

Queensland Bulk Water Supply Authority

SunWater

Service Level Agreement – Flood Management Services

QFCI

JM

Date: 18 | 05 | 11

Exhibit Number: 416

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Date 13/10/2009

Parties

QUEENSLAND BULK WATER SUPPLY AUTHORITY ABN 75450239876 of
240 Margaret Street, Brisbane, Queensland 4000 (**Seqwater**)

SUNWATER LIMITED ACN 131 034 985 of 179 Turbot Street, Brisbane,
Queensland 4000 (**SunWater**)

Background

- A Seqwater is the owner of Wivenhoe, Somerset and North Pine Dams.
 - B Seqwater and SunWater are parties to an agreement dated 5 March 2001 entitled contract No. T5-00/01 for *Operation and Maintenance of Wivenhoe, Somerset and North Pine Dams from 2001 to 2009* as amended by deeds of variation dated 22 November 2004 and 11 August 2005 ("the Contract").
 - C The Contract expired on 30 June 2009.
 - D SunWater provided a range of services under the Contract, including flood management services for Wivenhoe, Somerset and North Pine Dams.
 - E The parties have agreed that SunWater will continue to provide flood management services, and Seqwater will continue to pay SunWater for the provision of those Services, on the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Additional Disclosee has the meaning given in **clause 8.1(c)**.

Agreement means this document including its schedules and attachments, and any other document expressly incorporated by reference.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane.

Confidential Information of a party means information that is by its nature confidential, is designated in good faith by that party as confidential, or the

recipient of the information knows or ought to know is confidential, and includes:

- (a) the New Material (which shall be Confidential Information of Seqwater);
- (b) the Existing Material (which shall be Confidential Information of SunWater);
- (c) any data or information created, collected or captured by SunWater in the course of performing Services (which shall be Confidential Information of Seqwater);
- (d) information relating to the internal management and structure of, or the personnel, policies, systems and strategies of, a party; and
- (e) all trade and business secrets and other confidential information relating to the affairs or business of a party,

but does not include information which:

- (f) is or becomes public knowledge (other than by a breach of this Agreement); or
- (g) the recipient of the information can demonstrate was lawfully known to it prior to its disclosure by other party (or, in the case of paragraphs (a) and (c), its creation, development, collection or capture).

Contract means the agreement dated 5 March 2001 entitled contract No. T5-00/01 for *Operation and Maintenance of Wivenhoe, Somerset and North Pine Dams from 2001 to 2009* as amended by deeds of variation dated 22 November 2004 and 11 August 2005.

Contract Material means New Material and Existing Material.

Corporations Act means the *Corporations Act 2001* (Cth) and the *Corporations Regulations* made under it, as amended from time to time.

Dayworks Rates means the dayworks rates as provided for in the Contract.

Dispute means any dispute, disagreement, claim, controversy, demand, proceeding, suit, litigation, action or cause of action under this Agreement.

Effective Date means 1 July 2009.

Existing Material means Material, other than New Material, that is:

- (a) incorporated into New Material by or on behalf of a party; or
- (b) supplied or required to be supplied under this Agreement by a party.

Fees means the fees specified in the Service Schedule in relation to the Service, payable by Seqwater to SunWater.

Flood Operations Manuals means:

- (a) Manual for Operational Procedures for Flood Mitigation for Wivenhoe Dam and Somerset Dam; and
- (b) Manual of Operational Procedures for Flood Releases from North Pine Dam;

prepared under the *Water Act 2000*.

Insolvency Event means any of the following:

- (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 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 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) 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 includes all present and future rights in relation to copyright, trade marks, designs, patents, trade, business or company names, trade secrets, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

Liability means any debt, obligation, claim, loss, damage, cost (including legal costs on a full indemnity basis), expense or liability of any kind and howsoever arising, including penalties, fines and interest and including those which are prospective or contingent and those which for the time being are not ascertained or ascertainable.

Material means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any form and on any media.

New Material means Material that is created, written, developed or otherwise brought into existence by or on behalf of SunWater in the course of performing the Service.

Personal Information, in relation to a Privacy Law, has the definition given in that Privacy Law.

Personnel of an entity means that entity's officers, employees, agents and contractors and each of their respective Personnel.

Privacy Law means each of:

- (a) the *Privacy Act 1988* (Cth); and
 - (b) the *Information Privacy Act 2009* (Qld)
- (as applicable to the relevant party).

Service means the service to be provided by SunWater to Seqwater under this Agreement, as described in the Service Schedule.

Service Schedule means the Schedule to this Agreement that describes the Service.

Term means the term of this Agreement under **clause 2**.

1.2 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

- (iv) 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;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it;
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document; and
 - (xii) a requirement for a Party to act in 'good faith' does not require that party to act contrary to its own commercial considerations.
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2 Term

2.1 Initial Period

This Agreement commences on the Effective Date, and continues until 30 June 2010 unless otherwise terminated in accordance with its terms.

2.2 Termination

This Agreement may be terminated by:

- (a) agreement in writing between the parties to terminate the Agreement on a particular date;
- (b) a party under **clause 12**.

