

# Water Supply Agreement

**SOUTH TEXAS WATER AUTHORITY**

a Texas conservation and reclamation district

**SEVEN SEAS WATER (STWA) USA LLC**

a Delaware limited liability company

August 7, 2024

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## **WATER SUPPLY AGREEMENT**

This Water Supply Agreement ("**Agreement**") is made and entered into as of August 7, 2024 ("**Contract Date**") by and between the following parties (each of which is a "**Party**" and which together are the "**Parties**");

- (1) South Texas Water Authority, a conservation and reclamation district established and existing under the laws of the State of Texas, with its headquarters at 2302 East Sage Road, Kingsville, Texas 78363 ("**STWA**"); and
- (2) Seven Seas Water (STWA) USA LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 14400 Carlson Circle, Tampa, Florida 33626 ("**SSW**").

### **RECITALS**

- (A) STWA is a conservation and reclamation district that is composed of territory described by Section 2, Chapter 436, Acts of the 66th Legislature, Regular Session, 1979, as such territory may have been subsequently modified by Applicable Law. STWA was created to provide dependable water supplies to Customers in central Kleberg County and western Nueces County. STWA is committed to working with its wholesale Customers to maintain water supplies for current and future needs. As of the Contract Date, STWA obtains all water supplies to satisfy the demands of its Customers pursuant to a water supply agreement with the City of Corpus Christi. STWA desires to obtain water supplies from SSW as the primary source of water supply in order to satisfy the demands of its existing and future Customers.
- (B) SSW is in the business of designing, constructing, financing, owning and operating facilities for the production and treatment of water supplies for sale to retail water utilities, but does not itself act as a retail public utility, water utility, public utility or utility (as those terms are defined in Texas Water Code § 13.002) or otherwise subject to the jurisdiction of the PUCT.
- (C) SSW desires to deliver and sell to STWA, and STWA desires to receive and purchase from SSW, Product Water produced by the Project, on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following terms shall have the meanings set forth below.

"**AAA**" has the meaning set forth in Section 17.4.

"**Additional STWA Debt**" has the meaning set forth in Section 9.5(f)(i).

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, where control entails the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, "control" means having fifty percent (50%) or greater ownership of voting securities of the Person controlled or, without such ownership, having the right by contract or otherwise to direct the management and policies of the Person controlled.

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"Agreement" has the meaning set forth in the Preamble.

"Annual Maintenance Period" has the meaning set forth in Section 8.5(a).

"Anti-Corruption Laws" has the meaning set forth in Section 18.1(a)(i).

"Anti-Corruption Terms" has the meaning set forth in Section 18.1(b).

[REDACTED]

"Applicable Law" means any federal, state or local constitution, statute, law, municipal charter, regulation, code, ordinance, rule, mandate, judgment, order, decree, tax obligation or other governmental requirement or restriction, or any term or provision of any Approval from a Governmental Authority, or any interpretation or administration of any of the foregoing by any Governmental Authority of competent jurisdiction, that applies to any action, performance or obligation of a Party under this Agreement.

"Approval" means an approval, permit, consent, authorization, agreement, license or certificate issued by any Governmental Authority as required by Applicable Law for SSW to construct, own or operate the Project Works for the distribution of Product Water to STWA, or for STWA to receive and distribute Product Water to its Customers through the Water System.

"Arbitration Notice" has the meaning set forth in Section 17.5(a).

"Billing Period" means each calendar month commencing on the Commercial Operation Date and ending on the last day of the Contract Term; provided, that the first Billing Period shall commence on the Commercial Operation Date and end at 12:00 midnight at the end of the last day of the calendar month in which the Commercial Operation Date occurs, and the last Billing Period shall end at 12:00 midnight at the end of the last day of the Contract Term.

"BIS" has the meaning set forth in Section 18.2(a).

"Business Day" means any day other than Saturday, Sunday, New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve or Christmas Day.

"Capital Costs" means the actual, incurred costs required to plan, design, construct and commission the Project Works and Delivery Meter, acquire all Property Interests and Groundwater Interests, obtain all Approvals, conduct all Commissioning Tests, and take all other actions required to reach the Commercial Operation Date.

"Capital Costs Claim" has the meaning set forth in Section 2.6(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**"CFADS"** has the meaning set forth in Section 9.5(f)(ii)(B).

**"Change in Law"** means the enactment, adoption, promulgation, modification, repeal or change following the Contract Date of any Applicable Law, including any change in the interpretation or administration thereof by any Governmental Authority, or the organization of any new Governmental Authority with jurisdiction applicable to the Project.

**"Commercial Operation Date"** has the meaning set forth in Section 6.1.

**"Commissioning Tests"** has the meaning set forth in Section 2.4(a).

**"Confidential Information"** means all confidential information, trade secret information or proprietary information, in written, electronic or other form, which is disclosed by a Disclosing Party to the Receiving Party, and which is marked or designated in writing at the time of disclosure as "proprietary" or "confidential"; provided, that Confidential Information shall exclude:

- (i) information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;
- (ii) information that, after disclosure hereunder, enters the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;
- (iii) information that, prior to disclosure hereunder, was already in the Receiving Party's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;
- (iv) information obtained by the Receiving Party from a Third Party having an independent right to disclose the information; or
- (v) information that is available through independent research without use of or access to Confidential Information.

**"Contamination"** means any discharge, introduction, or release from suspension or dissolution of any Hazardous Material or any physical, chemical, biological or radiological substance into water, whether caused by the actions of any Person or by nature.

**"Contract Date"** has the meaning set forth in the Preamble.

**"Contract Documents"** means this Agreement, the exhibits and schedules attached to this Agreement, and any ancillary documents executed by either Party pursuant to the terms of this Agreement.

**"Contract Term"** has the meaning set forth in Section 11.1.

**"Cure Period"** has the meaning set forth in Section 15.3.

**"Customer"** means a public water system to which STWA has agreed to supply water on a wholesale basis, either by long-term contract or other arrangement. As of the Contract Date, the Customers are:

- (i) City of Agua Dulce, Texas;
- (ii) City of Bishop, Texas;

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- (iii) City of Driscoll, Texas;
  - (iv) City of Kingsville, Texas, and indirectly through the City of Kingsville, Escondido Creek Water System and Naval Air Station Kingsville;
  - (v) Ricardo Water Supply Corporation;
  - (vi) Nueces Water Supply Corporation, and indirectly through Nueces Water Supply Corporation, Golden Acres Water Company; and
  - (vii) Nueces County Water Control and Improvement District No. 5.

**"Delay"** means the occurrence of one or more Uncontrollable Events or STWA Defaults that result in ceasing or slowing progress on one or more actions required of SSW for planning, designing, permitting, constructing or commissioning the Project Works to achieve the Commercial Operation Date. Delay will be measured in days. As a general rule, two or more Uncontrollable Events or STWA Defaults occurring at the same time will be counted as a single occurrence for purposes of calculating Delay, absent good reason otherwise.

[REDACTED]

[REDACTED]

**"Delivery Meter"** means a device installed at the Delivery Point that measures the rate and volume of Product Water delivered from the Project Works to the Water System, subject to the requirements of Exhibit E (Description and scope of Water Metering).

**"Delivery Pipeline"** means one or more pipelines that will convey Product Water from the Plant to the Delivery Point.

**"Delivery Point"** means the physical point at which the Project Works owned by SSW and the Water System owned by STWA will be interconnected, through which Product Water is delivered by SSW to STWA. The Delivery Point will be a vertical plane which intersects the interconnected works of the Parties at the downstream edge of the Delivery Meter. For the avoidance of doubt, there may exist one or more than one Delivery Point, based on the final design and construction of the Project Works.

**"Direct Agreement"** has the meaning set forth in Section 5.2(a).

**"Disclosing Party"** has the meaning set forth in Section 19.3(a).

**"Disposal Water"** means water that is derived by the Project from the treatment of Process Water, including brine reject, backwash and similar waters, or water used by the Project that is necessary or convenient for the Project to dispose of in any manner other than delivery to STWA as Product Water or beneficial use on the Plant Site.

**"Disposal Wells"** means one or more wells that will be used by the Project to dispose of Disposal Water by injection into underground geologic formations.

**"Dispute"** has the meaning set forth in Section 17.3.

**"Dispute Notice"** has the meaning set forth in Section 17.3.

**"Dollars" or "\$"** means United States Dollars, the currency of the United States of America.

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"DSCR" has the meaning set forth in Section 9.5(f)(ii)(B).

"Environmental Law" means any Applicable Law:

- (i) relating to the protection, prevention of pollution or cleanup of air, soil, water, streams, geologic formations, natural resources, fish, wildlife, game, endangered or threatened species, or climate; or
- (ii) relating to the protection of human health and safety.

"Expiration Date" has the meaning set forth in Section 11.1(b).

"Force Majeure Event" means any act, event or condition that materially interferes with the performance by a Party of its obligations pursuant to this Agreement, is not caused by the negligence or lack of due diligence of the Party asserting the existence of a Force Majeure Event, and is beyond the reasonable control of such Party, including:

- (i) a natural disaster, hurricane, tornado, extreme wind, lightning, flood, earthquake, earth movement, land subsidence, fire or explosion;
- (ii) an act of public enemy, war, terrorism, blockade, insurrection, riot, civil disturbance, sabotage or vandalism; or
- (iii) pandemic, epidemic, virus, disease, illness or interruption in normal business practices based on occurrence of the foregoing.

"Gallon" means a unit of liquid measure equal to four United States quarts.

"Government Official" has the meaning set forth in Section 18.1(a)(ii).

"Governmental Authority" means:

- (i) the government of the United States of America;
- (ii) any state, local, municipal or other government; or
- (iii) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority

lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power having jurisdiction over either Party or the Project, Project Works, Property Interests, Groundwater Interests, Water System, Source Water, Process Water, Product Water, Disposal Water or Approvals, whether acting under actual or assumed authority.

"Groundwater Interests" means any interests in the groundwater estate of lands located within the Source Area or any groundwater rights of any type, whether adjudicated or unadjudicated, permitted or unpermitted, based on historic or other use, which are used or useful for the withdrawal of Source Water by the Project. Groundwater Interests may be based on fee ownership of lands within the Source Area, leases of groundwater from lands within the Source Area, or other legal right or entitlement to access Source Water. Groundwater Interests may authorize withdrawal of Source Water using the Supply Wells or obtaining groundwater from another source, as long as such other source allows the Project Works to deliver Product Water to STWA in compliance with all Water Quality Standards.

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**"Guaranteed Minimum Purchase"** has the meaning set forth in Section 1.1 of Schedule 4 (Delivery and Acceptance Obligations).

**"Hazardous Material"** means any of the following that is governed by or subject to Environmental Law:

- (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, plasma, mineral or gas, in each case whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Law; or
- (ii) any petroleum or petroleum-based products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls or per- and polyfluoroalkyl substances (PFAS).

**"Increased Capital Costs"** means an increase in total Capital Costs for the Project, resulting from one or more of the following:

- (i) change in the scope of Project Works set forth in Exhibit A (Description and scope of Project Works), Property Interests set forth in Exhibit B (Description and scope of Property Interests), Interconnection Facilities set forth in Exhibit D (Description and scope of Interconnection Facilities) or Delivery Meter set forth in Exhibit E (Description and scope of Water Metering), in each case as such exhibits are attached to this Agreement as of the Contract Date;
- (ii) change in the Approvals set forth in Exhibit F (List of Approvals), as such exhibit is attached to this Agreement as of the Contract Date;
- (iii) change in the Water Quality Standards set forth in Schedule 1 (Water Quality Standards), as such Water Quality Standards are in effect as of the Contract Date;
- (iv) occurrence of an Uncontrollable Event; or
- (v) STWA Default.

**"Increased Fees "** means any increase in duties, taxes, assessments, fees, charges or other payments due by SSW to any Governmental Authority following the Contract Date (whether pursuant to an Approval or otherwise) for construction or operation of the Project, including any groundwater withdrawal fees, transport fees or similar fees, but excluding any income, franchise, social security, workers compensation or other axes that are generally applicable to corporate entities or employers, regardless of the business in which they may be engaged.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**"Interconnection Facilities"** means the facilities and equipment necessary to connect the Project Works to the Water System, as depicted in Exhibit D (Description and scope of Interconnection Facilities). For the avoidance of doubt, certain portions of the Interconnection Facilities will be considered part of the Project Works, and the remainder of the Interconnection Facilities will be considered part of the Water System, as identified in Exhibit D (Description and scope of Interconnection Facilities).

**"Interruption"** means the suspension of operations of the Project during the Operating Period.

**"Invoice"** has the meaning set forth in Section 9.2(a).

**"kgal"** means thousand Gallons.

**"Liability"** means any fine, penalty, damage, loss, cost, claim, expense or other liability, including any related attorney fees and expenses.

**"MG"** means million Gallons.

**"MGD"** means million Gallons per day.

**"New Water Supply"** means any water supply to which STWA develops or acquires a right or entitlement, or which is received or used by STWA to deliver water to one or more of its existing or future Customers, in addition to the water supplies available to STWA as of the Contract Date, which consist of:

- (i) the right of STWA to buy water from the City of Corpus Christi pursuant to that certain Water Supply Agreement dated October 14, 1980 between STWA and the City of Corpus Christi, as amended through the Contract Date; and
- (ii) the right of STWA to buy the Guaranteed Minimum Purchase of Product Water pursuant to this Agreement.

**"Notice of Amounts Due"** has the meaning set forth in Section 9.3.

**"OFAC"** has the meaning set forth in Section 18.2(a).

**"Operating Costs"** means the costs for SSW to operate the Project Works to deliver the Guaranteed Minimum Purchase amount as reasonably determined by SSW, including all costs related to employees, Subcontractors, administration, and procurement of utilities, materials and supplies.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

**"Operating Period"** means the period commencing on the Commercial Operation Date and ending on either the Expiration Date or Termination Date, as applicable.

**"Operating Representatives"** has the meaning set forth in Section 6.4(a).

**"Party"** and **"Parties"** have the meanings set forth in the Preamble.

**"Permitted Debt"** means financing obtained by SSW, the proceeds of which are used:

- (i) to pay the costs of designing, permitting or constructing the Project Works;
- (ii) to acquire the Property Interests;
- (iii) to pay the costs of designing, permitting or constructing any capital improvements to the Project Works or acquiring any interests in real property related to such capital improvements;
- (iv) to repay, refinance or modify any previously issued Permitted Debt;
- (v) to meet short-term cash flow requirements of SSW related to the Project;
- (vi) to finance letters of credit to secure SSW's obligations under agreements and Approvals related to the Project;
- (vii) to pay the costs of compliance with Approvals; or
- (viii) for interest rate or other hedging arrangements related to financing of the Project.

**"Permitted Debt Creditor"** means a lender to SSW for any Permitted Debt.

**"Permitted Debt Secured Lender"** has the meaning set forth in Section 5.2(a).

**"Permitted Debt Security Interest"** has the meaning set forth in Section 5.2(a).

**"Person"** means any legal or natural person, including any individual, corporation, partnership, limited liability company, unincorporated association, cooperative, joint venture, trust, Governmental Authority or other entity.

**"Plant"** means those components of the Project Works that will be located on the Plant Site, including the water desalination plant, tanks, pumps, valves, pretreatment facilities, membranes, control panels, generators, structures, buildings, office space and associated facilities, equipment and security works.

**"Plant Site"** means that certain parcel of land on which the Plant will be located, as more particularly described on Exhibit B (Description and scope of Property Interests).

**"Proceeding"** means any claim, suit, demand, cause of action, lawsuit, arbitration, mediation, inquiry, audit, notice of violation, litigation, citation, summons, subpoena, investigation, complaint, allegation or dispute, whether actual or threatened, whether at law or in equity, and whether in an administrative or court forum.

**"Process Water"** means water held by SSW within the Project Works, which has been withdrawn from Source Water, but has not yet been delivered to STWA as Product Water or designated as Disposal Water.

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**"Product Water"** means water produced by the Project Works and delivered to STWA at the Delivery Point.

**"Project"** means a project for the withdrawal of brackish groundwater from the Source Area, treatment of such water to the Water Quality Standards, and conveyance and delivery of such water to STWA at the Delivery Point, on the terms and conditions set forth in this Agreement and the other Contract Documents as a whole. The Project includes the Project Works, Property Interests, Approvals and all other tangible and intangible assets, rights and privileges used or relied upon by SSW to deliver Product Water to STWA.

**"Project Design"** has the meaning set forth in Section 2.2(a).

**"Project Lands"** means all those parcels of land on which any of the Project Works are located, regardless of the type of Property Interest held by SSW or STWA in such parcels of land.

**"Project Works"** means the physical works, infrastructure, structures, facilities and equipment that make up the Project, including the Supply Wells, Plant, Disposal Wells, Delivery Pipeline and that portion of the Interconnection Facilities lying upstream of the Delivery Point, including all components, parts and fixtures associated with or related to such works.

