * Use only designated toilet facilities. |

* + 1. The parties acknowledge and agree that clause 4(b) may be amended at any time following the process described in clause 12 of the General Conditions (Varying this Agreement).

1. Confidentiality

[Drafting note: this clause is optional and can be included or deleted as agreed between the Parties]

* + 1. The Confidential Information shall be kept confidential by the Parties and shall not be disclosed to any other person except in the case where:
       1. disclosure is required by Law or by order of any court or tribunal of competent jurisdiction;
       2. disclosure is required by any Government Agency, stock exchange or other regulatory body;
       3. disclosure is necessary in enforcing the provisions of this Agreement;
       4. the Confidential Information is disclosed to each Party’s legal advisors, financial advisors, bankers, financiers, auditors, directors, officers, Related Bodies Corporate, employees, contractors or agents and the disclosure is:
          1. necessary to enable the recipient to perform its obligations and to exercise its rights under this Agreement; and
          2. on the basis that any such person will keep the information confidential;
       5. in the case of the Tenure Holder the disclosure is made to a person intending to acquire an interest or has acquired an interest in the Tenure;
       6. in the case of the Tenure Holder the disclosure is made to any person which has entered into a joint venture with the Tenure Holder or a bona fide proposed purchaser of the Tenure;
       7. to a buyer, agent or mortgagee of the Land where reasonably necessary; or
       8. to the extent that may otherwise be agreed between the Parties.
    2. The Parties must not make or publish any notice, advertisement, press release or other communication with respect to the Agreement without the other Party’s prior written consent.

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| GENERAL CONDITIONS |

1. Definitions
   * 1. Words in this section have the same meaning given to them in Section 1 of the Reference Schedule (Agreement Particulars).
     2. The following definitions also apply to this Agreement:

| Term | Description |
| --- | --- |
| **Act** | means the *Water Act 2000* (Qld). |
| **Activities** | means any activities or works necessary for the Tenure Holder to perform its obligations under this agreement and includes any activity or works reasonably necessary or incidental to works performed under this Agreement. |
| **Appropriately Qualified Hydrogeologist** | has the meaning given to it in section 423(5) of the Act. |
| **Approvals** | includes all approvals, licences, permits, consents, authorities or clearances required to carry out the obligations or exercise the rights under this Agreement. |
| **Bore Assessment** | has the meaning given to it in section 411 of the Act. |
| **Business Days** | means a day that is not a Saturday or Sunday or a public holiday in Brisbane, Queensland and does not include 27, 28, 29, 30 and 31 December. |
| **Confidential Information** | means the terms of this Agreement, the preceding negotiations and any information required to be provided under this Agreement. [Drafting note: include this definition if Special Condition 5 (Confidentiality) is used. Otherwise delete] |
| **Cooling Off Period** | has the meaning given to it in section 423A(5) of the Act, and does not apply to a make good agreement for a water bore that is the subject of a decision of the Land Court. |
| **Damage** | means physical harm or impact that impairs the value or usefulness of the Land, property or infrastructure so damaged. |
| **DES** | means the Queensland Department of Environment and Science which is responsible for the administration of Chapter 3 of the Water Act 2000. |
| **General Biosecurity Obligation** | has the meaning given to it in section 23 of the *Biosecurity Act 2014* (Qld). |
| **Government Agency** | means:   * + 1. a government or government department or other body;     2. a governmental, semi–governmental or judicial person including a statutory corporation; or     3. a person (whether autonomous or not) who is charged with the administration of a Law. |
| **GST** | means the same as in the GST Law. |
| **GST Law** | has the same meaning as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth),or any replacement or other relevant legislation and regulations in force from time to time, and includes all applicable GST rulings*.* |
| **Impaired Capacity** | has the meaning given to it in section 412 of the Act. |
| **Law** | means:   * + 1. legislation including regulations, by-laws, orders, awards and proclamations with which a Party is legally required to comply;     2. common law and equity (if applicable); and     3. requirements, guidelines, consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) of a Government Agency with which a Party is legally required to comply. |
| **Make Good Measures** | has the meaning given to it in section 421 of the Act. |
| **Make Good Obligations** | has the meaning given to it in section 409(1) of the Act. |
| **Map** | means the map of the Bore(s) and access routes in Section 3 of the Reference Schedule |
| **P&G Act** | means the *Petroleum and Gas (Production and Safety) Act 2004* (Qld). |
| **Parties** | means the Tenure Holder and the Bore Owner and **Party** means either of them. |
| **Related Bodies Corporate** | has the meaning given to it in the *Corporations Act 2001* (Cth). |
| **UWIR** | means an underground water impact report that must be developed and provided to the chief executive of DES under section 370 of the Act. |

