

VicRoads Non-Potable Water Supply Agreement

Supplier Name:

Purchaser / Contractor Name:



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Particulars

Parties

| The Supplier: | |
|---------------|--|
| Name: | |
| ABN: | |
| Address: | |

| The Purchaser/Contractor: | |
|---------------------------|--|
| Name: | |
| ABN: | |
| Address: | |

Background

- The Supplier has agreed to sell and supply non-potable water to the Purchaser on the terms and conditions set out in this agreement.
- The Purchaser intends to use the non-potable water for the purpose of undertaking the road project on the project site.
- VicRoads has awarded the tender for the construction of the road project to the Purchaser and is the Principal under that contract.
- The purpose of this agreement is to set out the terms and conditions upon which:
 - the Supplier will sell and supply non-potable water
 - the Purchaser will be supplied with, and is authorised to use, non-potable water on the project site.

Formal Instrument of Agreement

As a record, the parties have executed this agreement.

This agreement made this day of:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| D | D | M | M | Y | Y | Y | Y |
|---|---|---|---|---|---|---|---|

between

of

(here after called the Supplier) and the

of

(here after called the Purchaser).

The Supplier:

| Signed on behalf of the Supplier by its duly authorised delegate in the presence of: | |
|--|--|
| Name: | |
| Title: | |
| Witness: | |

The Purchaser:

| Signed on behalf of the Supplier by its duly authorised delegate in the presence of: | |
|--|--|
| Name: | |
| Title: | |
| Witness: | |

Operative Provisions

1. Definitions and Interpretation

| In this agreement the following definitions apply: | |
|--|---|
| Agreed quantity of non-potable water | the volume of non-potable water to be supplied by the Supplier in Schedule 1 |
| Agreement | this document, including all attachments |
| Approval | any approval, permit, licence or consent required in relation to the supply and use of non-potable water |
| Commencement date | the date on which this agreement is executed |
| EIP | the Environmental Improvement Plan to be prepared by the Purchaser under Clause 8 to VicRoads' satisfaction and attached to this document as Appendix A |
| EPA | the Victorian Environment Protection Authority established under Part 2 (5) of the <i>Environment Protection Act 1970</i> |
| Non-potable water | means the treated waste water supplied and sold to the Purchaser by the Supplier in accordance with this agreement |
| Point of supply | means the point at which the non-potable water is supplied to the Purchaser for use on the project site as specified in Schedule 1 |
| Project site | the area in which the non-potable water must only be stored or used and specifically is the site specified in Schedule 1 and in the Environment Improvement Plan (EIP). |
| Purchaser | the Purchaser of the non-potable water under this agreement and includes its officers, employees, contractors, consultants and agents |
| Quality | means the standard of non-potable water specified in Schedule 1. |
| Road project | means the road works specified in Schedule 1. |
| Shall | the use of this term indicates that the requirement is mandatory. |
| Supplier | means the vendor of the non-potable water as described in this agreement and its associates and successors. |
| Term of agreement | means the duration of this agreement specified in Schedule 1. |

2. Previous Agreements

2.1 This Agreement replaces all previous agreements between the Supplier and the Purchaser relating to the sale and supply of non-potable water for the project site.

3. Ownership of Non-potable Water

- 3.1. Subject to the Supplier's compliance with Clause 5.5, the parties agree that ownership and risk in relation to the non-potable water will pass to the Purchaser at the point of supply.
- 3.2. Prior to the Purchaser accepting the non-potable water, the Supplier must supply documentation that supports the quality assurance specifications of the non-potable water.

4. Method of Charging

- 4.1. The Purchaser shall pay the Supplier the fees set out in Schedule 1 in relation to the sale and supply of the non-potable water.
- 4.2. The Supplier will invoice the Purchaser on a monthly basis and payments are to be made in accordance with the payment conditions specified on the invoice, which will be no less than 28 days from the date of invoice.

5. Supplier's Obligations

5.1. Subject to Clause 6.2, the Supplier agrees to supply the agreed quantity of non-potable water at no less than the quality specified in Schedule 1, to the point of supply and from the date nominated by the Purchaser in writing for the term.