**"Property Interests"** means those interests in real property that are used or useful for the Project, including any fee simple, lease, easement, license or other current or future possessory interest in any land, surface estate or other asset normally considered to constitute a form of real property, as more particularly described in Exhibit B (Description and scope of Property Interests); provided, that the Property Interests shall exclude any component of the Project Works, even if such component might under other circumstances be considered a fixture and thus part of, or appurtenant to, certain real property; and further provided, that the Property Interests shall exclude any Groundwater Interests associated with any real property in the Source Area.

**"Public Utility"** means a retail public utility, water utility, public utility or utility, as those terms are defined in Texas Water Code § 13.002, or a Person otherwise subject to the jurisdiction of the PUCT.

**"PUCT"** means the Public Utility Commission of Texas.

**"Receiving Party"** has the meaning set forth in Section 19.3(a).

**"Regulated Entity"** means a retail public utility, water utility, public utility or utility (as those terms are defined in Texas Water Code § 13.002) or a Person that is otherwise subject to the jurisdiction of the PUCT.

**"Regulatory Event"** means any of the following:

- (i) an attempt by a Governmental Authority to regulate SSW or any of its Affiliates as a Public Utility based on the Project or this Agreement;
- (ii) the non-renewal or termination of any Approval required for SSW to perform any of its obligations under this Agreement; or
- (iii) a Change in Law that results in requiring a new Approval to be obtained by SSW for purposes of the Project, which SSW is unable to obtain from the applicable Governmental Authority on commercially reasonable terms following the exercise by SSW of commercially reasonable efforts.

**"Representatives"** has the meaning set forth in Section 18.1(a)(i).

**"Required Insurance"** has the meaning set forth in Schedule 6 (Insurance Requirements).

**"Required Reserve"** has the meaning set forth in Section 9.5(e)(i).

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**"Rescheduled Water"** means Product Water that has not been delivered to STWA when originally scheduled pursuant to this Agreement and has been credited to the Rescheduled Water Balance for delivery at a later time.

**"Rescheduled Water Balance"** means the volume of Rescheduled Water that has been credited pursuant to this Agreement and has not yet been debited based on delivery to STWA or expiration.

[REDACTED]

[REDACTED]

**"Sanctioned Jurisdiction"** has the meaning set forth in Section 18.2(b)(v).

**"Source Area"** means the area in which the Supply Wells will be located.

**"Source Water"** means the source of water for the Project, which is groundwater [available from an approximately 170-acre property near the town of Driscoll, Texas] in the Source Area. For purposes of this Agreement, water shall cease to be Source Water and become Process Water when it is pumped through the column of a Supply Well to a point above the ground surface.

**"SSW"** means Seven Seas Water (STWA) USA LLC, Party (2) to this Agreement.

**"SSW Default"** has the meaning set forth in Section 15.1.

**"SSW Indemnified Party"** has the meaning set forth in Section 16.4.

**"Startup Period"** has the meaning set forth in Section 6.2.

**"STWA"** means South Texas Water Authority, Party (1) to this Agreement.

**"STWA Default"** has the meaning set forth in Section 15.2.

**"STWA Fiscal Year"** means the fiscal year of STWA, which as of the Contract Date is the 12-month period beginning each October 1 and concluding on September 30, as such fiscal year may be changed from time to time by STWA upon reasonable written notice to SSW.

**"STWA Indemnified Party"** has the meaning set forth in Section 16.3.

**"STWA Interests"** has the meaning set forth in Section 4.1(b).

**"STWA Service Area"** has the meaning set forth in Recital (A).

**"Subcontractor"** means any Person, other than a Party or its employees, engaged by a Party or another Subcontractor to perform any work related to the Project, including the provision of services, provision of professional services or the supply of goods or materials.

**"Supply Wells"** means one or more wells that will extract groundwater from the Source Water within the Source Area for the production of Product Water.

**"Target Commercial Operation Date"** has the meaning set forth in Section 6.1.

**"TCEQ"** means the Texas Commission on Environmental Quality.

**"Termination Date"** has the meaning set forth in Section 11.2(a).

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**"Test Well"** has the meaning set forth in Section 2.2(b).

**"Third Party"** means any Person who is not a Party to this Agreement.

**"Third Party Claim"** means notice of the assertion or commencement of any Proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a representative of the foregoing.

**"Trade Control Laws"** has the meaning set forth in Section 18.2(a).

**"Trade Control Terms"** has the meaning set forth in Section 18.2(f).

**"Uncontrollable Event"** means the occurrence of one of more of the following events or circumstances:

- (i) Change in Law;
- (ii) change in the quality of Source Water (A) such that Source Water does not meet the requirements set forth in Section 1 of Exhibit G (Projected groundwater quality and quantity) or (B) due to Contamination;
- (iii) change in the average yield of the Supply Wells such that the Supply Wells do not meet the requirements set forth in Section 2 of Exhibit G (Projected Groundwater quality and quantity);
- (iv) change in the availability of Source Water for withdrawal by the Project for any reason, including any restriction or reduction in the allocation of Source Water to the Project by a Governmental Authority with jurisdiction over the Source Water;
- (v) delay in the acquisition of a Property Interest;
- (vi) filing or threatening by a Governmental Authority of an eminent domain action;
- (vii) Force Majeure Event;
- (viii) Regulatory Event;
- (ix) unavailability of any utilities, materials, equipment, parts or labor; or
- (x) Water System Emergency.

**"Water Capacity Test"** has the meaning set forth in Schedule 5 (Commissioning Tests).

**"Water Charge"** means the amount in Dollars payable by STWA per kgal of Product Water, as calculated pursuant to Schedule 2 (Charges for Water).

**"Water Quality Standards"** means those standards for the quality of Product Water set forth in Schedule 1 (Water Quality Standards).

**"Water Quality Test"** has the meaning set forth in Schedule 5 (Commissioning Tests).

**"Water System"** means the public water system owned, operated and maintained by STWA for the production, receiving, treatment, storage and distribution of water, including all wells, pumps, tanks, pipes, mains, valves,

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fittings, control systems, meters, electrical equipment and other associated facilities. The Water System shall include the Interconnection Facilities located downstream of the Delivery Point.

**"Water System Emergency"** means the existence of a physical or operational condition or the occurrence of an event on the Water System which is:

- (i) imminently likely to endanger life, health, property or the environment; or
- (ii) impairs or imminently threatens to impair:
  - (A) STWA's ability to discharge its statutory obligations to provide safe, adequate and proper water service to its Customers; or
  - (B) the safety or reliability of the Water System.

## 1.2 Interpretation

- (a) The provisions of this Agreement should be liberally interpreted to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any Party, as each Party has participated in the drafting of this Agreement and had the opportunity to have its counsel review it.
- (b) Whenever the context and construction so requires, all words used in the singular shall be deemed to include the plural, all masculine shall include the feminine and neuter, and vice versa.
- (c) The word "including" means without limitation, and the word "or" is not exclusive.
- (d) Unless the context otherwise requires, references: (i) to sections, exhibits or schedules mean the sections of, and the exhibits or schedules attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement, and all exhibits, schedules and other attachments thereto; (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto; and (iv) to a Person shall be construed to include its successors and permitted assigns.
- (e) The word "day" means a calendar day, absent express reference to a Business Day.

## 1.3 Recitals, Exhibits and Schedules

- (a) The recitals set forth herein and the exhibits and schedules attached hereto are incorporated into this Agreement and made a part hereof.
- (b) The Parties acknowledge that the Project Works are still in a design phase, and the precise location and composition of the Project Works and Property Interests may be slightly different than as described or depicted on the exhibits attached hereto. The Parties agree to cooperate in good faith to seek agreement upon, update and substitute modified exhibits as necessary to properly reflect the actual location and composition of the Project Works and Property Interests once the final design of the Project Works is complete.

## 1.4 Entire Agreement

In conjunction with the other Contract Documents, this Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior agreements, representations and understandings of the Parties.

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**1.5 Amendment**

No amendment, alteration, supplement or modification of this Agreement shall be binding unless executed in writing by all of the Parties.

**1.6 Severability**



If any term, provision, covenant, representation, warranty or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any Governmental Authority to be illegal, null, void, against public policy or otherwise unenforceable, such term shall be modified or changed by the Parties to the extent possible to carry out the intentions and directives stated in this Agreement, or otherwise shall be severed. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby.

**ARTICLE 2  
PROJECT WORKS**

**2.1 Description of the Project Works**

The Project Works shall be as described in Exhibit A (Description and Scope of Project Works), Exhibit D (Description and scope of Interconnection Facilities) and Exhibit E (Description and Scope of Water Metering).

**2.2 Design of the Project Works**

- (a) SSW shall plan, design and engineer the Project Works in accordance with this Agreement and Applicable Law, including preparation of all reports, engineering plans, construction drawings and other documentation or materials needed for construction of the Project Works ("**Project Design**"). All Project Works shall be designed to meet the Water Quality Standards set forth in Schedule 1 (Water Quality Standards) and the Guaranteed Minimum Purchase set forth in Section 1.1 of Schedule 4 (Delivery and Acceptance Obligations).
- (b) 
- (c) When SSW has completed the Project Design for the Project Works, SSW shall provide a copy of such Project Design to STWA and give STWA at least 15 Business Days to review such design.
- (d) SSW and STWA shall coordinate regarding:
  - (i) SSW's preparation of the Project Design for the Project Works; and
  - (ii) STWA's preparation of any designs for any modifications to the Water System that are deemed necessary or convenient by STWA for the acceptance of Product Water into the Water System at the Delivery Point.
- (e) The Parties recognize that the Project Works as described in Exhibit A (Description and scope of Project Works) and the Water Charge as set forth in Schedule 2 (Charges for Water) are based upon the results of a feasibility study summarized in Exhibit G (Projected groundwater quality and quantity)  


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**2.3 Construction of the Project Works**

- (a) Following preparation of the Project Design, SSW shall be responsible for construction of the Project Works, up to and including the Delivery Meter. SSW shall provide, furnish and perform, or cause to be provided, furnished and performed, all materials, equipment, tools, consumables and utilities, supervision, labor and services required for the procurement, manufacturing, transport to the site, quality assurance, erection, construction, installation, commissioning and performance testing of the Project Works and Interconnection Facilities in accordance with the provisions of this Agreement.
- (b) If construction of the Interconnection Facilities requires any work downstream of the Delivery Meter, SSW and STWA shall meet and confer regarding which Party or Subcontractor will perform such work; provided, that STWA shall reimburse SSW for all Capital Costs associated with any such work performed by SSW or its Subcontractors; and further provided, that STWA shall be ultimately responsible for the design and construction of any portions of the Interconnection Facilities downstream of the Delivery Meter.

**2.4 Project Commissioning**

- (a) The Project Works shall be planned, designed, permitted and constructed to deliver Product Water at the Delivery Point in accordance with the Guaranteed Minimum Purchase and Water Quality Standards, and in conformance with the requirements of Exhibit A (Description and scope of Project Works), Exhibit D (Description and scope of Interconnection Facilities), Exhibit E (Description and scope of Water Metering), Schedule 1 (Water Quality Standards), Schedule 4 (Delivery and Acceptance Conditions) and Schedule 5 (Commissioning Tests). Compliance of the Project Works with the Guaranteed Minimum Purchase and Water Quality Standards shall be determined by the Water Capacity Test and Water Quality Test, respectively (collectively, the "Commissioning Tests").
- (b) Upon completion of construction of the Project Works, SSW shall conduct the Commissioning Tests. SSW will develop procedures for the Commissioning Tests and provide notice of such procedures to STWA for its review, which shall be conducted within 10 Business Days or else waived, and shall not be unreasonably withheld or conditioned. SSW shall be responsible for providing all necessary labor, supervision, consumables, materials and equipment necessary to carry out properly the Commissioning Tests. STWA shall cooperate with SSW regarding the Commissioning Tests, especially with regard to those Commissioning Tests that involve or require use of the Interconnection Facilities and portions of the Water System.
- (c) Commissioning Tests shall be conducted under normal operating conditions and in accordance with all Applicable Law and industry norms in effect on the date thereof. SSW may conduct the Commissioning Tests at such time that SSW has complied with all provisions of this Agreement relating to the installation of the Project Works, except for completion of insulation, painting, final grading or other portions of the Project Works not affecting the operability, safety, mechanical or electrical integrity of the Project Works.
- (d) SSW shall notify STWA at least three Business Days in advance of the date that SSW proposes to start conducting a Commissioning Test. SSW and STWA shall cooperate to identify a date and time for each Commissioning Test, and STWA shall be entitled to attend and observe all portions of all Commissioning Tests.



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- (e) If the Project Works fail to satisfy an initial Commissioning Test, SSW shall take, within a reasonable period, corrective measures necessary to eliminate the defects or deficiencies causing such failure, and to ensure that the Commissioning Test is satisfied by repairing or replacing the affected part of the Project Works. SSW shall, if so requested by STWA, submit to STWA for its review details of the corrective measures that SSW proposes to take. A Commissioning Test may be repeated as often as SSW may elect. Without derogating from any of the foregoing, SSW may, at its discretion, make any adjustments or changes to any portion of the Project Works as deemed necessary or convenient in order to meet or enhance the achievement testing goals or to repeat the Commissioning Tests.
  - (f) SSW shall furnish notice to STWA of the results of all Commissioning Tests performed. STWA shall notify SSW within 10 Business Days whether it agrees with the results of any Commissioning Test and whether the Project Works passed such Commissioning Test. In the event that STWA fails to provide SSW a written statement of objections to such results within 10 Business Days of the notice, the aforementioned results shall be deemed accepted by STWA. If STWA provides SSW a written statement of objections to results of a Commissioning Test, and SSW and STWA cannot reach agreement on interpretation of the results of the Commissioning Test or SSW's compliance with this Section 2.4 in conducting such Commissioning Test, the dispute shall be referred to dispute resolution in accordance with Article 17.







## **2.5 STWA Responsibilities**

STWA shall be responsible for the following actions, including all costs and expenses relating thereto, which the Parties acknowledge are necessary for proper construction and operation of the Project Works by SSW:

- (a) provide and maintain capacity in the Water System to receive Product Water from the Project Works;
- (b) obtain of STWA Approvals required for construction and operation of the Project Works in accordance with Applicable Law;
- (c) cooperate with SSW regarding the planning and design of the Interconnection Facilities, especially those Interconnection Facilities that are located downstream of the Delivery Point;
- (d) design, permit and construct any improvements to the Water System that may be necessary or convenient to accept, store or distribute Product Water within the STWA Service Area;
- (e) operate and maintain the Water System, including tanks for receiving of Product Water;
- (f) operate and maintain the Interconnection Facilities downstream of the Delivery Point, in accordance with the specifications set forth in Exhibit D (Description and scope of Interconnection Facilities);
- (g) maintain any Property Interests acquired or held by STWA for the benefit of the Project, including the payment of any ad valorem taxes or other taxes, assessments, fees or charges imposed by any Governmental Authority related to such Property Interests;
- (h) test the quality of Product Water for compliance with the Water Quality Standards, with samples to be drawn from one or more ports to be installed at the Interconnection Facilities, as included in the Project Design;
- (i) conduct tests and file reports required by Governmental Authorities to be filed by STWA; and
- (j) use best efforts to comply with all Applicable Law.

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## 2.6 Project Milestones and Delays

- (a) SSW shall use commercially reasonable efforts to complete the design and construction of all Project Works, successfully pass all Commissioning Tests, obtain all Approvals, and reach the Commercial Operation Date by the Target Commercial Operation Date set forth in Schedule 3 (Project Milestones).
- (b) Upon the occurrence of one or more Uncontrollable Events or STWA Defaults prior to the Commercial Operation Date, the Parties shall take the following actions related to Delay.
  - (i) If SSW determines that an Uncontrollable Event or STWA Default is likely to result in Delay, SSW will calculate the likely number of days of Delay that will result and provide notice to STWA of its determinations (a "Delay Relief Claim"), including a summary of the relevant Uncontrollable Event or STWA Default, the expected Delay, any Delay Relief requested by SSW, and sufficient information for STWA to be able to evaluate such Delay Relief Claim.
  - (ii) Within 10 Business Days following notice of a Delay Relief Claim, the Parties shall meet and confer regarding how best to proceed with the Project. The Parties shall jointly consider   
(Mediation); provided, that such disputes may not be resolved by the processes set forth in Section 17.5 (Arbitration) or Section 17.6 (Judicial Proceedings); and provided further, that neither Party shall be mandated to agree upon any strategy that results in Increased Capital Costs or Increased Operating Costs to be borne by it.
  - (iii) SSW shall be entitled to Delay Relief equal to the Delay caused by any Uncontrollable Event or STWA Default, taking into account any strategies on which the Parties reach agreement pursuant to subsection (b)(ii) above.
- (c) Upon the occurrence of one or more Uncontrollable Events, STWA Defaults or Increased Fees prior 
  - (i) 
  - (ii)   
Parties cannot reach agreement on such strategies, the matter shall be resolved by the processes set forth in Section 17.3 (Negotiation) and Section 17.4 (Mediation); provided, that such disputes may not be resolved by the processes set forth in Section 17.5 (Arbitration) or Section 17.6 (Judicial Proceedings); and provided further, that neither Party 
  - (iii) 

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strategies on which the Parties reach agreement pursuant to subsection (ii) above; provided,

[REDACTED]

shall provide notice of such election to terminate this Agreement within 30 days of conclusion of the processes set forth in subsection (ii) above.