1. THIS Agreement
   * 1. This Agreement is comprised of the following sections:
        1. Reference Schedule;
        2. Special Conditions; and
        3. General Conditions.
     2. To the extent of any conflict or inconsistency between the sections listed in clause [2(a),](#_bookmark0) those sections shall be interpreted in descending order of precedence in the order they are listed in clause [2(a).](#_bookmark0)
     3. This Agreement commences on the Agreement Date and continues for [insert] years after the Agreement Date unless terminated in accordance with clause 3.
2. Cooling Off Period

Within the Cooling Off Period, the Bore Owner may terminate this Agreement by giving written notice to the Tenure Holder.

1. Approvals

Each Party to this Agreement must obtain, maintain and comply with all Approvals necessary to carry out its obligations and exercise its rights under this Agreement.

1. Bore Assessment
   * 1. The Tenure Holder has undertaken a Bore Assessment of the Bore(s) in accordance with the Act.
     2. The outcome of the Bore Assessment is that the Bore(s) has an Impaired Capacity.
2. Make Good Measures
   * 1. The Tenure Holder agrees to provide the Bore Owner with the Make Good Measures prescribed in Section 2 of the Reference Schedule (Make Good Measures).
     2. The Bore Owner agrees that the Make Good Measures prescribed in Section 2 of the Reference Schedule (Make Good Measures) represent full and final satisfaction of the Tenure Holder's Make Good Obligations under the Act in relation to the Bore(s).
3. dispute resolution
   * 1. Without limitation to any other rights of a Party under this Agreement, either Party may give a written notice (Dispute Notice) to the other Party if a dispute arises.
     2. The Parties will use best endeavours to meet within twenty (20) Business Days of the date that the dispute Notice is given to try to resolve the dispute in a timely manner.
     3. If the Parties cannot reach agreement within twenty (20) Business Days of the giving of the Dispute Notice, the Parties may:
        1. make use of the dispute resolution processes under sections 425 to 437 of the Act in seeking resolution of the dispute; and/or
        2. refer the dispute to the Land Access Ombudsman under Part 3 of the *Land Access Ombudsman Act 2017* (Qld).
4. LIABILITY

To the extent permitted by Law, the Tenure Holder is not liable for any loss, damage or expense the Bore Owner suffers arising out of or in relation to the Activities, except for:

* + 1. the costs under clause 10(a), which is in full and final satisfaction of the Tenure Holder’s obligation to reimburse the Bore Owner for such costs under section 423(3) of the Act; and
    2. any Damage to the Land, or any property or infrastructure on or under the Land, which belongs to the Bore Owner, caused by the Activities.

1. GST
   * 1. Terms used in this clause 9 that are defined in the GST Law have the meaning given in the GST Law.
     2. All amounts referred to in this Agreement are stated on a GST exclusive basis, unless otherwise specified.
     3. If GST is imposed in relation to any supply under this Agreement by one Party to another, the Party receiving the supply (**Recipient**) must pay the GST amount imposed to the Party providing the supply (**Supplier**) at the same time as the Party is required to pay the Supplier for the supply, provided:
        1. the Recipient issues a valid recipient created tax invoice to the Supplier;
        2. the Recipient is satisfied that the Supplier is registered for GST; and
        3. for the avoidance of doubt, notice of the GST status of the Supplier will be deemed to have been received by the Recipient when written confirmation of GST status of a Supplier is received and recorded by the Recipient.
     4. The Recipient is not obliged to pay GST to the Supplier until 30 Business Days after the recipient created tax invoice is issued.
2. Costs

[Drafting note: the parties may prefer to negotiate a payment arrangement different to the one contemplated by the clauses below. This clause can be amended or replaced accordingly]

* + 1. Subject to clause 10(b), the Tenure Holder will reimburse the Bore Owner for the GST inclusive value of the Bore Owner's reasonable and necessary accounting, hydrogeology, legal or valuation costs necessarily and reasonably incurred in the preparation and negotiation of this Agreement.
    2. Despite clause 10(a), the Tenure Holder is not required to reimburse the Bore Owner for hydrogeology costs incurred for work performed other than by an Appropriately Qualified Hydrogeologist.
    3. When seeking reimbursement pursuant to clause [10(a),](#_bookmark11) the Bore Owner must provide a written request to the Tenure Holder which includes copies of all invoices in respect of which the Bore Owner is claiming reimbursement.
    4. Within 10 Business Days of receiving the information required under clause [10(c),](#_bookmark12) the Tenure Holder will submit to the Bore Owner a recipient created invoice for payment of the costs under clause 10(a). The Tenure Holder shall pay the amount due to the Bore Owner within 30 Business Days of when the recipient created invoice is issued, by way of electronic funds transfer or as otherwise agreed with the Bore Owner.