Variation to agreed quantity of non-potable water

- 5.2. The Supplier may sell and supply less than the agreed quantity of non-potable water to the Purchaser in the case of a disruption to supply that is beyond the Supplier's control, including:
- accident, strike, civil commotion, natural disaster or such other incident
 - the level of output from the Supplier's plant and infrastructure falling to a level precluding or limiting supply
 - the non-potable water falling below the standards of the quality specified in Schedule 1 to this agreement
 - the Supplier or the Purchaser receiving from the EPA, or such other statutory body, a direction requiring the supply of non-potable water to the project site to cease
 - the cancellation of any approval relating to the treatment, sale, supply and use of non-potable water unless that event is caused by the negligent act or omission of the Supplier or the breach of this agreement by the Supplier.
- 5.3. In the case of one of the events outlined in Clause 5.2, the Supplier shall notify the Purchaser of any disruption to the supply of non-potable water as soon as reasonably practicable.
- 5.4. The Supplier shall sell and supply less than the agreed quantity of non-potable water to the Purchaser if the Purchaser has requested the Supplier to reduce the quantity due to changes in rainfall levels, soil compaction, site activities, landscaping, site conditions (including dust suppression) and any other relevant factors.

Water Quality and Monitoring

- 5.5. The Supplier will undertake monitoring of the non-potable water in accordance with the requirements of any EPA licence applying to the operation of the facility (e.g. waste water treatment plant) and to the supply of the non-potable water at no less than the quality specified in Schedule 1. Reference should be made to the EPA Publication 701, Sampling and Analysis of Waters, Wastewaters, Soils and Wastes (part of the Industrial Waste Resource Guidelines (2009) and the Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (Phase 1) (2006).
- 5.6. The Supplier shall have a well documented and proven treatment and monitoring program in place to ensure the water is 'fit for purpose'. The water quality shall be monitored using a process that will detect quality failures prior to the water being supplied to the Purchaser.

- 5.7. The Supplier shall appoint suitably qualified persons to undertake sampling and analysis of the non-potable water in accordance with its EPA licence of the facility (if applicable) and the methodology set out in the EPA Publication 701, Sampling and Analysis of Waters, Wastewaters, Soils and Wastes (part of the Industrial Waste Resource Guidelines (2009).
- 5.8. The Supplier shall make its monitoring program and results of the non-potable water quality available to VicRoads, the Contractor and/or the EPA on request.
- 5.9. If the Supplier is unable to supply the non-potable water at no less than the quality specified in Schedule 1, it shall:
- inform the Purchaser immediately and suspend the supply
 - use its best endeavours to improve the quality of the non-potable water as soon as possible

6. Purchaser's Obligations

- 6.1. The Purchaser agrees to buy and to receive the agreed volume of non-potable water in accordance with the terms of this agreement.
- 6.2. The Purchaser shall only use the non-potable water for the purpose of the road project on the project site specified in Schedule 1 and in accordance with the EIP, and the Purchaser shall not use, transfer or divert the non-potable water outside the project site.
- 6.3. The Purchaser shall obtain and comply with all of the necessary approvals for the transport, delivery, acceptance and use of the non-potable water pursuant to this agreement.
- 6.4. The Purchaser shall comply with the *Environment Protection Act 1970*, *Occupational Health and Safety Act 2004*, EIP and with all the relevant requirements of EPA Publication 464.2 Use of Reclaimed Water (2003) and the VicRoads' Integrated Water Management Guidelines and any other relevant documentation.
- 6.5. The Purchaser shall ensure that the appropriate operation and maintenance of equipment dispersing the non-potable water occurs, in accordance with the EIP. Adequate training and instructions shall also be given to all staff (including truck drivers) that will be using the equipment or may come into contact with the non-potable water.

7. Additional Amounts of Non-potable Water

- 7.1. The Purchaser may request the Supplier to supply additional amounts of non-potable water (over and above the agreed quantity) provided that:
- the request is in writing
 - any additional cost above what was previously agreed to are agreed in writing by the Purchaser before the additional supply occurs
 - any additional supply shall not result in a breach of the EIP unless it has first been varied in accordance with the terms of this agreement to take account of any additional supply.

8. Environment Improvement Plan

- 8.1. Prior to the use of non-potable water, the Purchaser shall prepare an EIP, in accordance with EPA guidance documents and to VicRoads satisfaction, that describes how it will manage identified environmental and occupational, health and safety risks on the project site.
- 8.2. The EIP shall address, but not be limited to, the following:
- project description and location
 - surrounding land use
 - source and quality of the non-potable water to be supplied
 - environmental and OH&S risk assessment of the non-potable water source, transport, storage and on-site application
 - management of identified risks
 - application techniques
 - on-site management including spill management
 - on-going monitoring
 - auditing requirements
- 8.3. The agreed EIP shall be attached in Appendix A and forms part of this agreement.

9. Signage

- 9.1. The Purchaser shall erect signs on any part of the project site and on any equipment where the non-potable water will be stored, distributed or used, including on fences, as identified in the EIP.