3 Service

3.1 Supply of Service

Commencing on the Effective Date, and continuing during the Term, SunWater must provide the Service to Seqwater on the terms of this Agreement.

3.2 Service requirements

The service requirements are described in the Service Schedule attached to this Agreement.

SunWater must:

- (a) Provide the Service in accordance with the Service Schedule;
- (b) provide the Service to Seqwater using appropriately qualified and experienced personnel; and
- (c) act in accordance with reasonable directions from Seqwater in respect of SunWater's performance of the Service.

3.3 Standard of Service

SunWater shall perform the Service in a diligent manner and to a standard which is, at a minimum, the higher of:

- (a) the standard to which the Service was performed over the 24 months prior to the Effective Date;
- (b) the standard of skill and care expected of a contractor experienced in the provision of the Service.

3.4 Cooperation

In performing the Service, SunWater must, and must ensure that its Personnel:

- (a) cooperate with Seqwater and its Personnel;
- (b) report to Seqwater's relevant Personnel any problems encountered that SunWater considers (acting reasonably) materially:
 - (i) affect Seqwater's operational capabilities; or
 - (ii) impact upon this Agreement or the Services provided; and
- (c) observe and comply with all lawful requests, directions and instructions which are made by Seqwater's relevant Personnel (acting reasonably).

3.5 Security and access

- (a) Each party must ensure that its Personnel who are at the premises of the other party in connection with the provision or receipt of the Service comply with the other party's then current:
 - (i) security requirements; and
 - (ii) workplace health and safety policies.
- (b) A party may refuse personnel access to its premises, or require Personnel to leave its premises, if they do not comply with the requirements in this clause 3.5.
- (c) Subject to clause 3.5(d), a party must provide the other party with at least 7 days prior written notice of any change to that party's security requirements or workplace health and safety policies or procedures.

- (d) In circumstances where a party identifies an imminent or serious risk with respect to workplace health and safety that necessitates a change in its workplace health and safety policies or procedures, it may give the other party immediate notice of the change, and the other party will take all reasonably practicable steps to ensure its Personnel engaged in providing the Service at the premises of the other party comply with the changed procedure or policy.

3.6 Subcontracting

- (a) SunWater must not subcontract the performance of, or otherwise arrange for another entity (other than its own employees) to perform the Service without Seqwater's prior written consent (which must not be unreasonably withheld).
- (b) If SunWater subcontracts the performance of the Service, SunWater is responsible for the acts or omissions of its subcontractors in the course of performing the Service as if they were SunWater's own acts or omissions.
- (c) Nothing in this clause 3.6 affects any contract entered into by SunWater prior to the date of this Agreement.

3.7 Exclusion of Personnel

- (a) Seqwater may exclude at any time by written notice to SunWater any person engaged by SunWater to provide the Service if Seqwater reasonably believes that person is unsuitable to carry out the Service, or if that person is not performing their duties to the reasonable satisfaction of Seqwater.
- (b) This clause 3.7 does not affect SunWater's responsibility for the performance of its obligations under this Agreement, or for the acts and omissions of any person engaged by it to perform the Service.

3.8 Equipment

Unless otherwise agreed between the parties, SunWater must at its own cost provide all the materials, equipment, consumables and utilities (including electricity) reasonably necessary to perform the Service.

4 Reporting

4.1 Reporting

SunWater must provide such reporting and documentation in respect of the Service, as outlined in the Service Schedule.

5 Records

5.1 Maintenance of Records

SunWater must maintain records, including timesheets or other method of recording time and records of all activities and all costs, expenses and

overhead in respect of which Fees are payable. The records to be maintained under this clause 5.1 include all records reasonably necessary to enable Seqwater to confirm that the Fees have been calculated in accordance with the Agreement and otherwise to evidence the proper performance of SunWater's obligations under, and in compliance with, this Agreement.

5.2 Retention of records

SunWater must retain all records required to be maintained by clause 5.1 for at least seven years from the date on which the record was created.

5.3 Seqwater to have access

To the extent permitted by law, SunWater will, upon reasonable prior written notice, allow and authorise Seqwater to have reasonable access to SunWater's records and archives relating to the Service (including records and archives in relation to activities similar to the Services undertaken by the SunWater on its own account, or for SunWater by third parties, prior to the Effective Date) for purposes related to the transactions contemplated by this Agreement.

5.4 SunWater to have access

If any records or archives are transferred to Seqwater, then Seqwater will allow and authorise SunWater to have access to those records and archives for the purpose of providing the Service under this Agreement.

5.5 Records management agreement

If the parties enter into a separate records access agreement in relation to access to SunWater's records and archives by Seqwater, then that Agreement shall apply to the exclusion of clauses 5.3 and 5.4.

6 Payments

6.1 Fees

During the Term Seqwater must pay the Fees contained in the Service Schedule to SunWater on the terms of this Agreement, provided that, Seqwater (acting reasonably) will not be obliged to pay that part of the Fees where the Service has not been provided or completed in accordance with this Agreement.