(d) Upon the occurrence of one or more Uncontrollable Events, STWA Defaults or Increased Fees prior

[REDACTED]

(i) If SSW determines that an Uncontrollable Event, STWA Default or Increased Fees is likely

[REDACTED]

(ii)

[REDACTED]

resolved by the processes set forth in Section 17.3 (Negotiation) and Section 17.4 (Mediation); provided, that such disputes may not be resolved by the processes set forth in Section 17.5 (Arbitration) or Section 17.6 (Judicial Proceedings); and provided further, that

[REDACTED]

(iii)

[REDACTED]

(e)

[REDACTED]

a request, and will consider any strategies that might allow SSW to withdraw its termination of this Agreement and resume the Project; provided, that during such 30-day period SSW shall not have any obligation to conduct any construction activities other than those required to maintain health, safety, environmental protection, and the integrity of any Project Works previously constructed or

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## **2.7 Expansion of Project Works**

- (a) Either Party may propose that the Project Works be expanded or modified, either to allow delivery of greater quantities of Product Water to STWA, or to deliver Product Water to additional or substitute Delivery Points. The receiving Party shall timely consider any such proposal and respond to the proposing Party regarding the terms and conditions, if any, under which the receiving Party would be interested in participating in an expansion or modification of the Project Works; provided, that neither Party shall be required to participate in any proposed expansion or modification of the Project Works, and any expansion or modification must be based on an agreement between the Parties in writing, pursuant to Section 1.5.
- (b) Notwithstanding subsection (a) of this Section 2.7, in its discretion SSW may take all actions necessary or convenient to expand, modify, alter or improve the Project Works in order to deliver Source Water to one or more Third Parties, so long as such actions do not materially interfere with the ability of the Project Works to deliver Product Water to STWA, excepting any short-term suspension of operations of the Project Works during construction of any such expansion, modification, alteration or improvement, during which suspension the Guaranteed Minimum Purchase shall not apply.

## **ARTICLE 3 REAL PROPERTY**

### **3.1 Locations of Project Works**

The Project Works shall be constructed on the Project Lands, as described on Exhibit B (Description and scope of Property Interests).

### **3.2 Acquisition of Property Interests**

- (a) SSW shall be responsible for identifying and acquiring the Project Lands on which the Supply Wells, Plant, Disposal Wells or Delivery Pipeline may be located, and the Property Interest that is necessary or convenient for the Project to hold related to each such parcel of the Project Lands.
- (b) STWA shall be responsible for identifying the Project Lands on which the Interconnection Facilities will be located, and the Property Interest that is necessary or convenient for the Project to access related to each such parcel of the Project Lands. To the extent that STWA does not own such Property Interest as of the Contract Date, STWA shall attempt to purchase from the owner or owners of each such parcel of Project Lands the appropriate Property Interest. Whether STWA acquires such Project Lands for purposes of the Project or already owns such Project Lands based on ownership of the Water System, STWA shall provide SSW with all required access to such Property Interest by assignment, lease, easement, access agreement or other legal means agreed upon between the Parties; provided, that STWA shall be responsible for the acquisition, ownership, maintenance and payment of taxes related to the Project Lands on which the Interconnection Facilities will be located, and STWA shall make such Project Lands available to SSW for purposes of the Project without charge.

### **3.3 Responsibility for Property Interests**

The Party that purchases or otherwise acquires a Property Interest on certain Project Lands for use by the Project shall be responsible for all actions, risks, costs and expenses arising out of, or related to:

- (a) negotiation with current owners of the Project Lands of any purchase and sale agreement, other agreement and appropriate instruments required for the grant, assignment, conveyance or transfer of the Property Interest;

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- (b) due diligence with regard to the Project Lands, including any title review, survey, Phase I environmental site assessment or similar investigation;
  - (c) recording of any instruments with the recorder of the county in which the Project Lands are located;
  - (d) any failure or impairment of title of the Property Interest, or acquisition of insurance against failure or impairment of title;
  - (e) any foreclosure of a senior mortgage or security interest held by a Third Party against the Project Lands;
  - (f) any breach or default by, or bankruptcy or insolvency of, any Third Party to any agreement concerning the purchase, sale, possession, use or other matter related to the Property Interest; or
  - (g) any Liability arising out of, or related to, conditions existing on the Project Lands prior to acquisition, including any Liability based on Environmental Law.

#### **3.4 Groundwater Interests**

- (a) SSW shall be responsible for acquiring, owning, holding, maintaining, preserving and protecting all Groundwater Interests for the Project. SSW shall acquire, or arrange for acquisition of, Groundwater Interests that allow sufficient access to Source Water to enable the Project to deliver Product Water to STWA at the Guaranteed Minimum Purchase; provided, that SSW shall have discretion regarding the mechanism used to acquire access to the Source Water.
- (b) At the request of SSW, STWA shall cooperate with SSW related to the acquisition, maintenance, preservation or protection of Groundwater Interests for the Project; provided, that STWA shall not have any obligation to incur any costs of outside consultants or legal counsel without an agreement by SSW to reimburse STWA for such costs.

### **ARTICLE 4 OWNERSHIP**

#### **4.1 Ownership of the Project**

- (a) SSW shall be the sole legal and beneficial owner and operator of the Project and all of its components, free and clear of any liens or other interests in favor of STWA. Without limiting the generality of the foregoing, STWA hereby waives any statutory or common law lien that it might otherwise have in or to the Project. STWA shall execute and furnish any instrument (including any financing statement or similar public document) and take any action reasonably requested by SSW to perfect, confirm or maintain SSW's right, title and interest in the Project. STWA acknowledges and agrees that, neither by the execution nor performance under this Agreement, does it obtain any right, title or interest in the Project.
- (b) Notwithstanding anything stated or implied to the contrary in Section 4.1(a), STWA shall be the sole legal and beneficial owner of any Property Interests held or acquired by it pursuant to Section 3.2(b) or Section 3.2(c)(ii) (excluding any interest granted by STWA to SSW), and the Water System, including those portions of the Interconnection Facilities located downstream of the Delivery Point (collectively, the "STWA Interests"), free and clear of any liens or other interests in favor of SSW. Without limiting the generality of the foregoing, SSW hereby waives any statutory or common law lien that it might otherwise have in or to the STWA Interests. SSW shall execute and furnish any instrument (including any financing statement or similar public document) and take any action reasonably requested by STWA to perfect, confirm or maintain STWA's right, title and interest in the

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STWA Interests. SSW acknowledges and agrees that, neither by the execution nor performance under this Agreement, does it obtain any right, title or interest in the STWA Interests.

#### 4.2 Eminent Domain

- (a) If any Person were to initiate an action in eminent domain against SSW, seeking to take any of the Project Works, Property Interests, Groundwater Interests or other assets used or useful for the Project, SSW shall use commercially reasonable efforts to defend against such action, and STWA shall cooperate with SSW in such defense at STWA's own expense; provided, that STWA may, but shall not be required to, engage outside counsel or consultants related to such defense. If any action in eminent domain were to result in any Person successfully taking any of the Project Works, Property Interests, Groundwater Interests or other assets used or useful for the Project:
  - (i) SSW shall be entitled to retain all compensation received from such Person or as a result of such action;
  - (ii) The Parties shall meet and confer regarding the extent to which the remaining Project Works, Property Interests, Groundwater Interests and other assets may be used to continue the Project on a commercially feasible basis, and the terms and conditions under which the Project shall be continued if deemed commercially feasible by the Parties;
  - (iii) If the Parties determine that the Project may be continued, but the compensation received by SSW in the eminent domain action is insufficient to allow SSW to acquire replacement property or otherwise continue the Project without suffering material economic losses, such losses shall be considered Increased Capital Costs pursuant to this Agreement, and SSW shall be entitled to either or both of the following: (A) adjustment of the Water Charge so that SSW shall recover such Increased Capital Costs from STWA during the remainder of the Contract Term; or (B) extension of the Contract Term for a period necessary to allow SSW to recover such Increased Capital Costs.
  - (iv) If the Parties determine that the Project may not be continued on a commercially feasible basis, the Parties shall take necessary actions to wrap-up the Project, this Agreement shall be terminated, and STWA shall pay the Termination Fee set forth in Schedule 8 (Termination Fee).
- (b) STWA hereby agrees that it shall not initiate any action in eminent domain against SSW, nor will it or cooperate with any Third Party related to any action, seeking to take any of the Project Works, Property Interests, Groundwater Interests or other assets used or useful for the Project, and to that extent, STWA hereby waives any power it may possess to initiate, or cooperate with any Third Party related to, such an action against SSW.

### ARTICLE 5 PROJECT FINANCING

#### 5.1 Financing by SSW

- (a) SSW is solely responsible for obtaining and repaying all financing necessary for the design and construction of the Project Works, at SSW's own cost and risk and without recourse to STWA. SSW may obtain financing or refinancing from any source, and on such terms as SSW determines in its discretion to be appropriate. SSW exclusively bears the risk of (i) the availability or unavailability of financing for the Project Works and (ii) any changes in the interest rate, payment provisions or other terms and conditions of any of its financings. STWA shall have no obligation to provide financing for any portion, component or aspect of the Project Works.

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- (b) All debt or other financing obligations issued or incurred by SSW in connection with this Agreement or the Project Works shall be issued or incurred only in the name of SSW or its Affiliates, and no debt or financing shall allow any recourse against STWA.

## 5.2 Permitted Debt

- (a) SSW may execute agreements, liens and financing statements deemed by SSW to be necessary or convenient to create, establish or perfect any security interest (each a "**Permitted Debt Security Interest**") in the Project for any Permitted Debt, including by a collateral assignment of this Agreement; provided, that any Permitted Debt Security Interest and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Agreement and to all rights and interests of STWA. Without limiting the foregoing, upon the election and written notice of SSW to STWA, STWA shall enter into a direct agreement with any Permitted Debt Creditor to whom SSW grants such a Permitted Debt Security Interest (each a "**Permitted Debt Secured Lender**"), confirming its consent to such Permitted Debt Security Interest, granting customary notice and cure rights and other provisions and protections reasonably requested by the Permitted Debt Secured Lender (the "**Direct Agreement**"). Such Direct Agreement shall be in form and substance reasonably acceptable to such Permitted Debt Secured Lender.
- (b) Without limiting the generality of the foregoing, nothing contained in any such Permitted Debt Security Interest shall release or be deemed to relieve SSW from full and faithful observance and performance of the terms, covenants and conditions of this Agreement, or from any liability for the non-observance or non-performance of any of the terms and conditions of this Agreement, nor be deemed to constitute a waiver of any rights of STWA under this Agreement.
- (c) SSW shall comply with all terms and conditions of any Permitted Debt to the extent necessary to perform its obligations under this Agreement. If at any time SSW receives a notice of the occurrence of an event of default, an event that entitles any Permitted Debt Creditor to enforce any security in the Project or a similar event, SSW shall promptly deliver a copy of such notice to STWA.
- (d) STWA acknowledges and agrees that SSW may obtain financing through agreements, notes, bonds or other instruments that include a right for a Permitted Debt Creditor thereunder (including any trustee or administrative agent on behalf of such creditor) to step into and assume the rights and obligations of SSW to STWA pursuant to this Agreement. If SSW provides STWA with notice of any such step-in rights in favor of a Permitted Debt Creditor, STWA shall provide notice to such Permitted Debt Creditor of any declaration by STWA of the default or potential default of SSW pursuant to Section 15.1 of this Agreement, and such Permitted Debt Creditor shall have the right to cure any such default on the same terms and conditions as SSW in accordance with Section 15.3.
- (e) If requested by SSW, STWA shall cooperate with SSW related to obtaining Permitted Debt from any potential Permitted Debt Creditor or any associated transaction—including a guarantee from a Governmental Authority or other Person—and respond to any requests by SSW or a proposed Permitted Debt Creditor for documents or other information; provided, that STWA shall not have any obligation to incur any costs of outside financial advisers, consultants or legal counsel without an agreement by SSW to reimburse STWA for such costs.

## ARTICLE 6 OPERATIONS

### 6.1 Commercial Operation Date

- (a) The "**Commercial Operation Date**" shall be a date agreed upon between the Parties following satisfaction of all required conditions



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- (b) Subject to STWA fully and timely performing all of its obligations in Section 2.5 and other provisions of this Agreement, SSW shall use commercially reasonable efforts to cause the Project to achieve the Commercial Operation Date no later than the target date set forth in Schedule 3 (Project Milestones) (the "**Target Commercial Operation Date**"). Such Target Commercial Operation Date may be extended in accordance with Section 2.6(b).

## **6.2 Startup of Operations**

The Parties acknowledge that once the Project has reached the Commercial Operation Date, and the Project Works begin delivery of Product Water to STWA, it may be necessary or convenient to ramp up deliveries of Product Water during an initial period covering one or more Billing Periods (the "**Startup Period**"). During the Startup Period, the Parties agree that SSW will not be in default or breach of this Agreement due to failure of the Project Works to deliver Product Water at the Guaranteed Minimum Purchase; provided, that the Startup Period shall have a duration no longer than 90 days, unless extended by the action of a Governmental Authority, in which case the Startup Period shall have the duration required by such Governmental Authority. Once SSW has determined that the Project Works are capable of delivering Product Water to STWA at the Guaranteed Minimum Purchase, SSW shall provide notice to STWA that the Startup Period is complete, and the Project Works shall thereafter be operated in accordance with the Guaranteed Minimum Purchase and all other provisions of this Agreement. During the Startup Period, the Guaranteed Minimum Purchase shall not apply, and STWA shall pay SSW for the quantity of Product Water actually delivered to STWA.

## **6.3 Operation and Maintenance**

- (a) During the Operating Period, SSW shall operate and maintain the Project Works to deliver Product Water that satisfies:
- (i) the Guaranteed Minimum Purchase as set forth in Schedule 4 (Delivery and Acceptance Obligations);
  - (ii) the Water Quality Standards as set forth in Schedule 1 (Water Quality Standards); and
  - (iii) Applicable Law.
- (b) During the Operating Period, STWA shall operate and maintain the Water System:
- (i) to accept deliveries of Product Water in accordance with this Agreement; and
  - (ii) in compliance with Applicable Law.

## **6.4 Operating Representatives**

- (a) Prior to the Commercial Operation Date, each Party shall appoint a member and two alternate members as operating representatives and provide written notice of such appointments to the other Party (the "**Operating Representatives**"). Such appointments may be changed at any time by similar written notice. The Operating Representatives shall meet as necessary at a mutually agreeable time and place upon prior written notice. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of the Project Works (for SSW) or the Water System (for STWA).
- (b) The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement and the following:
- (i) coordinate operation schedules;

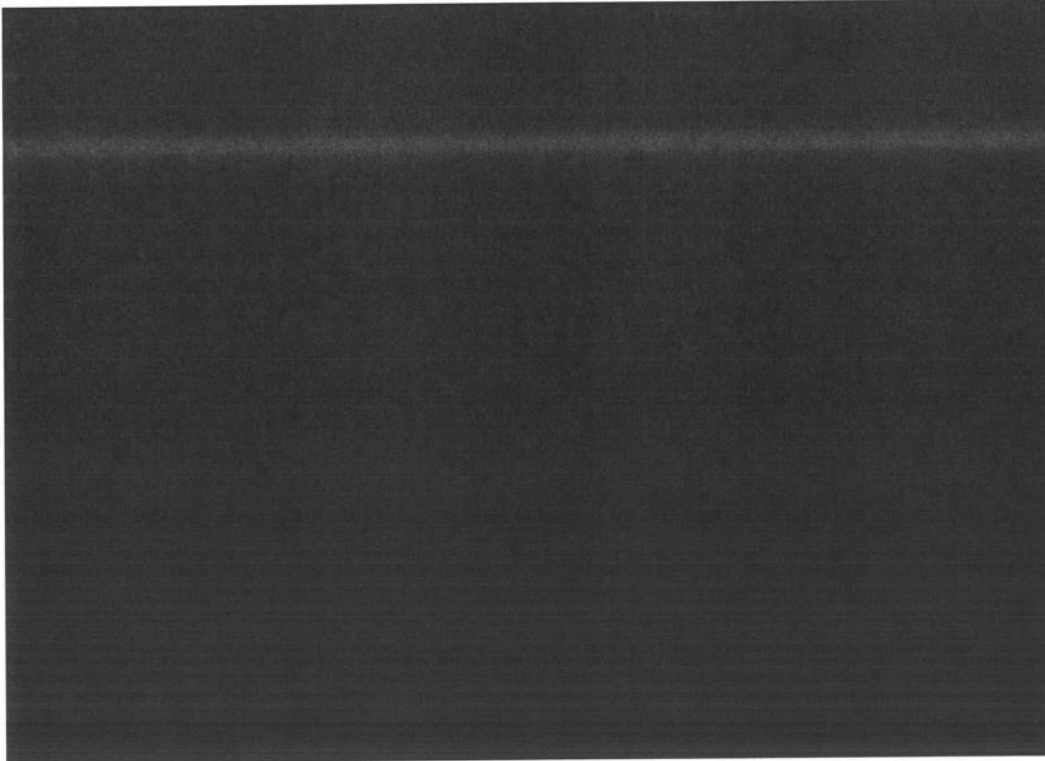


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- (ii) establish control and operating procedures consistent with the provisions of this Agreement;
  - (iii) provide a list of Operating Representatives of each Party;
  - (iv) communicate regarding any emergency circumstances affecting the Project Works or Water System; and
  - (v) such other duties as may be delegated to them by mutual agreement of the Parties; provided, that such Operating Representatives shall not have the authority to amend this Agreement.
- (c) Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. All decisions and agreements made by the Operating Representatives shall be evidenced in writing.