The sign should include the words to the effect:

- WARNING: non-potable water in use
- avoid contact
- do not drink
- do not allow stock to drink

10. Liability and Insurance

- 10.1. The Purchaser agrees to indemnify the Supplier for any loss or damage suffered by the Supplier arising from the use of the non-potable water in a manner which contravenes this agreement to the extent that such loss did not occur as a result of the negligent or deliberate actions of the Supplier and all reasonable steps were taken by the Supplier to mitigate the loss.
- 10.2. The Purchaser shall not do, fail to do, permit to be done or not done, anything which could result in any insurance policy being rendered void or voidable or more costly.
- 10.3. The Supplier agrees to indemnify the Purchaser for any loss or damage suffered by the Purchaser arising out of the supply of non-potable water which does not comply with the water quality specified in Schedule 1 and the EIP to the extent that such loss did not occur as a result of the negligent or deliberate actions of the Purchaser and all reasonable steps were taken by the Purchaser to mitigate their loss.

- 10.4. The Supplier shall not do, fail to do, permit to be done or not permit to be done anything which could result in any insurance policy being rendered void or voidable or more costly.

11. Severability

- 11.1. Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

12. Variation

- 12.1. This agreement may be varied by written agreement of the parties.

13. Defaults and Termination

- 13.1. The Purchaser will be in breach of this agreement if it:
- interferes with the non-potable water flow in contravention of the EIP
 - shuts off, reduces or refuses to take the agreed quantity of non-potable water without prior consultation with the Supplier
 - uses or diverts the non-potable water to land other than the project site
 - treats, distils or mixes the non-potable water with any other water, compound or chemical in contravention of the EIP
 - fails to pay any fees owing to the Supplier by the relevant due date
 - disregards public health and/or animal safety by using the non-potable water for a purpose not specified in the EIP
 - breaches a condition of any approval or the EIP relating to the use of non-potable water
- 13.2. The Supplier may serve a Default Notice on the Purchaser requiring it to rectify the breach of this agreement within a reasonable amount of time, having regard to the seriousness of the breach.
- 13.3. The Supplier may terminate this agreement if:
- the Purchaser fails to comply with the Default Notice for more than 30 days
 - there is a risk that continuing to supply the Purchaser with non-potable water may threaten the health or safety of any person or the environment
 - the continued supply would be contrary to any law or policy or requirement of the EPA
 - for reasons beyond its control, non-potable water ceases to be available
- 13.4. Any termination of this agreement shall be without prejudice to any claim, which either party may have against the other in relation to any earlier breach of this agreement.

14. Arbitration

14.1. In the event of a dispute between the parties either party may give to the other a notice that a mediator be jointly appointed by the parties. If the parties fail to agree on a mediator within 5 business days after the notice is given, then within a further 5 business days the parties shall request that a mediator be appointed by the Institute of Arbitrators & Mediators Australia (Victorian Division).

The mediation is to be conducted in accordance with the Institute's Rules for the Mediation of Commercial Disputes. Each party shall co-operate fully with the mediator. Each party shall pay an equal share of the mediator's fees and expenses.

If the dispute does not settle at mediation or is not otherwise resolved within 40 business days from the date of referral to mediation, then the mediation is to end.

14.2. If the dispute has not been resolved within the mediation process in Clause 14.1 that dispute shall be and is hereby referred to arbitration.

Arbitration shall be effected by an arbitrator, who shall be nominated by the Chairperson for the time being of the Chapter of the Institute of Arbitrators Australia (Victorian Division).

14.3. The award of the arbitrator shall be final and binding on the parties. The provisions of the *Arbitration Act 1958* shall insofar as they are not inconsistent with this agreement apply to any reference to arbitration pursuant to this clause.

14.4. The cost of appointment of the person under this clause and the carrying out of any necessary investigation shall be borne equally by the parties.

Schedule 1

| | | |
|--------|--------------------------------------|---|
| Item 1 | Commencement Date | <input type="text" value="D"/> <input type="text" value="D"/> <input type="text" value="M"/> <input type="text" value="M"/> <input type="text" value="Y"/> <input type="text" value="Y"/> <input type="text" value="Y"/> <input type="text" value="Y"/> |
| Item 2 | Term of Agreement | This Agreement starts on the commencement date and continues for with the option to extend |
| Item 3 | Agreed Quantity of Non-potable Water | Up to kL per annum |
| Item 4 | Quality | Class quality in accordance with the EPA Guidelines – attach water quality results  |
| Item 5 | Fees | Water volume charge: \$ / kL for the term of the agreement |
| Item 6 | Method of Delivery | |
| Item 7 | Point of Supply | |
| Item 8 | Road Project | |
| Item 9 | Project Site | |

Appendix A

Environment Improvement Plan

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For further information please phone **13 11 71**
or visit **vicroads.vic.gov.au**



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