6.2 Invoice

Unless otherwise agreed between the parties, SunWater will invoice Seqwater monthly in arrears in respect of the Fees payable by Seqwater.

6.3 Supporting documentation

SunWater will provide supporting documentation and information related to an invoice under this Agreement.

6.4 Disputes

If Seqwater queries or disputes a fee included in an invoice, SunWater may reimburse Seqwater for any overpayments if the invoice is found to be in error.

6.5 Payment

- Subject to **clause 6.3** and **clause 6.4**, if SunWater issues a correctly rendered invoice to Seqwater in accordance with this Agreement, then Seqwater must pay that invoice within 30 days after receiving it.

If Seqwater fails to make payment on the due date for payment in accordance with this clause, such payment shall bear interest at the rate of interest equal to the Suncorp-Metway Limited variable business lending rate applicable from time to time plus two percent (2%) and if at any time this rate ceases to be published, then such other suitable replacement bank rate per annum as may be determined after request by SunWater or Seqwater by a nominee of the President of the Institute of Chartered Accountants in Australia (Queensland Branch), or such other rate agreed between the Parties.

7 Intellectual Property Rights

7.1 Material

- (a) If SunWater develops New Material in the course of providing the Service to Seqwater under this Agreement, then SunWater will retain all rights, title and interest in that New Material.
- (b) This **clause 7.1** does not affect the ownership of Intellectual Property Rights in any Existing Material.

7.2 Non-infringement warranty

SunWater warrants that, to the best of its actual knowledge as at the Effective Date, the exploitation by Seqwater of Material provided by SunWater in the course of providing the Service does not infringe the Intellectual Property Rights of any other person.

8 Confidentiality

8.1 No unauthorised use or disclosure

A party must not, during or after the Term, use the other party's Confidential Information for any purpose other than the provision of the Service, nor disclose or authorise the disclosure of any such information to any other entity except:

- (a) with the other party's prior written consent;
- (b) as required by law; or
- (c) to the first party's Personnel and professional advisors (Additional Disclosees) on a need-to-know basis for the purposes of this Agreement.

8.2 Additional Disclosees

- (a) If a party discloses the other party's Confidential Information to any Additional Disclosee, that party must ensure that all such Additional

Disclosees keep that information confidential on the terms provided in clause 8.1.

- (b) That party must, on request by the other party, arrange for any Additional Disclosee to execute a document in a form reasonably required by the other party to protect confidentially of the information.

8.3 Breach of confidentiality

If a party becomes aware of a suspected or actual breach of this **clause 8** by the other party or an Additional Disclosee, that party must immediately notify the other party and take reasonable steps required to prevent the suspected or actual breach.

8.4 Return of Confidential Information

Each party must return or destroy Materials containing the other party's Confidential Information which are in the first party's possession or control when:

- (a) directed by the other party;
- (b) those Materials are no longer required by the first party; or
- (c) this Agreement ends (unless otherwise agreed by the parties).

8.5 Information Privacy

Each party must comply with the Privacy Law in relation to any Personal Information disclosed to or collected by it in the course of exercising its rights or performing its obligations under this Agreement.

9 Liability

9.1 Limitation of Liability

Subject to clause 9.2 and excluding any liability arising as a result of SunWater's negligent act or omission or breach of this Agreement, SunWater's liability to Seqwater arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be limited to the Fees. Nothing in this clause shall be read or applied so as to purport to exclude, restrict or modify, or have the effect of excluding, restricting or modifying the application in relation to the performance of the Services pursuant to this Agreement.

9.2 Consequential loss excluded

Neither party shall be liable to the other for any indirect or consequential loss, or loss of revenue, profit or anticipated savings, or loss, damage or destruction of data.

9.3 Contribution of other party

A party's liability to the other party is reduced to the extent (if any) that the other party causes or contributes to the relevant loss.

10 Insurance

10.1 SunWater insurance policies

SunWater must maintain during the Term (and, in the case of the professional indemnity insurance, for three years after the expiration of the Term):

- (a) public liability and product liability insurances of at least \$20 million;
- (b) professional indemnity insurance of at least \$20 million; and
- (c) workers' compensation insurance as required by law.

with a reputable insurer which is reasonably satisfactory to Seqwater.

10.2 Evidence of insurance

SunWater must, on request of Seqwater, provide Seqwater with certificates of currency for the required insurances.

11 Dispute resolution

11.1 Informal resolution of disputes

Each party shall endeavour to resolve any Dispute with the other by direct negotiation, in good faith, between the relevant officers of the parties.

11.2 Dispute Notice

If there is a Dispute between the parties which is not resolved under clause 11.1, then a party may send the other party a notice (**Dispute Notice**) setting out the issues in Dispute between them.

The parties' respective chief executive officers must meet to discuss and endeavour to resolve the Dispute within 14 days after receipt of a Dispute Notice.

11.3 No litigation in absence of process

The applicable procedures in this **clause 11** are conditions precedent to the commencement of any litigation in relation to a Dispute referred to in this **clause 11**.

A party may, however, seek interlocutory relief in respect of any such Dispute from any court having jurisdiction.