#### **6.5 Water System Emergency**

STWA shall notify SSW, or SSW shall notify STWA, promptly by telephone, or as may be agreed to by the Parties, when either Party becomes aware of a Water System Emergency that may reasonably be expected to affect operation of the Project Works, Interconnection Facilities or Water System. To the extent such information is known, the notification shall describe the Water System Emergency, the extent of the damage or deficiency, the expected effect on the operation of the Project Works, Interconnection Facilities or Water System, its anticipated duration and the corrective action taken or to be taken. The initial notice shall be followed as soon as practicable with written notice. Each Party agrees to take promptly reasonable appropriate corrective action as is necessary to correct any hazardous or unsafe conditions associated with such Water System Emergency.

#### **6.6**



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**6.7 Electrical Power**

- (a) STWA will purchase electrical power necessary for the Project, and shall do so at its own expense, and provide such power to SSW at no charge.
- (b) The Parties agree that if in the future that SSW is required to purchase electrical power for the Project, SSW shall obtain and pay for power, and SSW may recover the cost of such power through a surcharge in addition to the Water Charge. In such case, SSW shall invoice STWA, and STWA shall pay SSW, for such power surcharge pursuant to Article 8 and Article 9.

**6.8 Risk of Loss**

- (a) At all locations upstream of the Delivery Point, SSW shall own, hold, possess and control all Process Water and shall bear all responsibility and Liability therefore.
- (b) At all locations downstream of the Delivery Point, STWA shall own, hold, possess and control all Product Water and shall bear all responsibility and Liability therefore.

**6.9 Wrap-up of Operations**

Upon termination or expiration of this Agreement pursuant to Article 11, SSW may take any actions deemed necessary or convenient for wrapping up the operations of the Project. In its discretion, SSW may reuse, repurpose, abandon, close or dispose of the Project Works, Property Interests, Groundwater Interests and other assets used or useful for the Project, and STWA shall cooperate with SSW regarding disconnection of the Project Works from the Water System at the Interconnection Facilities. Unless there is a material risk to human health and safety or environmental or natural resources damages, or there is a requirement of Applicable Law, SSW shall be entitled to abandon in place any of the Project Works that are located on Project Lands owned by STWA. In its discretion, SSW may pump, produce, treat, convey, distribute, deliver and sell water to any Person using the Project Works, Property Interests, Groundwater Interests, Approvals and other assets used or useful for the Project. Following the end of the Contract Term, STWA shall have no right, title or interest, either legal or beneficial, in any of the Project Works, Property Interests, Groundwater Interests, Approvals or other assets used or useful for the Project.

**ARTICLE 7  
WATER MEASUREMENT**

**7.1 Water Measurement**

- (a) The quantity, quality and pressure of the Product Water delivered to STWA shall be measured, monitored, tested and recorded by the Parties in accordance with the methods specified in Exhibit E (Description and scope of Water Metering).
- (b) Water shall be measured and invoiced in Gallon increments as set forth in Exhibit E (Description and scope of Water Metering), Schedule 2 (Charges for Water) and Schedule 7 (Form of Invoice).
- (c) To the extent any metering device is incapacitated or is being tested, SSW shall estimate as accurately as practicable the data required by SSW to perform its obligations under this Agreement. The estimate and methodology shall, with STWA's approval (which shall not be unreasonably withheld, conditioned or delayed), be used as the basis for determining the operating data required hereunder during the outage.

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## **7.2 Division of Responsibility for Delivery Meter**

- (a) SSW shall obtain, install, calibrate and test the Delivery Meter as provided for in Exhibit E (Description and scope of Water Metering). The selection of the type of meter to serve as the Delivery Meter will occur as part of the Project Design for the Interconnection Facilities.
- (b) SSW shall be responsible for routine servicing and maintenance of the Delivery Meter and appurtenant field mounted instruments as set forth in Exhibit E (Description and scope of Water Metering). SSW shall be responsible for the cost of materials and replacement parts required for its responsibilities set forth in this Section 7.1(b).
- (c) SSW shall calibrate the Delivery Meter on a schedule consistent with all specifications from the manufacturer and standard industry practices. SSW shall provide STWA with at least five Business Days' notice prior to any calibration of the Delivery Meter. STWA shall have the right to observe any activities performed by SSW pursuant to this Section 7.2.

## **7.3 Water Quality**

SSW shall sample and test the quality of Product Water as required to satisfy all Applicable Law and Approvals. SSW shall notify STWA of the results of any test of the quality of Product Water within five Business Days of receiving the results of such test from the applicable laboratory.

## **7.4 Operational Reports**

SSW shall provide an operational report to STWA on an annual basis, to be provided to STWA by each October 31 for the preceding STWA Fiscal Year. The operational report will contain, at minimum, maintenance work order statistics completed in the period, type of maintenance performed on the equipment, operational statistics and data for availability of the equipment, water production quantity, logged data statistics for quality, and any water analysis data from samples tested during the period. Operational reports shall be considered Confidential Information subject to the restrictions of this Agreement.

# **ARTICLE 8 WATER PURCHASE AND SALE**

## **8.1 Sale and Purchase of Water**

- (a) Commencing on the Commercial Operation Date and continuing throughout the Contract Term, SSW shall sell and deliver to STWA, and STWA shall purchase and accept from SSW, the Product Water, subject to the terms and conditions of this Agreement.
- (b) SSW shall make available Product Water from the Project Works to STWA on a first priority basis, and SSW shall not (i) sell or deliver any water from the Project Works to a Third Person in a manner that would diminish the ability of SSW to deliver Product Water to STWA up to the Guaranteed Minimum Purchase or (ii) sell any water directly to any then-existing Customer of STWA, in either case without the prior written consent of STWA. Notwithstanding the foregoing, SSW may sell water from the Project Works to a Third Person (excluding then-existing Customers of STWA) as long as such sale does not negatively affect the ability of SSW to deliver Product Water to STWA pursuant to the terms of this Agreement.

## **8.2 Water Charge**

Promptly following the end of each Billing Period, SSW shall determine the amount of Product Water delivered to STWA during such Billing Period based on the measurements taken in accordance with Article 7. STWA shall pay to SSW the Water Charge as determined in accordance with Schedule 2 (Charges for Water) and

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Schedule 4 (Delivery and Acceptance Obligations) as set forth in Article 9. The Water Charge shall be adjusted on an annual basis as set forth in Section 2 of Schedule 2 (Charges for Water). For each Billing Period, STWA shall pay the Water Charge for the greater of: (a) the amount of Product Water delivered to STWA during such Billing Period; or (ii) the Guaranteed Minimum Purchase.

### **8.3 Take or Pay Obligation**

(a) It is recognized that: (i) SSW is making a considerable financial investment in the capital cost of the Project and a financial return is required; (ii) SSW is relying solely on STWA's commitments and obligations under this Agreement for such return; (iii) SSW is granting a first priority arrangement to STWA pursuant to this Agreement; (iv) SSW would not undertake the cost of building the Project were it not for STWA's agreement as set forth herein to agree to purchase the entire Guaranteed Minimum Purchase.

(b)



(c) The Guaranteed Minimum Purchase shall not apply during the Startup Period, during which STWA shall pay SSW for the actual volumes of Product Water delivered to STWA.

(d) Notwithstanding subsection (a) above, at times when the Project Works do not meet the Guaranteed Minimum Purchase, STWA shall only be required to purchase and take delivery of Product Water up to the actual production of the Project Works.

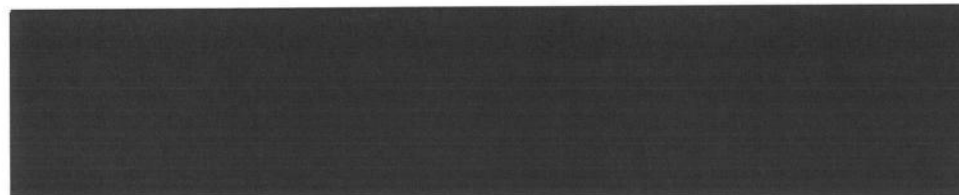
(e) Notwithstanding subsection (a) above, at times when Product Water produced by the Project Works does not meet the Water Quality Standards, STWA shall not be required to purchase and take delivery of Product Water.

### **8.4 Monthly Maintenance**

(a)



(b)



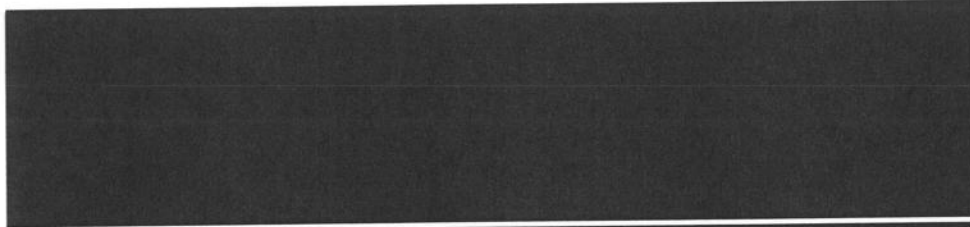
(c)



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**8.5 Annual Maintenance**

(a)



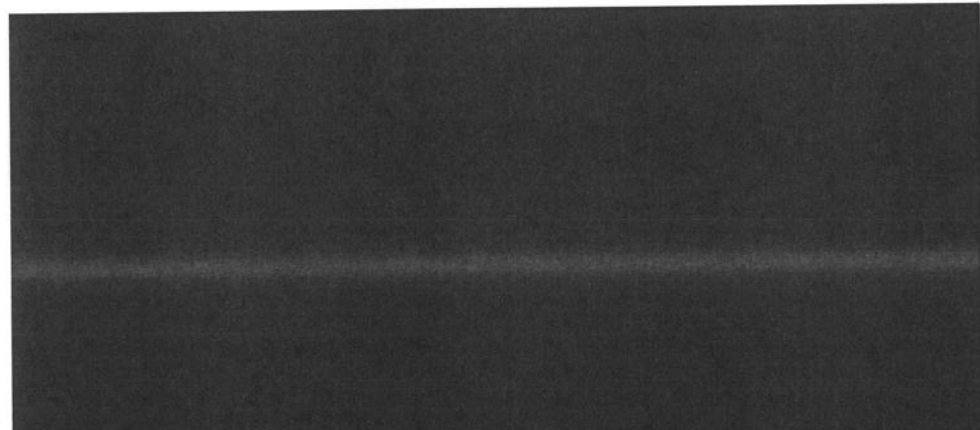
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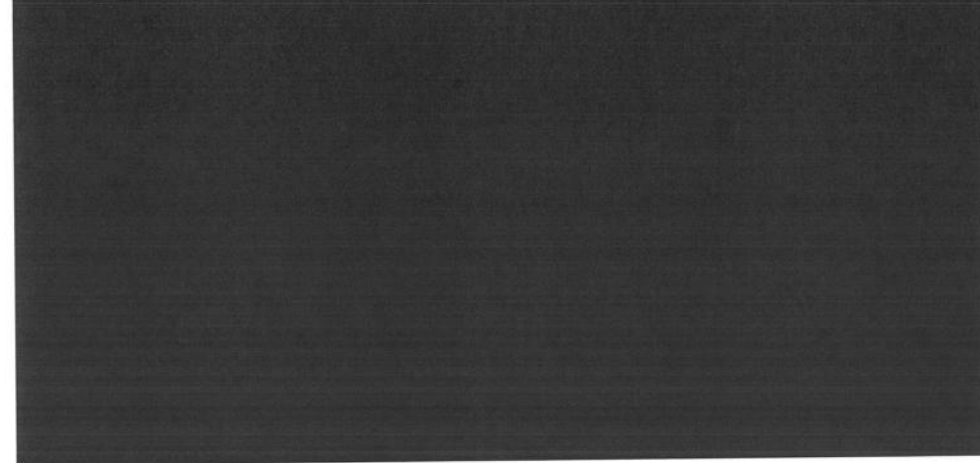
shall operate the Project Works, and STWA shall operate the Water System, in a manner that will deliver Product Water to STWA in the amount of the water credit balance as soon as practicable following the generation of such water credit. For the avoidance of doubt, STWA shall not be required to pay the Water Charge for any Product Water delivered to satisfy the water credit balance, since such water credit balance represents Product Water for which STWA has already paid as set forth above.

**8.6 Interruption of Operations**

(a)



(b)



- 
- (c) SSW shall maintain an accounting of the Rescheduled Water Balance and provide STWA with such Rescheduled Water Balance on each Invoice and upon any request by STWA.
  - (d) SSW shall use commercially reasonable efforts to deliver Rescheduled Water to STWA during the Billing Period that next follows resumption of operations at the end of the Interruption, and STWA shall use commercially reasonable efforts to accept such Rescheduled Water. All credits in the Rescheduled Water Balance shall expire at end of the Billing Period that follows the Billing Period in which such Rescheduled Water credits were generated, and following such expiration STWA shall have no right to delivery of Rescheduled Water based on such credits.
  - (e) STWA shall have no obligation to pay the Water Charge for any deliveries of Rescheduled Water, as long as STWA has previously paid for the Guaranteed Minimum Purchase that generated such Rescheduled Water credits. STWA shall pay for the cost of power related to deliveries of Rescheduled Water pursuant to Section 6.7(b).
  - (f) The Parties agree that for an Interruption based on an Uncontrollable Event, neither Party shall be liable to the other Party for failure to perform any obligation hereunder, when such failure is the result of the occurrence of an Uncontrollable Event which arises after the Contract Date; provided, that neither Party shall be excused from any obligation to pay amounts due under this Agreement for services rendered or products delivered before the occurrence of the Uncontrollable Event. Upon becoming aware of the occurrence of an Uncontrollable Event, or that any such event is reasonably expected to occur, the affected Party shall promptly notify the other Party of such event, or such pending event, as the case may be. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required as a result of the Uncontrollable Event. The affected Party shall use commercially reasonable efforts to mitigate the impact of the Uncontrollable Event, including commercially reasonable efforts to mitigate any interruption to operation of the Project Works. The affected Party shall provide weekly progress reports to the other Party describing actions taken to implement such mitigation. When the non-performing Party is able to resume performance of its obligations under this Agreement, said Party shall give the other Party three days prior written notice to that effect.

#### 8.7 Special Circumstances

(a)

(i)

(ii)

matter shall be resolved by the processes set forth in Section 17.3 (Negotiation) and Section 17.4 (Mediation); provided, that:

- (A) such disputes may not be resolved by the processes set forth in Section 17.5 (Arbitration) or Section 17.6 (Judicial Proceedings); and

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(B) [REDACTED]

(iii) [REDACTED]

on which the Parties reach agreement pursuant to subsection (i) above.

(b) Upon the occurrence of one or more Uncontrollable Events or STWA Defaults during the Operating [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

cannot reach agreement on such strategies, the matter shall be resolved by the processes set forth in Section 17.3 (Negotiation) and Section 17.4 (Mediation); provided, that:

(A) such disputes may not be resolved by the processes set forth in Section 17.5 (Arbitration) or Section 17.6 (Judicial Proceedings); and

(B) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

#### 8.8 Development of New Water Supply

(a) [REDACTED]



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(b)

(c)

(d)

**ARTICLE 9  
BILLING AND PAYMENT**

**9.1 Delivery Meter Reading**

Not more than two days prior to the end of each Billing Period, the Delivery Meter shall be read and the quantity of Product Water delivered by SSW to STWA at the Delivery Point shall be recorded for billing purposes by representatives of SSW and STWA, simultaneously, unless such quantity is determined by electronic means.



