|  |  |
| --- | --- |
| [Drafting note: use this template when the bore assessment outcome stipulates no make good measures] | |
| Make Good Agreement  **NO MAKE GOOD MEASURES**  [Insert name of tenure holder]  **Alt[**ABN/ACN/ARBN**]** [number]  and  [Insert name(s) of bore owner]  **Alt[**ABN/ACN/ARBN**]** [number]  [Insert Document ID(s)]  [Document 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.* | |
|  |  |
|  | |

**CONTENTS**

**CLAUSE PAGE**

[REFERENCE SCHEDuLE 1](#_Toc24479208)

[1. DOCUMENT particulars 1](#_Toc24479209)

[2. Map 2](#_Toc24479210)

[SPECIAL CONDITIONS 3](#_Toc24479211)

[1. Confidentiality 3](#_Toc24479212)

[GENERAL CONDITIONS 4](#_Toc24479213)

[1. Definitions 4](#_Toc24479214)

[2. THIS Document 5](#_Toc24479215)

[3. Cooling Off Period 5](#_Toc24479216)

[4. Bore Assessment 6](#_Toc24479217)

[5. Make Good Measures 6](#_Toc24479218)

[6. dispute resolution 6](#_Toc24479219)

[7. GST 6](#_Toc24479220)

[8. Costs 6](#_Toc24479221)

[9. Warranties 7](#_Toc24479222)

[10. varying this Document 7](#_Toc24479223)

[11. General 7](#_Toc24479224)

[12. Interpretation 8](#_Toc24479225)

|  |
| --- |
| REFERENCE SCHEDuLE |

|  |
| --- |
| 1. DOCUMENT particulars |

|  |  |
| --- | --- |
| Item | Particulars |
|  |  |
| Document ID | [Insert the unique number/identifier for this document] |
| Document Date | [Insert the date the last of the Parties executes this Document] |
| 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 Document, 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) does not have an Impaired Capacity; and is not likely to start having an Impaired Capacity. |

|  |
| --- |
| 1. Map |

1. [Drafting note: insert map showing location of Bore(s)]

|  |
| --- |
| SPECIAL CONDITIONS |

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

[Drafting note: these clauses are optional if agreed by both Parties]

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 Document;
       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 Document; 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 Document without the other Party’s prior written consent.

|  |
| --- |
| GENERAL CONDITIONS |

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

| 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 Document, and includes any activity or works reasonably necessary or incidental to works performed under this Document. |
| **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 Document. |
| **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 Document, the preceding negotiations and any information required to be provided under this Document. [Drafting note: include this definition if Special Condition 1 (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 2 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 Document
   * 1. This Document 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) the sections shall be interpreted in descending order of precedence in the order they are listed in clause 2(a).
     3. This Document commences on the Document Date and continues for [insert] years after the Document Date unless terminated in accordance with clause 3.
2. Cooling Off Period

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

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) does not have an Impaired Capacity and is not likely to start having an Impaired Capacity.
2. Make Good Measures

Because the Bore(s) does not have an Impaired Capacity and is not likely to start having an Impaired Capacity, the Parties agree that the Tenure Holder is not required to provide the Bore Owner with any Make Good Measures for the Bore(s).

1. dispute resolution
2. Without limitation to any other rights of a Party under this Document, either Party may give a written notice (Dispute Notice) to the other Party if a dispute arises.
3. 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.
4. 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 the Act (sections 425 to 437) 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).
5. GST
   * 1. Terms used in this clause 7 that are defined in the GST Law have the meaning given in the GST Law.
     2. All amounts referred to in this Document are stated on a GST exclusive basis, unless otherwise specified.
     3. If GST is imposed in relation to any supply under this Document 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.
6. 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 8(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 Document.
    2. Despite clause 8(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 [8(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. Where the Tenure Holder reimburses the Bore Owner for an expense or other amount incurred in connection with any wholly or partly creditable acquisition, the amount reimbursed must be net of any input tax credit claimable in respect of that acquisition.
    5. Within 10 Business Days of receiving the information required under clause 8(c)[,](#_bookmark12) the Tenure Holder will submit to the Bore Owner a recipient created invoice for payment of the costs under clause [8(a).](#_bookmark10) 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 it has the capacity to enter into this Document.
     2. The Tenure Holder represents and warrants that it has the capacity to enter into this Document.
2. varying this Document

This Document 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 Document 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 Document to any person who becomes the responsible tenure holder of 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 Document 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 Document unless the waiver is given in writing and expressed to be a waiver.
     5. Any notice given under the Document 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 Document 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 Document will bind and take effect to the benefit of the successors and permitted assigns of the Parties.
     8. The Document may be signed in any number of counterparts, all of which will constitute a single document 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 Document which will remain in full force and effect.
     10. Each Party must do all things reasonably necessary to give full effect to this Document.
     11. The termination of this Document does not affect any rights and obligations under clauses 6 and Special Condition 1 (Confidentiality) and these rights and obligations shall survive termination. [Drafting note: if Special Condition 1 (Confidentiality) is not used, delete this entire sub-clause (k)]
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 Document will limit, alter or affect the meaning or operation of the Document.
     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 Document is not a Business Day, the act must be done by the person on or by the next Business Day.

**EXECUTED** as a deed.

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

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