12 Termination for default

A party may immediately terminate this Agreement by written notice to the other party if:

- (a) the other party does not carry out any material obligation under this Agreement and, in the case of a default which is capable of remedy, does not remedy that default within 20 Business Days after the party serves notice on the other party requiring the default to be remedied; or

- (b) an Insolvency Event occurs in relation to the other party.

13. Notices

13.1 General

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in English and may be given by an agent of the sender.

13.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for notices.

13.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

SunWater:

Address: Level 10, 179 Turbot Street
Brisbane QLD 4000
PO Box 15536
City East QLD 4002

Fax: [REDACTED]

Attention: Chief Executive Officer

Seqwater:

Address: Level 3, 240 Margaret Street
Brisbane QLD 4000
PO Box 16146
City East Q 4002

Fax: [REDACTED]

Attention: Peter Borrowes

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

13.4 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

13.5 Communications by fax

- (a) A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee.
- (b) That report is evidence that the addressee received the fax in full at the time indicated on that report.

13.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

14 GST

14.1 Construction

In this clause 14:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

14.2 Consideration GST exclusive

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

14.3 Payment of GST

If GST is payable by a party or by the representative member for a GST group of which the party is a member, on any supply made under this Agreement, the other party will pay to the first party an amount equal to the GST payable on the supply.

14.4 Timing of GST payment

The other party will pay the amount referred to in **clause 14.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

14.5 Tax invoice

- (a) The first party must deliver a tax invoice or an adjustment note to the other party before the first party is entitled to payment of an amount under **clause 14.3**.

- (b) The other party can withhold payment of the amount until the first party provides a tax invoice or an adjustment note, as appropriate.

14.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a party under this Agreement, the amount payable by the other party under **clause 14.3** will be recalculated to reflect the adjustment event and a payment will be made by one party to the other as the case requires.

14.7 Reimbursements

Where a party is required under this Agreement 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, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

15 General

15.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

15.2 Amendment

This Agreement may only be varied or replaced by a document executed by the parties.

15.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

15.4 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.

15.5 Consents

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

15.6 Further steps

Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

15.7 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.

15.8 Assignment

- (a) A party must not assign or deal with any right under this Agreement without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

15.9 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

15.10 Entire understanding

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. Neither party is liable to the other party in respect of those matters.
- (c) No oral explanation or information provided by a party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the parties.

15.11 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

15.12 Survival of terms

Notwithstanding the expiration or termination of this Agreement for any reason, clauses 5, 6.3, 7, 8, and 14 shall survive and continue in force.


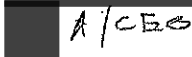
Executed as an Agreement.

Signed as a Déed.

Signed on behalf of

**QUEENSLAND BULK WATER SUPPLY
AUTHORITY ABN 75450239876**

by its duly authorised representative,
Peter Borrows, Chief Executive Officer.

) 
)  A/CEO
) _____
) *PB* Peter Borrows
)
)
)

in the presence of:



Signature of Witness

TOM LAKE

Name of Witness (print)

Signed for and on behalf of **SUNWATER**)
LIMITED ACN 131 034 985 by its Chief)
Executive Officer under Power of Attorney)
No. 711767649 who warrants that the Power)
of Attorney is valid and has not been revoked)



Peter Boettcher

in the presence of:

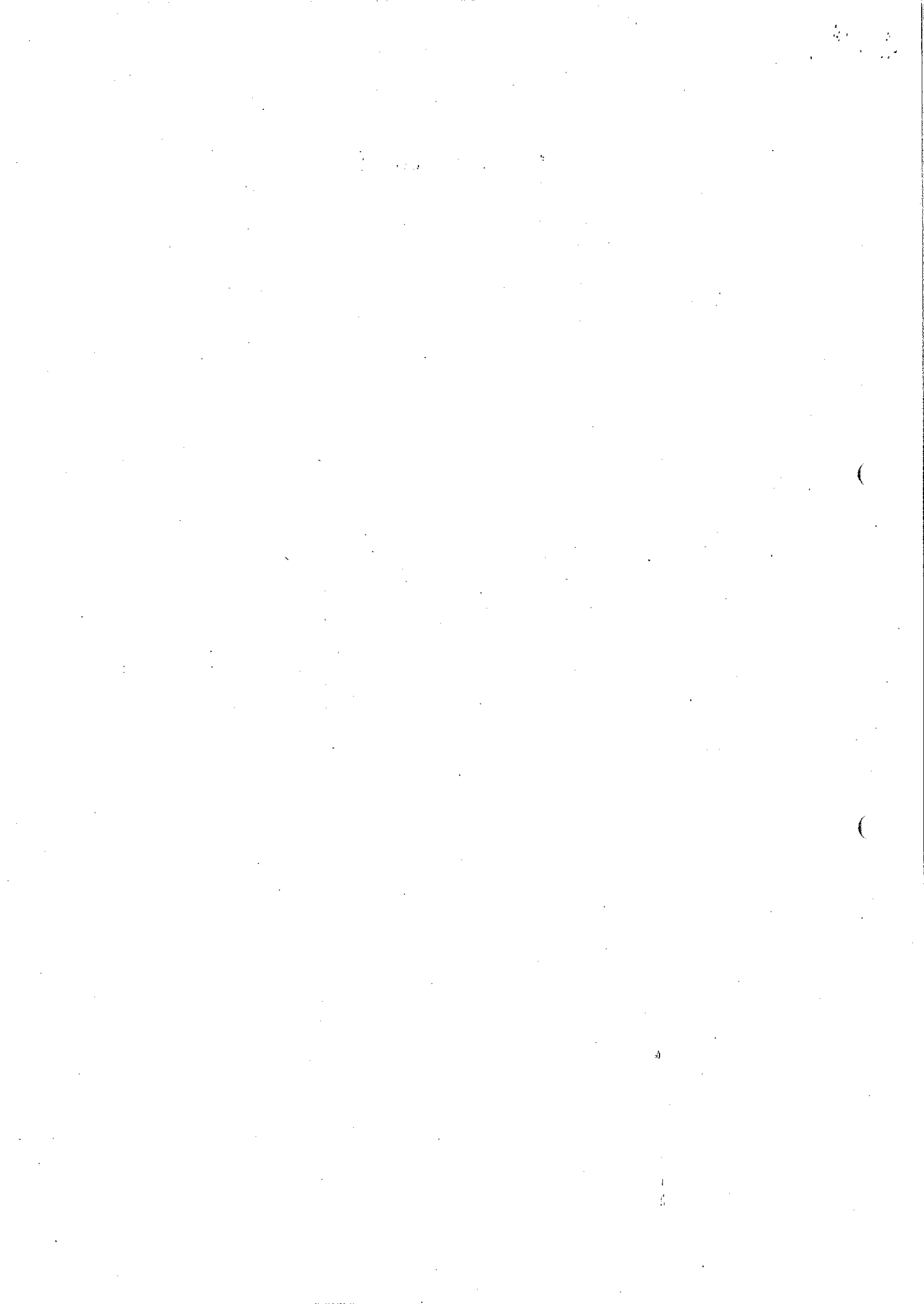


Signature of Witness

Marla Noemla Coimbra
Solicitor

Name of Witness (print)

Service Schedule



SERVICE SCHEDULE

FLOOD MANAGEMENT SERVICES

FOR

**WIVENHOE, SOMERSET AND NORTH PINE
DAMS**

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1 GENERAL

Scope of Work

SunWater shall provide flood management services for Wivenhoe, Somerset and North Pine Dams in accordance with the provisions of this Service Schedule, the Emergency Action Plans, Standing Operating Procedures, the Flood Operations Manuals.

SunWater's Organisation

SunWater will provide the following information in relation to the provision of services:

- Organisation Chart.
- Name, curriculum vitae and contact details for nominated Duty Flood Engineers.
- Name and contact details for nominated flood duty staff.
- Name and contact details for any sub-contractors together with details of functions to be carried out by the sub-contractor.

Should SunWater have a requirement to change organisational arrangements, it shall immediately submit details of and reasons for such changes to SeqWater.

Emergency Action Plans

Emergency Action Plans (**EAPs**) detail procedures to be followed in the event that safety problems are developing at a dam arising from any cause or event including floods. Separate EAPs have been prepared for:

- Wivenhoe Dam and Somerset Dam
- North Pine Dam

Arising from changes of SunWater's personnel there may be a requirement to amend the Register of Contact persons within an EAP. SunWater shall promptly comply with the requirements of the EAPs for notification of any such changes.

Seqwater is responsible for document control of EAPs. SunWater shall comply with the requirements of the EAPs.

Standing Operating Procedures

A Manual of Standing Operating Procedures (**SOPs**) details procedures to be followed in both the normal operation of a dam and during periods of flooding or high risk operation. Separate SOPs have been prepared for each dam.

In July each year SunWater shall review the SOPs and advise Seqwater, in writing of either:

- any improvements recommended for SOPs, or
- confirmation that SOPs remain satisfactory.

Seqwater is responsible for document control of SOPs. SunWater shall comply with the requirements of the Standing Operating Procedures.

Flood Operations Manuals

The Flood Operations Manuals set out detailed procedures and working instructions that are to be followed by SunWater during a flood event. In July each year SunWater shall review the Flood Operation Manuals and advise Seqwater, in writing, of either:

- any improvements recommended for the Manuals, or
- confirmation that the Manuals remain satisfactory.

Seqwater is responsible for document control of the Manuals and obtaining any necessary approval under the *Water Supply (Safety and Reliability) Act 2008* (Qld). SunWater must comply with the requirements of the Manuals.

Workplace Health and Safety

SunWater shall have a quality accredited Workplace Health and Safety Management System in accordance with ISO 4801 for all activities and services carried out under the Agreement.

Environmental Management

SunWater shall have a quality accredited Environmental Management System in accordance with ISO 14001 for all activities and services carried out under the Agreement.

Quality Management

SunWater shall have a quality accredited Quality Management System in accordance with ISO 9001 for all activities and services carried out under the Agreement.