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## 9.2 Invoicing

- (a) Promptly following the end of each Billing Period, SSW shall prepare and deliver to STWA an invoice (each an "Invoice") for the total Water Charges for such Billing Period as determined in accordance with this Agreement.
- (b) Each Invoice shall be itemized substantially in the manner set forth in Schedule 7 (Form of Invoice), and shall state:
  - (i) the Guaranteed Minimum Purchase for the Billing Period;
  - (ii) the amount of Product Water delivered to the Delivery Point during the Billing Period in kgal;
  - (iii) the Water Charges that are due and payable by STWA to SSW pursuant to Schedule 2 (Charges for Water), Schedule 4 (Delivery and Acceptance Obligations) and other provisions of this Agreement; and
  - (iv) any surcharges as set forth in Section 3 of Schedule 2 (Charges for Water).

## 9.3 Payment of Invoices

- (a) Unless otherwise specified in this Agreement, payments due under this Agreement shall be due and payable in Dollars on or before the 30th day following receipt of the Invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates that the payment was mailed on or before the 30th day following receipt of the Invoice. If any payment remains outstanding for more than 30 days, then SSW will provide written notice to STWA of the amounts due ("Notice of Amounts Due").
- (b) If STWA does not pay SSW within 30 days of receipt of such Notice of Amounts Due, then SSW may declare an immediate default under this Agreement pursuant to Article 15 and suspend the delivery of Product Water to STWA. STWA hereby agrees that SSW shall have an unqualified right to suspend deliveries of Product Water to STWA, notwithstanding any obligations that STWA may have to deliver water to its Customers. Any suspension of deliveries of Product Water shall not be construed to waive or release any other rights of SSW to seek any and all remedies available to it, including the remedies under Article 15 and any breach of contract claim.
- (c) Overdue amounts will bear interest at the Applicable Interest Rate. Any interest charge will be calculated on the outstanding amount from the due date until the date paid.

## 9.4 Invoice Disputes

In the event of a bona fide dispute about the correctness of an Invoice, STWA shall pay the undisputed amount in accordance with Section 9.3 pending resolution of the dispute. Additional amounts owed by STWA, or refunds due to STWA, determined upon resolution of the billing dispute shall accrue interest at the Applicable Interest Rate.

## 9.5

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(b)

(c)

the Water System, and that STWA's entering into this Agreement represents a long-term plan for supplying water to meet the current and projected needs of present and future Customers of the Water System. Accordingly, the payments required by this Agreement to be made by STWA to SSW shall constitute reasonable and necessary operating expenses of the Water System as described above, with the effect that such payments (i) shall be deducted from gross revenues of the Water System in the same manner as other operating expenses of the Water System for the purpose of determining net revenues available to pay bonds or other similar obligations issued by STWA before or after the Contract Date, which obligations are secured by a pledge of the revenues of the Water System after deduction of its operating expenses, and (ii) shall be taken into account in establishing and maintaining rates and charges for water services provided by STWA to its Customers. The Parties acknowledge and agree that Texas Government Code § 1502.056 creates a statutory first priority lien in favor of SSW on all revenues of STWA.

(d)

(e)

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(iii)

(iv)

(v)

(vi)

(vii)

(f) **Additional STWA Debt**

(i) STWA reserves the right to issue additional debt or modify the terms of existing debt after entering into this Agreement ("**Additional STWA Debt**"). Such Additional STWA Debt may be payable from and secured by revenues, and any such security or revenue pledge related to Additional STWA Debt shall be subordinate to STWA's payment obligations due to SSW under this Agreement.

(ii) No Additional STWA Debt shall be issued unless:

(A)

(B) net cash flows available for debt service ("**CFADS**") are at least 1.2 times average annual debt service requirements for all outstanding debts of STWA, after giving effect to the obligations associated with the proposed Additional STWA Debt ("**DSCR**"). CFADS is defined as cash flows from operating activities less capital expenditures as reported in accordance with U.S. Generally Accepted Accounting

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Principles and is demonstrated by: (1) the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or (2) in the event that (1) is not available, a certification by STWA that STWA is expected to continue to meet or exceed DSCR with a minimum coverage of 1.2 times the average annual debt service requirement. An authorized representative of STWA must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to SSW; and

- (C) such issuance is approved in writing by SSW prior to the undertaking of Additional STWA Debt, which approval shall not be unreasonably withheld, conditioned or delayed.
- (iii) Subject to the requirements of subsection (ii) above, STWA further reserves the right to issue subordinate notes or other obligations of subordinate liens and notes, or other subordinate obligations payable from sources including rates and charges for the provision of water services to its Customers.

#### **ARTICLE 10 APPROVALS**

##### **10.1 List of Approvals**

SSW and the STWA shall jointly develop, to the best of their knowledge, a list of all Approvals necessary under Applicable Law to enable SSW to construct, own and operate the Project and such list shall be attached to this Agreement as Exhibit F (List of Approvals).

##### **10.2 Obtaining Approvals**

- (a) SSW shall prepare, at SSW's expense, applications for all Approvals which will be required from the relevant Governmental Authorities with jurisdiction over SSW or the Project, Project Works, Project Lands, Property Interests or Groundwater Interests, and that will be necessary for the construction, completion, operation and maintenance of the Project and for SSW to perform its other obligations under this Agreement.
- (b) STWA shall cooperate as necessary with the preparation and execution of all Approval applications, as reasonably requested by SSW, and assist SSW with its application and presentation of any completed applications, approvals or requests to all necessary Governmental Authorities; provided, that such cooperation shall not require or authorize STWA to engage any outside consultants or legal counsel without an agreement by SSW to reimburse STWA for the costs of such engagement.
- (c) SSW shall comply with the terms and conditions of all Approvals throughout the term of this Agreement.

#### **ARTICLE 11 TERM AND TERMINATION**

##### **11.1 Contract Term**

The term of this Agreement ("**Contract Term**") shall commence on the Contract Date and shall expire on the earlier to occur of:

- (a) the Termination Date; or

(b)

## 11.2 Termination

- (a) This Agreement may be terminated prior to occurrence of the Expiration Date as set forth in Section 2.2(e), Section 2.6(c)(iii), Section 2.6(e), Section 4.2(a)(iv), Section 8.7(b)(iv), Section 14.7, or Section 15.4. The date on which any such early termination shall become effective will be the "Termination Date".

(b)

(c)

## 11.3 Survival

Notwithstanding anything provided herein to the contrary, the following provisions of this Agreement shall survive the expiration or termination of this Agreement:

- (a) Article 9 related to invoicing and payments that relate to the delivery of Product Water during the Contract Term;
- (b) Section 2.6(c)(iii), Section 4.2(a)(iv), Section 8.7(b)(iv), Section 15.4, and Schedule 8 (Termination Fee) related to payment of a Termination Fee;
- (c) Section 6.9 related to wrapping up of operations of the Project; and
- (d) Article 1, Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 18, and Article 19, as necessary to enforce rights of the Parties that arose during the Contract Term.

## ARTICLE 12 INSURANCE

### 12.1 Required Insurance

- (a) At all times during the Contract Term, each Party shall obtain, maintain and comply with the terms and conditions of the Required Insurance as set forth in Schedule 6 (Insurance Requirements), and shall pay all premiums with respect thereto as the same become due and payable.
- (b) A Party shall not be obligated to carry Required Insurance to the extent and for any period that coverage for any particular risk or event is not available on a commercially reasonable basis or on commercially reasonable terms. In such circumstances, such Party shall obtain insurance as comparable to the Required Insurance as is available on a commercially reasonable basis or on commercially reasonable terms. Neither Party in any such circumstances shall bear any risk or responsibility upon the occurrence of any uninsured or underinsured risk or event due solely to the lack of insurance coverage.

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- (c) If, under the terms of any Permitted Debt entered into by SSW to fund its obligations under this Agreement, it is obligated to carry, or procure the carrying of, insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement or to procure customary lender endorsements for such insurance, SSW shall obtain and maintain such insurance, and such requirements shall be deemed to have modified the Required Insurance set forth in Schedule 6 (Insurance Requirements) for the effective period of such Permitted Debt.

#### **12.2 Subrogation**

- (a) SSW specifically waives all rights of subrogation and recovery against STWA and any STWA Indemnified Party to the extent of any loss or damage to any of the Project Lands owned by SSW. SSW's property insurance policies shall contain a waiver of subrogation clause stating that the insurance companies will waive their rights of subrogation against any party against which the insured or loss payees have waived their rights of action prior to any loss.
- (b) STWA specifically waives all rights of subrogation and recovery against SSW and any SSW Indemnified Party to the extent of any loss or damage to any of the Project Lands owned by STWA. STWA's property insurance policies shall contain a waiver of subrogation clause stating that the insurance companies will waive their rights of subrogation against any party against which the insured or loss payees have waived their rights of action prior to any loss.

#### **12.3 Compliance with Insurer Requirements**

Each Party shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. A Party shall not knowingly do or permit anything to be done that results in the cancellation or reduction of coverage under any policy of Required Insurance.

#### **12.4 Proof of Insurance Coverage**

Upon request by a Party, the second Party shall furnish the first Party with any endorsements to the policies for such insurance obtained for the Project and certificates of insurance from each insurance carrier showing that the Required Insurance is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be cancelled, changed or not renewed until the expiration of at least 30 days (or 10 days in the case of cancellation due to non-payment of premiums) after written notice of such cancellation, change or non-renewal has been received by the first Party. Each policy of insurance (or renewal policy of insurance) furnished hereunder shall evidence the existence and coverage amounts of the Required Insurance and show the first Party as an additional insured or named insured, as required by Schedule 6 (Insurance Requirements) for the particular policy of Required Insurance.

#### **12.5 Failure to Provide Insurance Coverage**

If a Party fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and such Party fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the other Party may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the second Party the amount thereof shall be immediately reimbursable by the first Party to the second Party. The failure of a Party to obtain and maintain any Required Insurance shall not relieve such Party of its liability for any losses or in any way limit, modify or satisfy such Party's indemnity obligations under this Agreement.

#### **12.6 Use of Insurance**

Upon the occurrence of an event that results in any loss of, or damage to, the Project Works that would require actions to repair or replace any component, part or fixture of the Project Works to enable delivery of the

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Guaranteed Minimum Purchase to STWA with a cost in excess of any deductible in any applicable insurance policy (whether Required Insurance or otherwise):

- (a) SSW shall file an insurance claim to recover such losses and damages, and use the proceeds of such insurance claim to repair and replace the lost or damaged component, part or fixture of the Project Works; and
- (b) if the insurance claim set forth in subsection (a) is not sufficient to recover the full amount of such losses and damages, the unrecovered amount shall be considered Increased Capital Costs subject to the provisions of Section 8.7.

#### **12.7 Reductions for Insurance Proceeds**

Whenever this Agreement obligates a Party to pay any amount to the other Party in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the second Party under the Required Insurance, the amount which the first Party is obligated to pay will be reduced by the amount of insurance proceeds which the second Party recovers or would have been entitled to recover if it had complied with the requirements of this Agreement or any policy of Required Insurance.

#### **12.8 Subcontractors**

Each Party shall ensure that all of its Subcontractors obtain and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties on the Project Lands or concerning the Project Works. Each Party shall furnish sufficient certificates of insurance upon request demonstrating the insurance (including any necessary endorsements) required to be maintained by its Subcontractors under this Agreement is in full force and effect.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES**

#### **13.1 Representations and Warranties of SSW**

SSW makes the following representations, warranties and covenants to STWA as of the Contract Date:

- (a) SSW is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is duly qualified to conduct business in Texas, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) SSW has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by SSW and constitutes the legal, valid and binding obligation of SSW in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.
- (c) Neither the execution nor the delivery by SSW of this Agreement, nor the performance by SSW of its obligations hereunder, assuming all Approvals are obtained and remain in effect:
  - (i) conflicts with, violates or results in a breach of any Applicable Law applicable to SSW; or
  - (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, franchise, material agreement, including the certificate of formation of SSW, or material instrument to which SSW is a party or by which SSW or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material agreement or material instrument.



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- (d) There is no action, suit or other proceeding pending or, to its knowledge, threatened against SSW, at law or in equity, before or by any Governmental Authority, which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by SSW in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by SSW of its obligations hereunder or under any such other agreement or instrument.

### **13.2 Representations and Warranties of STWA**

STWA makes the following representations, warranties and covenants to SSW as of the Contract Date:

- (a) STWA is a conservation and reclamation district duly organized and validly existing under the laws of the State of Texas, is duly qualified to conduct business in Texas, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) STWA has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by STWA and constitutes the legal, valid and binding obligation of STWA in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.
- (c) Neither the execution nor the delivery by STWA of this Agreement, nor the performance by STWA of its obligations hereunder, assuming all Approvals are obtained and remain in effect:
- (i) conflicts with, violates or results in a breach of any Applicable Law applicable to STWA; or
  - (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, franchise, material agreement, including the certificate of formation of STWA, or material instrument to which STWA is a party or by which STWA or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material agreement or material instrument.
- (d) There is no action, suit or other proceeding pending or, to its knowledge, threatened against STWA, at law or in equity, before or by any Governmental Authority, which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by SSW in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by SSW of its obligations hereunder or under any such other agreement or instrument.

## **ARTICLE 14 PARTIES**

### **14.1 Assignment Rights of SSW**

- (a) SSW may assign or otherwise transfer this Agreement without STWA's consent: (i) to an Affiliate; (ii) in connection with a merger, consolidation or reorganization involving SSW; (iii) in connection with a sale of all or substantially all of the assets or voting stock of SSW; or (iv) in connection with an initial public offering by SSW or its Affiliate or in connection with any debt financing issued, incurred or obtained by SSW or its Affiliate. However, nothing herein shall relieve SSW, its successor, its assignee or any new entity formed as a result of clauses (i) through (iii) above of its obligations to STWA under this Agreement. SSW agrees to provide prompt written notice to STWA of any assignment covered by this Section 14.1(a).
- (b) SSW or its successors or assigns may from time to time, without the prior consent of STWA, encumber its interest in this Agreement and the rights granted hereunder by one or more Permitted



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Debt Security Interests, including by a collateral assignment of this Agreement; provided, that any Permitted Debt Security Interest and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Agreement and to all rights and interests of STWA; and further provided, that SSW or an assignee shall promptly upon the execution of any Permitted Debt Security Interest deliver a written notice thereof to STWA.

- (c) Without limiting the generality of the foregoing, nothing contained in any such Permitted Debt Security Interest shall release or be deemed to relieve SSW from full and faithful observance and performance of the terms, covenants and conditions herein contained to be observed and performed by SSW or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of STWA hereunder, except as expressly provided for herein. STWA agrees upon request of SSW or the holder of a Permitted Debt Security Interest to execute an agreement in reasonable form which contains provisions and protections reasonably requested by the holder of such Permitted Debt Security Interest.

#### **14.2 Assignment Rights of STWA**

STWA may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of SSW.

#### **14.3 Relationship of Parties**

Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party, and nothing in this Agreement shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

#### **14.4 Subcontracting**

SSW shall have the right to subcontract work to be performed under this Agreement but shall remain liable for full performance of such work. SSW shall instruct any Subcontractor to abide by the same standards of behavior, rules and regulations which are required of SSW. SSW shall pay all Subcontractors engaged by SSW.

#### **14.5 Employees of SSW**

STWA specifically acknowledges that it has been informed of SSW's policy of requiring that all SSW employees agree neither to compete with SSW nor to work for clients of SSW located in the State of Texas for a period of 12 months after termination of employment with SSW. STWA agrees that it will not employ any of SSW's current or former employees, until a period of 12 months has elapsed since the termination of the person's employment with SSW. This provision shall survive the termination of this Agreement.

#### **14.6 No Third Party Rights**

Nothing in this Agreement is intended, or should be construed, to create any rights of any kind whatsoever in any Third Party.