1. Warranties
   * 1. The Bore Owner represents and warrants that:
        1. it has the capacity to enter into this Agreement; and
        2. it is the sole owner and/or occupier of the Land and the Bore(s) and has the right to grant access to the Land and the Bore(s) in accordance with this Agreement.
     2. The Tenure Holder represents and warrants that it has the capacity to enter into this Agreement.
2. varying this agreement

This Agreement can be varied in writing signed by both Parties.

1. General
   * 1. The Bore Owner may assign or novate any or all of its remedies, rights, duties, obligations or liabilities under the Agreement to any person to whom the Bore Owner assigns the Land and who becomes the owner of the Bore(s) under the Act, subject to the proposed assignee entering into a deed of assignment with the Tenure Holder on terms and conditions acceptable to the Tenure Holder acting reasonably.
     2. The Tenure Holder may assign or novate any or all of its remedies, rights, duties, obligations or liabilities under the Agreement to any person who becomes the responsible tenure holder for the Bore(s) under the Act, subject to the proposed responsible tenure holder entering into a deed of assignment with the Bore Owner on terms and conditions acceptable to the Bore Owner acting reasonably.
     3. The Agreement is governed by the laws of the State of Queensland and each Party submits to the non-exclusive jurisdiction of the courts of the State of Queensland.
     4. Neither Party is taken to have waived any right under the Agreement unless the waiver is given in writing and expressed to be a waiver.
     5. Any notice given under the Agreement must be given in writing to the address specified in the Reference Schedule for the relevant Party. Documents must be served in the manner provided for in the *Acts Interpretation Act 1954* (Qld) (**AIA**) and service will take effect as provided for in the AIA.
     6. The Agreement constitutes the entire agreement between the Tenure Holder and the Bore Owner in relation to its subject matter and supersedes any other agreement, document or pre-contractual statement relating to the same.
     7. The Agreement will bind and take effect to the benefit of the successors and permitted assigns of the Parties.
     8. The Agreement may be signed in any number of counterparts, all of which will constitute a single agreement and each counterpart will represent a fully signed original as if signed by both Parties.
     9. The invalidity or unenforceability of any provision will not affect the other provisions of the Agreement which will remain in full force and effect.
     10. Each Party must do all things reasonably necessary to give full effect to this Agreement.
     11. The termination of this Agreement does not affect any rights and obligations under clauses 7, 8 and Special Condition 5 and these rights and obligations shall survive termination. [Drafting note: remove reference to Special Condition 5 (Confidentiality) if it is not used]
2. Interpretation
   * 1. The terms "including" and "includes" mean "including without limitation" and "includes without limitation".
     2. No heading, index, title, subtitle, subheading or marginal note of the Agreement will limit, alter or affect the meaning or operation of the Agreement.
     3. Except where the context requires otherwise, words indicating the singular will also include the plural and words indicating the plural will include the singular.
     4. Any reference to law, statute, statutory provision or statutory instrument will include any re-enactment, replacement or amendment thereof for the time being in force.
     5. A reference to:
        1. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
        2. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
        3. anything (including a right, obligation or concept) includes each part of it.
     6. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
     7. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
     8. A reference to **"dollars"** or **"$"** is to an amount in Australian currency.
     9. If the day on or by which a person must do something under this Agreement is not a Business Day, the act must be done by the person on or by the next Business Day.
     10. [Drafting note: insert a clause here to reflect how rights obligations are shared if there is more than one Bore Owner or more than one Tenure Holder. See "How rights and obligations are shared" in the guidance note for more details]

**EXECUTED** as an agreement.

|  |  |  |
| --- | --- | --- |
| executed by [insert name of Tenure Holder and ABN]: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |
|  |  |  |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| signed by [insert name of Bore Owner(s)] in the presence of: |  |  |
|  |  | Signature of party |
|  |  |  |
| Signature of witness |  | Date |
|  |  |  |
| Name |  |  |
|  |  |  |
| Date |  |  |