Document Control and Storage

Seqwater will provide to SunWater, as soon as practicable after execution, an original and five copies of the Agreement.

Seqwater will also provide to SunWater three copies of each of the following documents:

Wivenhoe Dam and

Emergency Action Plan

Somerset Dam	Manual of Flood Operational Procedures
Wivenhoe Dam	Standing Operating Procedures
Somerset Dam	Standing Operating Procedures
North Pine Dam	Emergency Action Plan Standing Operating Procedures Manual of Flood Operational Procedures

2 TRAINING

SunWater shall ensure that only staff and subcontractors who have been adequately trained, specifically in relation to the tasks to be undertaken under the Agreement, are permitted to perform the Service.

During the performance of the services SunWater shall provide additional training for:

- new staff or subcontractors' Personnel.
- reinforcement or enhancement of training
- real time flood model and flood operations

Payment for training required during the performance of the Service shall be covered by the total annual cost specified in clause 7 of this Schedule.

3 PLANNED MAINTENANCE

In February each year, SunWater shall review the operation of the Flood Control Centre and Flood Alert Network and prepare an annual report on upgrade and maintenance requirements for the following financial year. This information shall be presented to Seqwater and Seqwater will issue to SunWater before the end of May each year an approved planned maintenance program. This program will confirm the planned maintenance tasks to be carried out by SunWater in the coming year.

Seqwater is not bound to accept any offers for planned maintenance prepared by SunWater. Seqwater is also not bound to use SunWater in any role for any planned maintenance other than the approved planned maintenance program and reserves the right to make other arrangements to carry out other maintenance at its sole discretion.

Payment for approved planned maintenance program will be in accordance with the relevant approved financial arrangements advised in writing by Seqwater. Depending on the nature of work to be carried out under this item such financial arrangements could include lump sums, dayworks, nominated sub-contracts and sub-contractors both with management fees for SunWater or a combination thereof. Such arrangements shall be as proposed by SunWater in the Annual Report on Planned Maintenance or as otherwise agreed.

Payment for preparing the Annual Report for discussions and negotiations on the approved program for planned maintenance shall be covered by the total annual cost specified in clause 7 of this Schedule.

4. UNPLANNED MAINTENANCE

Emergency Maintenance

In the event of failure of or damage to any equipment or other components within the Flood Control Centre or Flood Alert Network that results in a situation that is unsafe for personnel of SunWater, sub-contractors or Seqwater or for any member of the public or places any of the assets of Seqwater or other affected parties at risk, SunWater shall immediately take all steps necessary to eliminate, or reduce the risk as far as is reasonably possible, or reinstate the component to a safe condition.

SunWater shall ensure that relevant authorities and responsibilities for its key staff are implemented so that staff respond to emergency situations in an effective and timely manner.

Seqwater shall be advised of an emergency situation as soon as practicable after the situation arises. Nevertheless the requirements to respond to an emergency to protect personnel and the public and to ensure asset security shall take precedence over notifying Seqwater.

SunWater shall, in managing the response to an emergency situation, act to limit the costs incurred to those costs that are reasonable.

Where expenditure on any emergency maintenance activity is likely to exceed \$10,000 SunWater shall endeavour to seek confirmation of Seqwater's approval for each activity before it is implemented.

Immediately after an emergency situation has ended SunWater shall prepare and submit a report to Seqwater.

Payment for emergency maintenance shall be as follows:

- Payment for SunWater's Personnel shall be at the applicable hourly rates contained in clause 7 of this Schedule for the actual hours involved in the emergency situation, including hours paid to SunWater's personnel under applicable industrial awards for standby, callout or minimum duty and including preparation of report on emergency maintenance.
- Payment for sub-contractors or other services shall be at the actual cost incurred by SunWater.
- Payment for materials or supplies shall be at actual cost.

Non-emergency Maintenance

In the event that during the Term there is a failure of equipment or a situation arises which necessitates repair or modification of any equipment or other assets which situation is not an emergency situation, but is not appropriate to delay and include in the planned maintenance program, SunWater shall implement within a reasonable period of time the following action:

- If the estimated cost of the remedial action is less than \$1,000 SunWater shall proceed forthwith to repair the equipment or remedy the situation.
- If the estimated cost of the remedial action is \$1,000 or more SunWater shall report the situation to Seqwater together with a quotation for remedial work and with description of the work proposed. Upon receipt of Seqwater's approval SunWater shall carry out the approved remedial work.

Details of all non-emergency unplanned maintenance shall be included in SunWater's monthly report. Payment for non-emergency maintenance shall be as follows:

- Payment shall be as approved by Seqwater when responding to SunWater's report and quotation for such work. Depending on the nature of the work to be carried out, the financial arrangements for such work could include lump sums, dayworks, nominated sub-contracts and sub-contracts both with management fees for SunWater or a combination thereof.

5 FLOOD PLANNING AND FLOOD CONTROL CENTRE

General

SunWater shall be prepared to competently deal with flood events in accordance with the requirements of the SOPs, the EAPs and the Flood Operations Manuals.