#### **14.7 SSW Not a Regulated Entity**

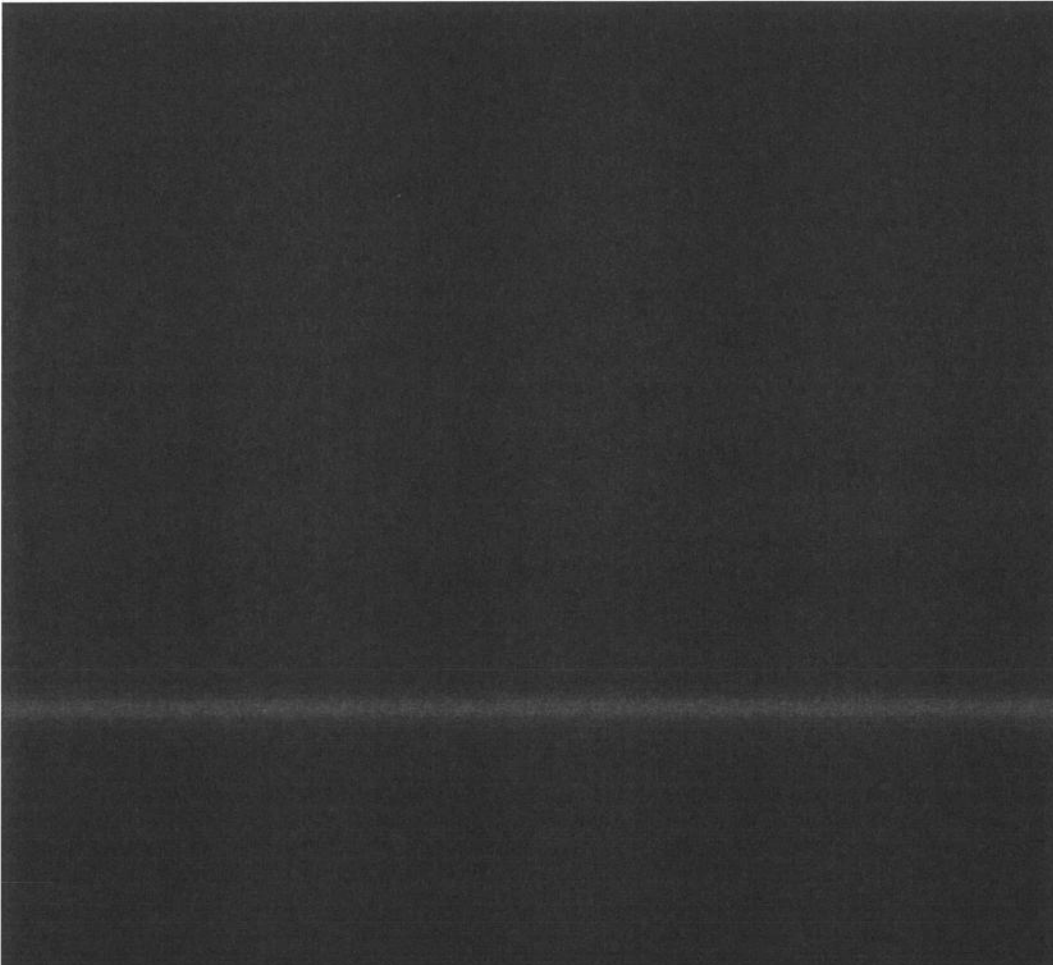
Nothing in this Agreement shall be construed to mean that SSW is a Regulated Entity, and STWA shall not assert in any public forum that SSW is a Regulated Entity. Nonetheless, if any attempt or effort is made by any Governmental Authority to declare or treat SSW as a Regulated Entity due to its activities under this Agreement, SSW may, in its sole discretion, terminate this Agreement upon six months prior written notice to STWA. In such an event, STWA will be responsible for monies due for services rendered prior to the

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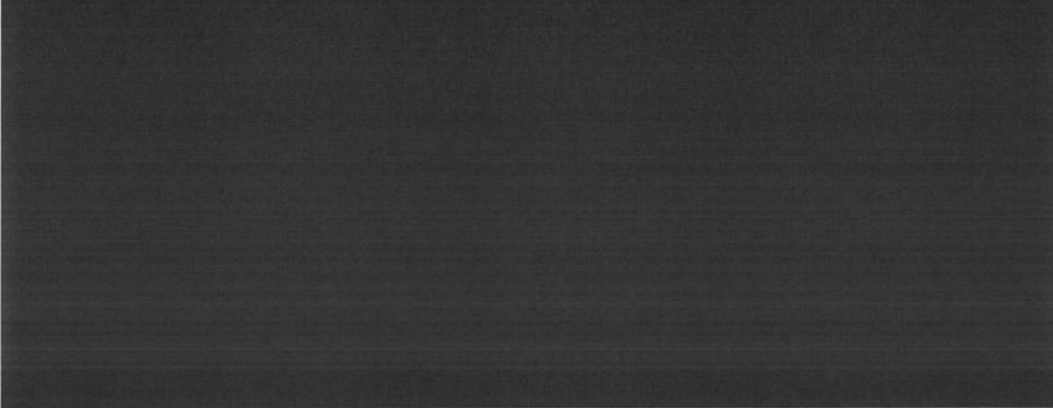
Termination Date, any other amounts payable under Article 9, and any indemnification, damages, costs or fees arising out of any attempt to declare or treat SSW as a Regulated Entity.

**ARTICLE 15  
DEFAULT AND TERMINATION**

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15.2



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15.3

15.4 **Termination for Default**

- (a) If SSW shall Default under this Agreement, then STWA, at its option, by written notice to SSW, may terminate this Agreement. If termination of this Agreement pursuant to the terms and conditions of this Section 15.4(a) shall occur, SSW shall cease to deliver Product Water to STWA, and STWA shall be responsible for the payment to SSW of Invoices for Product Water delivered under the terms of

- (b) If STWA shall default under this Agreement, then SSW, at its option, by written notice to STWA may terminate this Agreement. If termination of this Agreement pursuant to the terms and conditions of this Section 15.4(b) shall occur, or otherwise in connection with any actual or constructive termination of this Agreement by STWA other than as expressly authorized under subsection (a) of this Section 15.4, in addition to all other available remedies, SSW shall cease to deliver Product Water to STWA and STWA shall be responsible for the payment to SSW of Invoices for Product Water delivered under the terms of this Agreement up to and through the Termination Date and any and all other

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**15.5 Waiver**

The failure of any Party at any time or times to enforce or require performance of any provision of this Agreement shall in no way operate as a waiver or affect the right of such Party at a later time to enforce the same. No waiver by any Party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or a waiver of any other condition or of any other breach of any term, covenant, representation or warranty contained in this Agreement. No waiver of any provision of this Agreement shall be effective against a Party except as expressly set forth in a writing signed by such Party. The making or acceptance of a payment by a Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**ARTICLE 16  
LIABILITY AND INDEMNIFICATION**

**16.1 Exclusion of Consequential Damages**

Without limiting any obligation to pay damages or any other express remedy otherwise specifically provided for in this Agreement, in no event, whether because of a breach of any provision contained in this Agreement or any other cause, whether based upon contract, negligence, including tort or strict liability, warranty, or otherwise, shall either Party be liable for or obligated in any manner to pay incidental, special, punitive, consequential, exemplary, or indirect damages of any nature whatsoever incurred by either Party.

**16.2 Limitation on Liability**

The aggregate liability of SSW and its directors, officers, employees, agents and Subcontractors under this Agreement, and in connection with the actions to be performed under this Agreement, whether based on contract, warranty, tort (including intentional acts, errors or omissions, negligence, indemnity, strict liability or otherwise) or any other claim or cause of action, shall be limited to the lesser of the insurance coverage maintained by SSW pursuant to Section 12.1 or the actual direct damages incurred by STWA.

**16.3 Indemnification by SSW**

- (a) SSW shall indemnify, defend and hold harmless STWA and its directors, officers, employees and agents (each a "**STWA Indemnified Party**") from and against any Liability or Proceeding based upon, arising out of, or with respect to:
  - (i) any inaccuracy in or breach of any of the representations or warranties of SSW contained in this Agreement;
  - (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by SSW pursuant to this Agreement;
  - (iii) any Third Party Claim based upon, resulting from, or arising out of the interests of SSW in the Project Works, Property Interests or Product Water;
  - (iv) any actual or alleged injury or death of persons or damage to property arising out of the negligence, willful misconduct or breach of this Agreement by SSW; or
  - (v) any delivery of Product Water by SSW that does not satisfy the Water Quality Standards.
- (b) SSW shall have no indemnification obligation in connection with any Third-Party Claim or Proceeding arising from or otherwise in connection with:

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- (i) the operation or management of the Water System or STWA's other facilities or real property by STWA;
  - (ii) a breach by STWA of any of its covenants, obligations, representations or warranties set forth in this Agreement;
  - (iii) the negligence or willful misconduct of STWA or any STWA Indemnified Party; or
  - (iv) the consumption or use of Product Water by Customers of STWA or Persons to whom those Customers have directly or indirectly delivered such Product Water, as long as such Product Water satisfied all Water Quality Standards when delivered to STWA at the Delivery Point.

#### 16.4 Indemnification by STWA

- (a) STWA shall indemnify, defend and hold harmless SSW and its directors, officers, employees and agents (each an "SSW Indemnified Party") from and against any Liability or Proceeding based upon, arising out of, or with respect to:
  - (i) any inaccuracy in or breach of any of the representations or warranties of STWA contained in this Agreement;
  - (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by STWA pursuant to this Agreement;
  - (iii) any Third-Party Claim based upon, resulting from, or arising out of the interests of STWA in the Water System, Property Interests or Product Water;
  - (iv) any actual or alleged injury or death of persons or damage to property arising out of the negligence, willful misconduct, or breach of this Agreement by STWA; or
  - (v) any Third-Party Claims based upon the consumption or use of Product Water by Customers of STWA or Third Parties to whom Customers have directly or indirectly delivered Product Water, to the extent that the quality of Product Water in the Water System, or the facilities of the Customer or their deliverables as applicable, has been adversely impacted by blending with other sources of water available to STWA or interaction with facilities or materials of the Water System or the water pipes or equipment of the Customers of STWA or their deliverables.
- (b) STWA shall have no indemnification obligation in connection with any Third-Party Claim or Proceeding arising from or otherwise in connection with:
  - (i) the operation or management of the Project Works or Property Interests by SSW;
  - (ii) a breach by SSW of any of its covenants, obligations, representations or warranties set forth in this Agreement; or
  - (iii) the negligence or willful misconduct of SSW or any SSW Indemnified Party.

#### 16.5 Indemnification Process

Each Party's indemnification obligations under this Article 16 shall be conditioned on: (a) the other Party promptly notifying the indemnifying Party, in writing, of any potential Liability or the filing of any Third Party Claim or Proceeding for which indemnification is sought hereunder; (b) the indemnifying Party having sole control and authority with respect to the defense or settlement of any such Liability or Proceeding, and (c) the

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other Party cooperating fully with the indemnifying Party, at the indemnifying Party's sole cost and expense, in the defense of any such Third Party Claim or Proceeding. The indemnifying Party shall not accept any settlement which imposes Liability not covered by its indemnification obligations hereunder or restrictions on the other Party without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnified Party may participate in the defense of any Third-Party Claim or Proceeding through its own counsel, and at its own expense.

## **ARTICLE 17 DISPUTE RESOLUTION**

### **17.1 Governing Law**

This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based on, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the Texas Constitution and the laws of the State of Texas, including its statutes of limitations. STWA hereby waives and relinquishes any claim that it is immune from liability under this Agreement under the doctrine of governmental and/or sovereign immunity or any other similar doctrine or argument.

### **17.2 Continued Performance**

Each Party shall continue to perform its obligations under this Agreement pending resolution of any dispute pursuant to this Article 17. Neither Party shall be required to make any disputed payment to the other Party so long as such dispute has been referred in good faith to the process for resolution pursuant to this Article 17; provided, that to the extent any amounts owed to a Party by the other Party are not disputed in good faith and can be segregated from amounts with respect to which there is a dispute, such undisputed amounts shall, in good faith, be identified by the Parties and paid as required by this Agreement. To the extent that any disputed amount was withheld from a Party, and such Party is ultimately found to be entitled to all or any portion of such disputed amount pursuant to this Article 17, then such Party shall be entitled to the payment of interest on any withheld amount, at the Applicable Interest Rate, from the original due date for payment of such amount until the payment of such disputed amount.

### **17.3 Negotiations**

If any dispute, controversy or claim arises under or relates to this Agreement or the breach, termination or validity thereof (each a "**Dispute**"), such Dispute shall be referred by each Party to its Operating Representatives for resolution upon written notice from the other Party (a "**Dispute Notice**"). If the Operating Representatives of the Parties are unable to reach agreement by the 30th day following the Dispute Notice, upon the request of either Party such Dispute shall be referred to mediation in accordance with Section 17.4. The Parties agree to attempt to resolve all Disputes promptly and equitably and to provide each other with reasonable access during regular business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

### **17.4 Mediation**

If a Dispute is not resolved by the Parties through negotiation pursuant to Section 17.3 by the 30th day following the Dispute Notice, upon the request of any Party the Parties shall try in good faith to settle the Dispute by nonbinding mediation administered by the American Arbitration Association ("**AAA**") under its Commercial Mediation Rules. The mediation shall occur in Travis County, Texas or other location agreed upon by the Parties. Each Party will bear the cost and expense of preparing and presenting its own case, including its own attorney fees and costs of witnesses. Payment of the mediator and other costs and expenses of the mediation will be divided equally on a per-Party basis.

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## 17.5 Arbitration

- (a) **Submission to Arbitration.** If a Dispute is not resolved by the Parties through mediation pursuant to Section 17.4 by the 90th day following the Dispute Notice, or upon agreement by the Parties that they should proceed to arbitration rather than mediation, either Party may submit any Dispute to arbitration by providing the other Party a written notice of arbitration (the "Arbitration Notice") specifying the matter to be arbitrated.
- (b) **Arbitration Proceedings.** The arbitration shall be held in Kleberg County, Texas or other location agreed upon by the Parties. The arbitration shall be governed by the AAA Commercial Arbitration Rules then in effect, except as modified herein. If the amount in Dispute (including claims and counterclaims) is \$1 million or less, there shall be one arbitrator chosen by agreement of the Parties within 30 days of receipt by respondent of the Arbitration Notice. If the amount in Dispute is greater than \$1 million, there shall be three (3) arbitrators, one chosen by each Party within 30 days of receipt by respondent of the Arbitration Notice and the third chosen by the two arbitrators so selected within 20 days of the appointment of the second arbitrator. If any arbitrator is not timely appointed, on the request of any Party such arbitrator shall be appointed by the AAA in accordance with the listing ranking and striking provision in its Commercial Arbitration Rules. Any arbitrator appointed by AAA shall be a retired judge experienced with large, complex commercial cases or an attorney admitted to practice for at least 15 years, who is experienced in the arbitration of large, complex commercial cases, if possible, with experience with water-related transactions or disputes.
- (c) **Discovery.** The arbitrators shall permit each Party to conduct reasonable discovery as promptly and expeditiously as possible and both Parties shall cooperate to this end. Discovery shall be limited to requests for the production of documents, deposition by each Party of up to five witnesses for no more than eight hours each, and requests for admission. Each Party's requests for and responses to discovery, including depositions, shall be completed within 60 days of the arbitrators' selection. The Parties may modify the terms of discovery by mutual agreement. The arbitrators shall resolve any discovery disputes between the Parties that the Parties cannot resolve themselves and may modify or extend any limit or time period contained in this Section 17.5(c) for good cause.
- (d) **Evidence.** The hearing shall begin as promptly and expeditiously as possible and, if practicable, not more than 60 days after the conclusion of the discovery period. Each Party shall file written direct testimony with the arbitrators and serve a copy on the other Party. The written testimony shall be received by the arbitrators and the other Party no later than 10 days prior to the commencement of the hearing. Each Party shall be permitted to make opening statements with the Party demanding arbitration presenting its opening statement first. Immediately after opening statements, the Party demanding arbitration shall then present evidence in support of its position. The other Party then shall present evidence in support of its position. Both Parties may present rebuttal witnesses. All witnesses shall testify under oath, and a stenographic record and transcript of the hearing shall be made. Each Party shall have an opportunity to cross-examine the other Party's witnesses, including the witnesses for whom written direct testimony has been filed. The Parties shall be permitted to make closing statements. The Party demanding arbitration shall present its statement first. The arbitrators shall, if practicable, conclude and close the hearing within 30 days of its commencement. The period for concluding the hearing may be modified by mutual agreement of the Parties.
- (e) **Determination.** The determination and award, if any, of the arbitrators shall be made no later than 30 days from the date of the completion of the hearing or, if applicable, the date when post-hearing briefs were received by the arbitrators and the Parties. Such determination and award shall be conclusive, final and binding. To the extent that an award includes an amount of money, such award shall include interest at the Applicable Interest Rate, and such interest shall accrue from the dates on which such money was originally due to have been paid to the prevailing Party or was incorrectly paid by that Party.



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- (f) **Costs.** The costs of the arbitration proceedings, other than the Parties' own expenses and attorney fees, shall be paid by the non-prevailing Party.
- (g) **Arbitral Awards.** The arbitrators shall apply Texas law and shall have no power to amend or add to this Agreement but shall have the authority to interpret the language of this Agreement and make findings of fact, order specific performance and provide injunctive relief or any other remedy available under the terms of this Agreement as if the arbitrators were a court. Subject to such limitation, the decision and award of the arbitrators shall be final and binding. Judgment on an award may be enforced in any court specified in Section 17.6(b). Upon request of either Party, the arbitrators may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject of arbitration or otherwise to avoid irreparable harm to a Party, without prejudice to the rights of the Parties in the final determination of the Dispute. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect.