SunWater shall establish a dedicated Flood Control Centre. SunWater shall maintain the Centre in good operating order at all times throughout the Term.

The Flood Control Centre shall be located:

- In an area in Brisbane where reliable reception of telemetry of ALERT data from Mt Glorious repeater station is available
- On land not subject to flood inundation and where reasonable access during major flood events is available
- In an area reasonably accessible to key staff during major flood events.

In the event that the location adopted by SunWater necessitates additional repeater stations for radio telemetry of ALERT data, such additional stations shall be provided by SunWater at SunWater's cost.

As an absolute minimum the Flood Control Centre shall include:

- a dedicated area within premises occupied by SunWater with appropriate locks for security
- workstations for 3 persons
- adequate storage for relevant documents
- climate control operating 24 hours per day, 7 days per week
- communications facilities including telephone, facsimile and radio base station with links to each dam
- emergency standby power facilities, capable of continuously operating the Centre and its equipment, including climate control
- uninterruptible power supply for all computer equipment with minimum 2 hour capacity
- accommodation/facilities to allow staff to remain at the centre on a 24 hour basis in a major flood emergency
- adequate room to comfortably operate hardware and software supplied by Seqwater.

Access to the Flood Control Centre shall be restricted to members of SunWater's project team and other persons authorised by Seqwater and notified in advance to SunWater.

If the Flood Control Centre is located at premises occupied by SunWater, Seqwater will ensure that its employees and subcontractors:

- use entrances and exits nominated by SunWater;
- comply with those security measures directed by SunWater;
- carry suitable identification;
- do not examine, copy, remove or otherwise interfere with anything on the premises, except in accordance with this Agreement;
- comply with the reasonable directions of SunWater pertaining to the premises, and workplace health and safety;
- reinstate the premises if any damage is caused as a result of their access.

Payment for providing the Flood Control Centre, including provision of space, furniture, equipment, ancillary computers and services shall be covered by the total annual cost specified in clause 7 of this Schedule.

Data Collection

Seqwater has installed a network of hydrologic instruments which record in real time a range of data including rainfall and reservoir and river levels. The system is known as ALERT and will be maintained in good operating order by Seqwater. The ALERT data is available through telemetry to support the Real Time Flood Model.

Other data sources which SunWater shall access, as required, include:

- Department of Environment and Resource Management
- Bureau of Meteorology

SunWater shall, at intervals not exceeding one week, check the ALERT system to ensure it is functioning. ALERT checking shall include validation of all data received since the previous checking and validation. Seqwater shall be promptly notified, in writing, which may be by email, of any breakdowns or other defects in the ALERT system.

When probability of spill is high for modest rainfall events and rain is forecast by Bureau of Meteorology, SunWater shall check the ALERT and RFTM system and validate data at key stations on at least a daily basis and more often if necessary to ensure timely response once a flood event has been initiated.

Payment for checking and validating data, and testing ALERT system and RFTM except during a flood event, shall be covered by the total annual cost specified in clause 7 of this Schedule.

Real Time Flood Model

Seqwater will supply to SunWater a real time flood model (RFTM). This system was developed to facilitate the operation of the dams in accordance with the SOPs and the Flood Operations Manuals.

Seqwater will provide to SunWater hardware and software to enable the RTFM to be operated in the Flood Control Centre.

SunWater shall make all arrangements and connections to link the RTFM in the Flood Control Centre to the ALERT system and to the backup RTFM. The cost of the necessary connections will be separately reimbursed by Seqwater at cost. Payment for SunWater's staff involved in arranging and supervising connections and installation of RTFM hardware will be at applicable Dayworks Rates.

During the Term Seqwater may require that the RTFM also be connected to a backup Flood Control Centre. Any costs incurred by SunWater in arranging and supervising any such connection will be at applicable Dayworks Rates.

SunWater shall ensure that the flood response teams for the Flood Control Centre are fully familiar with all the capabilities of the RTFM and are capable of maintaining the RTFM and its connections in operational order and using the RTFM to its full extent during flood events.

Payment for SunWater's involvement with the RTFM shall be as follows:

- for support, maintenance, and intermittent training during the Term, payment shall be covered by the total annual cost specified in clause 7 of this Schedule.
- for annual refresher training as part of annual preparedness payment shall be covered by the total annual cost specified in clause 7 of this Schedule.
- for use during a flood event, payment shall be as set out in clause 4 of this Schedule.

Flood Preparedness

Preparation by SunWater, to deal with flood events shall include:

- preparation of a program, in conjunction with Seqwater, which shall be finalised prior to 31 July each year and which sets out the training schedule for all flood response team members. The flood response team includes all SunWater's operators and flood control centre staff and other staff required to respond to flood events at any of the dams. This program shall also state the names of all staff proposed at each dam and at the flood control centre and the names of any backup flood response team members.

- training of all flood response team members in conjunction with Seqwater prior to 30 September each year. No flood response team members shall provide services at a dam or flood control centre during a flood event if this training has not been satisfactorily completed. Training of flood centre staff shall include simulation of real past events and events up to and including the probable maximum flood with all staff operating at their designated work stations during the training. The RTFM contains a module for these simulations. The simulations shall include:
 - adjustment of flood forecasts due to revised rainfall estimates
 - assessment of capacity to maintain public access at downstream river crossings (for small and medium flood events only) by fine tuning of releases
 - testing of all communications systems
 - procedures for handover at change of shift
 - completion of all logs and other documentation.

Prior to 30 September each year SunWater shall submit to Seqwater a formal Statement of Preparedness. This statement shall include:

- an outline of the training given to the flood response team members
- the names of all flood response team members who have satisfactorily completed training
- an assurance to Seqwater that SunWater is prepared to deal with any flood event
- an assurance that all management and communication channels to be used in a flood event are unambiguous and effective and have been recently tested and found to be satisfactory
- an assurance that all manuals and procedures relating to flood operations have been checked and are correct.

At intervals not exceeding one month SunWater shall ensure that the RTFM remains capable of communicating effectively with the ALERT system. This frequency shall increase when rainfall is forecast and probability of spill is high.

The Bureau of Meteorology currently provides a rainfall service and paging service to warn of storm events. SunWater shall make the necessary arrangements with the Bureau to ensure a continual storm warning service is available to SunWater.

Payment for flood preparedness shall be covered by the total annual cost specified in clause 7 of this Schedule.

6 FLOOD OPERATIONS AND REPORTING

Flood Operation

SunWater shall perform flood operations during flood events in accordance with the relevant provisions of EAPs and SOPs, which refer to the Flood Operations Manuals.

SunWater shall ensure that adequate arrangements are in place within SunWater's organisation to ensure that storm warnings are responded to promptly including notification of key staff required for flood operations at each dam, at the Flood Control Centre and elsewhere.

SunWater, in conjunction with Seqwater, shall mobilise flood response teams to attend each relevant dam and the Flood Control Centre when:

- for Wivenhoe Dam indications are received of an imminent flood which may require flood releases.
- for Somerset Dam indications are received of a significant inflow which may require flood releases.
- for North Pine Dam heavy rain is experienced in the dam's catchment area.

The flood response teams shall report to the dams or Flood Control Centre, as applicable, within the response times prescribed in the SOPs. Sufficient standby teams shall be available to ensure continuous around the clock operation.

Unless otherwise approved by Seqwater, flood response teams per shift shall comprise a Senior Flood Operations Engineer and/or Flood Operation Engineer and sufficient hydrographers/modellers and data checkers to manage operational requirements.

The flood response team shall be sufficiently qualified and trained as prescribed in the relevant SOP's and the flood operation procedures contained in the Flood Operations Manuals. As detailed in Section 5 of this Service Schedule, no staff member shall provide services at a dam during flood operations without having undergone the relevant training within the previous year.

Unless otherwise approved by Seqwater, the flood response team shall remain on duty until the reservoir levels have returned to full supply level and flood operations have ceased.

Payment for SunWater's personnel involved in flood operations at the dams, the Flood Control Centre or elsewhere shall be made at the applicable hourly rates contained in clause 7 of this Schedule for the actual hours involved in the flood event.

Seqwater will also reimburse SunWater for the actual cost of:

- accommodation and meals, if any
- taxis, if any, from home to FCC and return.

Flood Event Report

During the drainage phase of a flood event, the Duty Engineer(s), assisted as appropriate by hydrographers/modellers, shall commence preparation of a Flood Event Report. The Report shall be completed and submitted to Seqwater within 2 weeks of the end of the flood event and shall include:

- the storage situation prior to the event.
- the weather situation.
- involvement of flood response teams.
- details of data collection.
- Communications during the event.
- performance of real time flood model
- flood modelling and management strategies
- a quantification of the flood mitigation benefits of the dams during the event.
- proposed changes (if necessary) to Flood Operations Manuals.

Appendices within the report shall include:

- Flood Control Centre - event logs
- representative cumulative rainfall and IFD curves
- catchment rainfalls
- inflow and outflow hydrographs
- attendance records of flood response teams.

For small flood events of short duration and modest peak discharges abridged versions of Flood Event Reports will be sufficient. The section of the Flood Event Report on details of data collection shall cover all sources of data accessed for the given event and may include:

- ALERT network
- Department of Environment and Resource Management Telephone Telemetry System
- BoM weather forecasts and warnings
- BoM Quantitative Precipitation Forecasts
- Manually observed reservoir levels and river heights.

Payment for Sunwater's personnel involved in preparation of Flood Event Report shall be made at the applicable hourly rates contained in the Dayworks Schedule for actual hours involved in preparation of the report.

7 PAYMENT FOR SERVICES

The total annual cost to maintain the Service, in accordance with the Contract, is \$466,733 per annum, with flood events to be paid for on an hourly rate basis in accordance with the schedule of rates.

Schedule of Rates

Category	Standard Hourly Rate*
Duty Flood Engineers	\$270.00
Senior Data Collector	\$171.00
Data Collector	\$140.00

* a combination of standard hourly rates and overtime rates are used during flood events.