#### 17.6 Judicial Proceedings

- (a) **Preservation of Rights.** Notwithstanding any provision of this Article 17 to the contrary, a Party may commence litigation within 30 days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other Applicable Law, or at any time in order to request injunctive or other equitable relief in connection with any bankruptcy or insolvency proceeding, or otherwise as necessary to prevent irreparable harm. In such event, the Parties will (except as may be prohibited by judicial order) nevertheless continue to follow the procedures set forth herein. While any disputes under this Agreement are pending, including the commencement and pendency of any of the Dispute Resolution Procedures set forth in this Article 17, the Parties shall abide by all their obligations under this Agreement without prejudice to a final determination in accordance with the foregoing provisions of this Article 17.
- (b) **Jurisdiction.** Each Party irrevocably and unconditionally agrees that the federal and state courts located in the State of Texas shall have exclusive jurisdiction to hear and decide any Proceeding relating to this Agreement to enforce a decision rendered in a Proceeding described in Section 17.5, and for these purposes each Party irrevocably submits to the jurisdiction and venue of such courts. Each Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that such Party may have now or hereafter to the laying of the venue or the jurisdiction or the convenience of the forum of any such legal suit, action or Proceeding.
- (c) **Enforcement of Award.** Each Party agrees that any final award against it in any arbitration proceedings pursuant to Section 17.5 shall be final, conclusive and binding upon it and may be enforced in any court with jurisdiction by suit on the award or otherwise, a certified copy of which award shall be conclusive evidence thereof and of the amount of its liability, or by any other means provided by Applicable Law.
- (d) **Waiver of Jury Trial.** Each Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this Agreement or the Project or transactions contemplated by this Agreement. Each Party certifies and acknowledges that:
- (i) no representative of the other Party has represented, expressly or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of a legal action;
  - (ii) it has considered the implications of this waiver;



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- (iii) it makes this waiver knowingly and voluntarily; and
  - (iv) it has decided to enter into this Agreement in consideration of, among other things, the mutual waivers and certifications in this Section 17.6(b).

#### 17.7 Waiver of Sovereign Immunity

The defense of immunity (sovereign or otherwise) shall not be available to STWA in any Proceeding by SSW to enforce any of the obligations of STWA under this Agreement, and, to the fullest extent permitted by Applicable Law, STWA consents to the initiation of any such Proceeding in any state court of competent jurisdiction located in the State of Texas. STWA hereby waives and relinquishes any claim that it is immune from any Proceeding or Liability under this Agreement pursuant to the doctrine of sovereign or governmental immunity or any similar doctrine or argument.

#### 17.8 Remedies Cumulative

Each right or remedy of the Parties under this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided herein, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

### ARTICLE 18 COMPLIANCE

#### 18.1 Anti-Corruption Terms

- (a) The Parties hereby represent, covenant and agree as follows:
  - (i) Each of the Parties and its officers, directors, employees, agents, partners and any other Persons acting on its behalf (collectively, "**Representatives**") is in compliance, and in the performance of this Agreement will continue to comply, with the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 *et seq.*, and any Applicable Laws related to anti-corruption (collectively, "**Anti-Corruption Laws**").
  - (ii) Neither Party nor any of its Representatives has taken, and none of them shall take, any action in furtherance of making, offering, promising or authorizing, directly or indirectly, in connection with this Agreement or the Project, the payment or giving of money or anything else of value to any: (i) officer, member or employee of a state or government-owned business, anyone acting in an official capacity for or on behalf of a Governmental Authority, a political party official, a candidate to a political or governmental office, members of monarchies or royal families, or any government officer or employee ("**Government Official**"), except that, for STWA and its Representatives, such term shall not include STWA itself for any improper purpose; or (ii) other Person while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, promised or given, directly or indirectly, to a Government Official for any improper purpose.
- (b) If a Party engages any Subcontractor to perform any actions under or related to this Agreement, such Party shall make such Subcontractor's performance subject to the terms and conditions of this Article 18 (the "**Anti-Corruption Terms**").
- (c) STWA shall maintain accounting and financial controls adequate to ensure that: (i) all payments and activities have been accurately recorded in such company's books, records and accounts; (ii) there have been no false, inaccurate, misleading or incomplete entries made in such company's books, records and accounts; and (iii) STWA shall preserve all books and records that describe in accurate

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and reasonable detail all expenditures incurred by STWA in connection with this Agreement. STWA shall permit SSW to review and inspect such books and records. STWA shall grant SSW the unrestricted right to take reasonable steps to verify STWA's compliance with any Anti-Corruption Terms, including but not limited to the audit rights established in Section 18.4.

- (d) In connection with this Agreement or any other business transaction related to SSW, STWA shall:
- (i) have and maintain throughout the term of this Agreement adequate policies, procedures and controls to ensure compliance with the Anti-Corruption Terms of this Agreement;
  - (ii) participate in anti-bribery and anti-corruption compliance training, if so requested by SSW;
  - (iii) immediately notify SSW in writing if subsequent developments cause the statements in subsection (a)(i) of this Section 18.1 to be inaccurate or incomplete;
  - (iv) promptly report to SSW any request or demand for any undue or suspicious payment or other advantage of any kind received by STWA;
  - (v) immediately notify SSW in writing if STWA or any of its Representatives: (i) becomes a Government Official; (ii) employs any Government Official or a close family member of any Government Official; or (iii) forms a personal, business or other relationship or association with any Government Official or close family member of any Government Official who may have responsibility for or oversight of any business activities of SSW; and
  - (vi) when requested by SSW from time to time, provide a certification, signed by a legal representative of STWA, certifying that STWA is, and to its knowledge all of its Representatives are, in compliance with this Section 18.1. Upon SSW's request, STWA shall also obtain such certificates from its Representatives and provide a copy of such certificates to SSW.
- (e) If SSW reasonably determines, at any time, that there is credible evidence that STWA or any of its Representatives has violated any Anti-Corruption Terms, SSW shall have the right to suspend all payments due under this Agreement while it investigates the credible evidence. Upon a good faith request by SSW, STWA shall cooperate with SSW's investigation to determine if such a violation has occurred. Violation of the terms of the Anti-Corruption Laws by STWA shall constitute an event of STWA Default pursuant to this Agreement.

## 18.2 Trade Control Terms

Each of the Parties hereby covenants and agrees as follows:

- (a) The Party and its Representatives are in compliance with all sanctions and export controls administered or enforced by the United States, including the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS"), as well as by the European Union, Her Majesty's Treasury of the United Kingdom, the United Nations Security Council, or other relevant sanctions or export controls authority (collectively, "Trade Control Laws"). The Party maintains and shall maintain in effect policies and procedures reasonably designed to ensure compliance by the Party and its Representatives with Trade Control Laws.
- (b) None the Party nor any of its Representatives (A) is an individual or entity that is, or (B) is owned, directly or indirectly, by individuals or entities that are, or (C) is controlled by individuals or entities that are:

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- (i) the target of any Trade Control Laws, including but not limited to persons that are identified on the OFAC Specially Designated Nationals and Blocked Persons List, OFAC Sectoral Sanctions Identifications List or BIS Entity List;
    - (ii) a Person meeting the OFAC definition of the Government of Venezuela;
    - (iii) a Person that is located, organized or resident in Venezuela;
    - (iv) a government that is the target of comprehensive economic sanctions administered by OFAC; or
    - (v) a Person that is located, organized or resident in a country or region that is the target of comprehensive economic sanctions administered by OFAC (currently Crimea, Cuba, Iran, North Korea, Syria, the Donetsk People's Republic, and the Luhansk People's Republic) (each a "**Sanctioned Jurisdiction**").
  - (c) At no time in the past five years has the Party engaged in business dealings with any individual, entity or government that was the target of any Trade Control Laws at the time of the dealing, including but not limited to persons meeting the OFAC definition of the Government of Venezuela or any individuals or entities acting for or on behalf of any Sanctioned Jurisdiction.
  - (d) The Party shall not, directly or indirectly, use the proceeds of any transaction contemplated by this Agreement, or lend, contribute or otherwise make available such proceeds to any subsidiary, partner or other Person:
    - (i) to fund any activities of, or business with, any Person or in any country or region that, at the time of such funding, is the target of Trade Control Laws; or
    - (ii) in any other manner that would result in a violation of Trade Control Laws by any Person.
  - (e) In connection with this Agreement, STWA shall:
    - (i) participate in Trade Control Law compliance training, if so requested by SSW;
    - (ii) immediately notify SSW in writing if subsequent developments cause any statement in this Section 18.2 to be inaccurate or incomplete; and
    - (iii) when requested by SSW, from time to time, provide a certification, signed by a legal representative of STWA, certifying that STWA is, and all of its Representatives are, in compliance with this Section 18.2. Upon SSW's reasonable request, STWA shall also obtain such certificates from its Representatives and provide a copy of such certificates to SSW.
  - (f) STWA shall grant SSW the unrestricted right to take reasonable steps to verify STWA's compliance with any terms and conditions of this Section 18.2 (the "**Trade Control Terms**").
  - (g) If a Party reasonably determines, at any time, that there is credible evidence that the other Party or any of its Representatives has violated, or has caused any person to violate, any Trade Control Terms, such first Party shall have the right to suspend all payments and performance due under this Agreement while it investigates the credible evidence. Upon a good faith request by the first Party, the second Party shall cooperate with the first Party's investigation to determine if such a violation has occurred. Violation of the Trade Control Terms by a Party shall constitute an event of STWA Default or SSW Default, as applicable, pursuant to this Agreement.
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- (h) If the first Party determines reasonably and in good faith that there has been such a violation, it shall have the right to terminate this Agreement with immediate effect and without payment due of any kind by the first Party except for services lawfully and properly rendered under the Agreement.

### **18.3 Anti-Corruption and Trade Control Investigations**

Each of the Parties hereby represents and warrants that, in the past five years, it has not:

- (a) been fined or penalized or restricted under any Anti-Corruption Laws or Trade Control Laws;
- (b) been the subject of any past, current, pending or threatened investigation, formal or informal inquiry, or enforcement Proceeding by or before any Governmental Authority for violations of Anti-Corruption Laws or Trade Control Laws, or
- (c) received any oral or written notice from a Governmental Authority concerning any actual or possible noncompliance with any Anti-Corruption Laws or Trade Control Laws.

### **18.4 Audit Rights**

SSW shall have the right to audit or retain a Third Party to audit, at its sole discretion and expense, all:

- (a) services performed by STWA under this Agreement;
- (b) invoices and requests for expense reimbursement submitted to SSW by STWA; and
- (c) payments made to or benefits conferred by STWA on Third Parties in the course of STWA's performance under this Agreement.

## **ARTICLE 19 MISCELLANEOUS**

### **19.1 Further Assurances**

Each Party agrees and shall use all reasonable efforts to provide such information, execute and deliver any instruments and documents, and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full force and effect to this Agreement and to carry out its intent.

### **19.2 Notices**

Any notices required to be given under this Agreement shall be deemed delivered: (a) five Business Days following the day when deposited with the United States Postal Service, certified and return receipt requested; (b) two Business Days following the day when deposited with a nationally recognized express courier for overnight or next Business Day delivery; (c) by personal delivery; or (d) when transmitted as email to the internet service provider of the sending Party, as long as such notice is confirmed using either method (a) or (b) above. Any notices required to be given under this Agreement shall be in writing, in the English language or mathematical or other symbols that may be reasonably expected to be understood by the receiving Party. Notices shall be provided to the persons at the addresses or email addresses stated below, except that delivery to the persons listed as "copy to" shall not constitute delivery to the Party whom they represent:

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If to STWA: South Texas Water Authority  
Attn: Executive Director  
2302 East Sage Rd  
Kingsville, TX 78363  
[jwagner@stwa.org](mailto:jwagner@stwa.org)

with copy to: Charles W. Zahn, Jr.  
Attorney at Law  
2106 State Highway 361, Suite C  
Port Aransas, TX 78373  
[cwzir@centurytel.net](mailto:cwzir@centurytel.net)

If to SSW: Seven Seas Water (STWA) USA LLC  
c/o Seven Seas Water Corporation  
Attn: Chad Schafer, Chief Financial Officer  
14400 Carlson Circle  
Tampa, FL 33626  
[cschafer@7seaswater.com](mailto:cschafer@7seaswater.com)

with copy to: Ashurst LLP  
Attn: Wes Strickland, Partner  
111 Congress Ave, Suite 500  
Austin, TX 78701  
[wes.strickland@ashurst.com](mailto:wes.strickland@ashurst.com)

### 19.3 Protection of Confidential Information

- (a) Any Confidential Information of a transferring Party (the "**Disclosing Party**") which is disclosed to or otherwise received or obtained by the other Party (the "**Receiving Party**") incident to this Agreement shall be held in confidence, and the Receiving Party shall not publish or otherwise disclose such Confidential Information to any Person or use any such Confidential Information, except as reasonably may be required in connection with the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Confidential Information of the Disclosing Party which such Party observes with respect to its own information of the same or similar kind (but no less a standard than reasonable care). The Receiving Party may disclose Confidential Information to its employees, consultants and agents on a need-to-know basis.
- (b) The restrictions on disclosure of Confidential Information shall not apply to information which a Receiving Party may be required to disclose by Applicable Law; provided, that the Receiving Party shall give the Disclosing Party prompt written notice and sufficient opportunity to object to such use or disclosure.
- (c) The Parties acknowledge that a Disclosing Party may be irreparably harmed if a Receiving Party breaches its obligation of confidentiality under this Section 19.3 and such obligation is not specifically enforced, and the Disclosing Party may not have an adequate remedy at law in the event of an actual or threatened violation of any such material obligation hereunder. In the event that any Receiving Party breaches or threatens to breach any material obligation under this Section 19.3, the Disclosing Party shall, in addition to any and all other forms of relief to which it may be entitled, be entitled to seek an injunction restraining any further disclosure or use of Confidential Information.
- (d) The obligation to retain Confidential Information in confidence shall continue in full force and effect until the third (3rd) anniversary of the Expiration Date or Termination Date.

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**19.4 Counterparts**

This Agreement and any amendment hereto may be executed and delivered in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each Party and delivered to the other Party. The executed copies of this Agreement may be delivered by facsimile or other electronic transmission.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Contract Date.

Signed by



for and on behalf of

SOUTH TEXAS WATER AUTHORITY

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)  
)  
)  
)  
)  
)

Signed by 

Henry J. Charrabé  
Chief Executive Officer  
for and on behalf of  
**SEVEN SEAS WATER (STWA) USA LLC**

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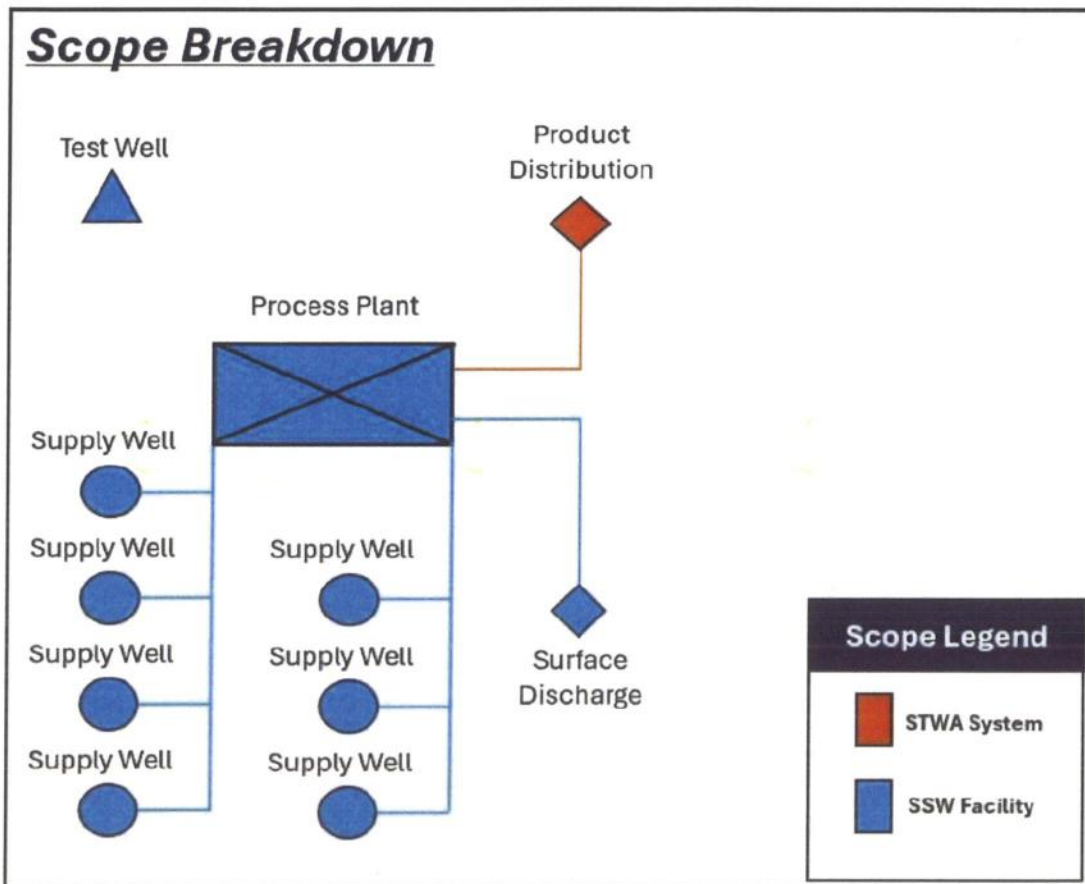


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EXHIBIT A

DESCRIPTION AND SCOPE OF PROJECT WORKS

The Project Works will include 4 MGD capacity Plant, required Water Supply Wells with connection pipelines to the Plant, as well as works to discharge water into Petronila Creek. This also includes 50 feet of piping to convey water from the Plant to the Delivery Point, from which the remainder of the piping for connection to STWA's distribution system will be designed, constructed, operated, and maintained by STWA. The final design of Project Works will be agreed upon by the Parties upon satisfactory water testing results, as described in Section 2.2 of the Agreement.



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**EXHIBIT B**

**DESCRIPTION AND SCOPE OF PROPERTY INTERESTS**



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EXHIBIT C  
[RESERVED]

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**EXHIBIT D**

**DESCRIPTION AND SCOPE OF INTERCONNECTION FACILITIES**

The Interconnection Facilities will consist of STWA equipment that will be installed, owned and maintained by STWA upstream or downstream of the Delivery Points, as set forth on the upcoming construction and design drawings. The final design of Interconnection Facilities will be agreed upon by the Parties upon satisfactory water testing results, as described in Section 2.2 of the Agreement.

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**EXHIBIT E**

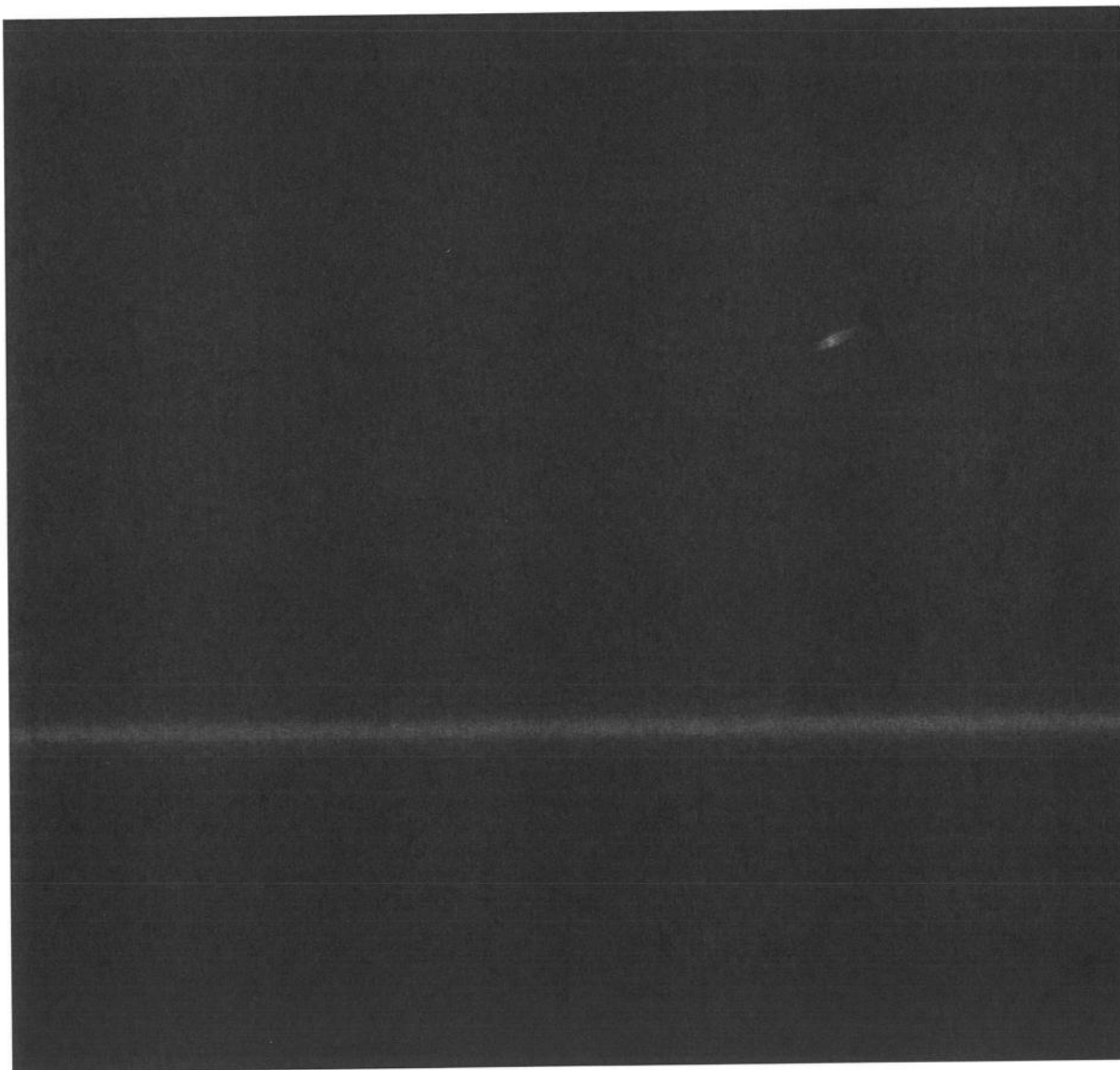
**DESCRIPTION AND SCOPE OF WATER METERING**

SSW shall install, and be responsible for, one Delivery Meter, and STWA shall install, and be responsible for, one identical adjacent Delivery Meter. The Delivery Point will be between the two Delivery Meters. Each Billing Period, the two Delivery Meters will be read and the two readings will be averaged together to get the current meter reading. The difference from the prior Billing Period's reading shall be deemed to be the quantity purchased by STWA during the current Billing Period.

The Delivery Meter's manufacturer's specified accuracy shall be specified as +/- 0.5% of full scale, and a deviation between the Delivery Meters of greater than 1.0% will trigger meter calibration. If calibration is required, SSW will first send its Delivery Meter to the independent manufacturer for factory calibration and STWA will thereafter send its Delivery Meter to the independent manufacturer for factory calibration. The independent manufacturer shall provide acceptable certification of accuracy once each of these calibrations is complete. During the calibration time, a pipe spool will be installed in place of the Delivery Meter that is being calibrated and the Billing Period reading will be done from the remaining installed Delivery Meter.

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**EXHIBIT F**  
**LIST OF APPROVALS**




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**EXHIBIT G**

**PROJECTED SOURCE WATER QUALITY AND QUANTITY**

**1. Source Water Quality**

- 1.1 Water in the Gulf Coast Aquifer at a target depth of 1,000 ft below ground level shall meet the following water quality parameters.

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- (b) Heavy metals not detected by the methods of water quality testing required by TCEQ;
  - (c) Concentrations of oil and grease, trace elements, contaminants of emerging concern, gross alpha and beta radioactivity, and microbiological organisms are not detectable; and
  - (d) Temperature not to exceed 100°F.

**2. Source Water Quantity**

2.1



**3. Results of Testing**

If the tests performed do not satisfy the parameters set forth in Section 1 or Section 2 above, the Parties shall follow the process set forth in Section 2.2(e) of the Agreement.

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**SCHEDULE 1**

**PROJECT WATER QUALITY STANDARDS**

1. **Product Water Quality Standards**

The "Water Quality Standards" shall consist of the following:

- 1.1 Product Water quality at the Delivery Point will meet or exceed the requirements set forth in the Texas Administrative Code, Title 30, Part 1, Chapter 290, as amended from time to time.



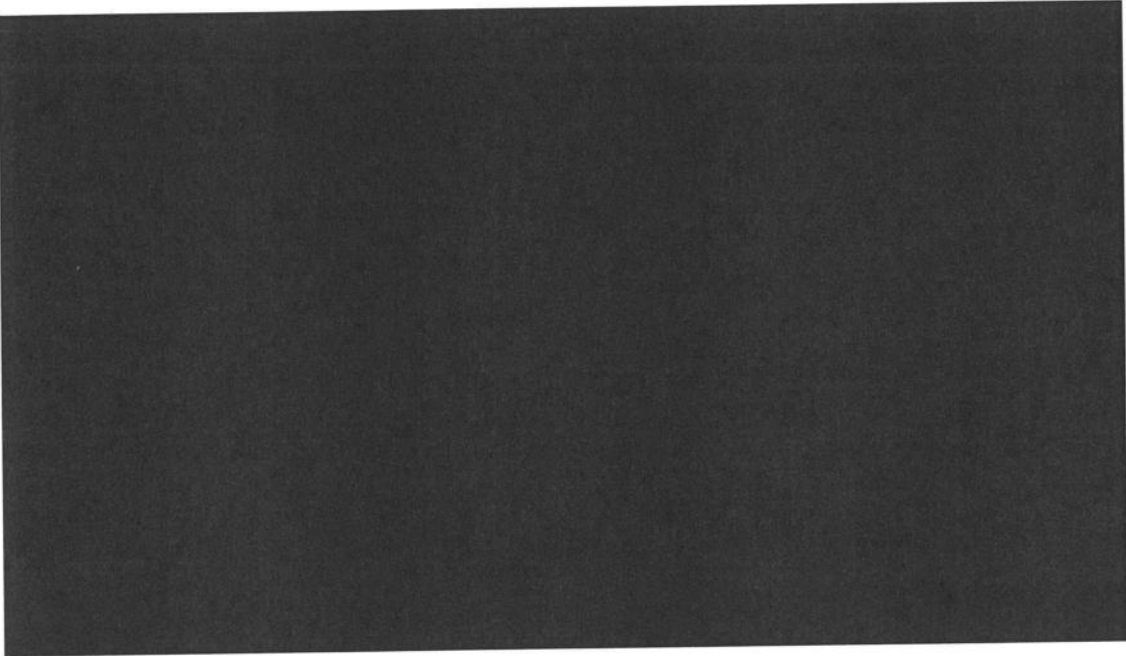
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**SCHEDULE 2**  
**CHARGES FOR WATER**

1.

2.

3.



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**SCHEDULE 3**  
**PROJECT MILESTONES**



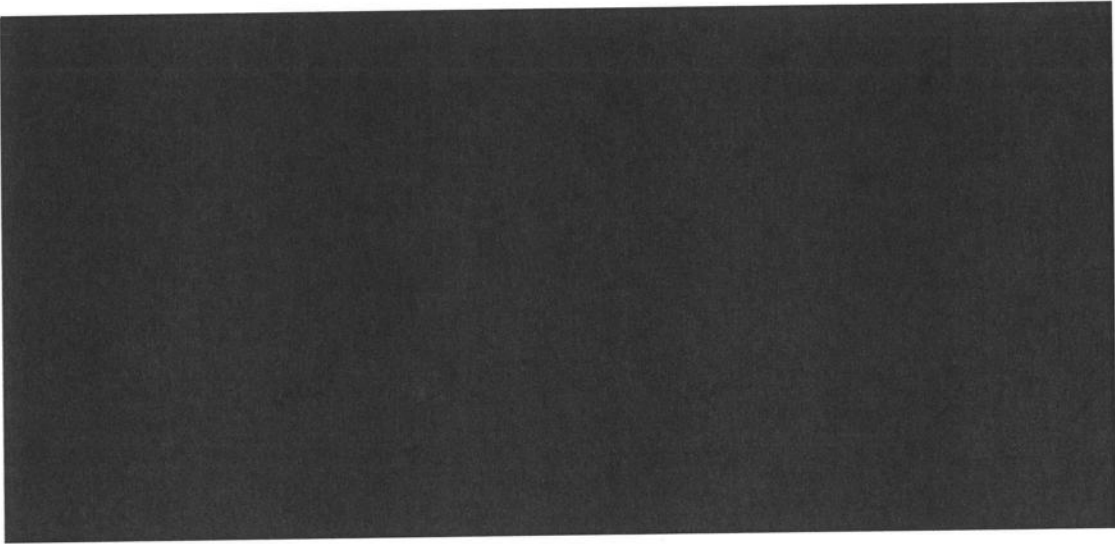
Project Milestones will be established upon satisfactory water testing results, as described in Section 2.2 of the Agreement.

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**SCHEDULE 4**

**DELIVERY AND ACCEPTANCE OBLIGATIONS**

1.



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**SCHEDULE 5**  
**COMMISSIONING TESTS**

1. **Water Capacity Test**

Water Capacity Test to be established upon satisfactory water testing results, as described in Section 2.2 of the Agreement.

2. **Water Quality Test**

Water Quality Test to be established upon satisfactory water testing results, as described in Section 2.2 of the Agreement.

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**SCHEDULE 6**  
**INSURANCE REQUIREMENTS**

**1. Insurance Requirements for SSW**

**1.1 SSW shall obtain and maintain the following insurance policies:**

- (a) Workers' compensation insurance covering SSW's obligations as required by Applicable Law;
- (b) General liability insurance covering liability arising from premises, operations, contractual liability, injuries to employees and independent contractors, personal injury, advertising injury, and products/completed operations with limits of not less than \$1,000,000 per occurrence, \$2,000,000 products completed operations aggregate limit, and \$2,000,000 policy aggregate limit;
- (c) Automobile liability insurance, with limits of not less than \$1,000,000 per occurrence combined single limit bodily injury or death and loss of or damage to property, covering all owned and non-owned vehicles used by SSW;
- (d) Excess (or umbrella) liability insurance providing follow-form coverage or coverage that is at least as broad as the coverage provided under the primary general liability set forth in subsection (b) above, as well as excess to the automobile liability insurance set forth in subsection (c) above, with minimum per occurrence limits of \$5,000,000;
- (e) Property Insurance, which SSW shall purchase and maintain, excluding CAT coverage, upon substantial completion of the Project Works to the full insurable value thereof (subject to such deductible amounts as may be required by Applicable Law) for the duration of the entire Agreement and any extensions thereof.
- (f) Any additional insurance coverage required by Applicable Law.

1.2 All insurance companies must be rated A- or better by A.M. Best Company, Inc. Should an insurance company's rating fall below A-, SSW must replace that insurance company with a qualifying insurance company within 60 days.

1.3 If SSW fails to meet these insurance requirements, STWA may take any action necessary to rectify the non-compliance including procurement of comparable insurance coverage on SSW's behalf, the cost of which shall be borne by SSW.

1.4 STWA may place other insurance for SSW, at STWA's own cost and expense and at STWA's sole discretion. SSW shall cooperate with STWA and STWA's insurance representatives in placement of these coverages and, if requested by STWA, coordinate placement of these insurances with the insurances arranged by SSW.

**2. Insurance Requirements for STWA**

**2.1 STWA shall obtain and maintain the following insurance policies.**

- (a) Workers' compensation insurance covering STWA's obligations, as required by Applicable Law;

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- (b) General liability insurance covering liability arising from premises, operations, contractual liability, injuries to employees and independent contractors, personal injury, advertising injury, and products/completed operations with limits of not less than \$1,000,000 per occurrence, \$2,000,000 products completed operations aggregate limit, and \$2,000,000 policy aggregate limit;
  - (c) Automobile liability insurance, with limits of not less than \$1,000,000 per occurrence combined single limit bodily injury or death and loss of or damage to property, covering all owned and non-owned vehicles used by STWA;
  - (d) Excess (or umbrella) liability insurance providing follow-form coverage or coverage that is at least as broad as the coverage provided under the primary general liability set forth in subsection (b) above, as well as excess to the automobile liability insurance set forth in subsection (c) above, with minimum per occurrence limits of \$5,000,000;
  - (e) Property Insurance, STWA shall purchase and maintain property insurance for property owned by STWA at the Interconnection Facilities to the full insurable value thereof (subject to such deductible amounts as may be required by Applicable Law) for the duration of the entire Agreement and any extensions thereof.
  - (f) Any additional insurance coverage required by Applicable Law.
- 2.2 All insurance companies must be rated A- or better by A.M. Best Company, Inc. Should an insurance company's rating fall below A-, STWA must replace that insurance company with a qualifying insurance company within 60 days.
- 2.3 If STWA fails to meet these insurance requirements, SSW may take any action necessary to rectify the non-compliance including procurement of comparable insurance coverage on STWA's behalf, the cost of which shall be borne by STWA.
- 2.4 SSW may place other insurance for STWA, at SSW's own cost and expense and at SSW's sole discretion. STWA shall cooperate with SSW and SSW's insurance representatives in placement of these coverages and, if requested by SSW, coordinate placement of these insurances with the insurances arranged by STWA.

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**SCHEDULE 7**  
**FORM OF INVOICE**

[To be inserted]

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**SCHEDULE 8**

