

South East Water
Business Water Grants
(Round 1 - 2007 / 2008)

Funding Agreement

for the provision of funding from

South East Water Limited

CONTENTS

OPERATIVE PROVISIONS	1
1. INTERPRETATION	1
1.1. DEFINITIONS.....	1
2. PURPOSE OF FUNDING AGREEMENT	4
3. COMMENCEMENT AND DURATION OF AGREEMENT	4
4. STEERING COMMITTEE'S CAPACITY AND LIABILITY	4
4.1. STEERING COMMITTEE CAPACITY	4
4.2. RELEASE	4
5. COMMUNICATION BETWEEN THE PARTIES	5
5.1. APPOINTMENT OF PROJECT MANAGER	5
5.2. LIAISON AS REQUIRED	5
6. PROVISION OF GRANT FUNDS	5
6.1. PAYMENT OF GRANT FUNDS	5
6.2. TIMING OF PAYMENT	5
6.3. NO ADDITIONAL PAYMENTS	5
7. USE OF GRANT FUNDS	5
7.1. EXPENDITURE OF GRANT FUNDS	6
7.2. REFUND OF NON-EXPENDED GRANT FUNDS.....	6
8. PERFORMANCE OF PROJECT	6
8.1. COMMENCEMENT, COMPLETION AND OPERATION.....	6
8.2. ACKNOWLEDGMENT AND RELEASE.....	6
8.3. INDEMNITY	7
8.4. RIGHT OF INDEMNITY.....	7
8.5. AUTHORISATIONS	7
8.6. USE OF SPECIFIED PERSONNEL	7
9. MILESTONES AND REPORTS	7
9.1. COMPLIANCE WITH MILESTONES.....	7
9.2. REPORTS	7
9.3. FORM OF REPORTS.....	8
9.4. INDEPENDENT VERIFICATION OF REPORTS.....	8
9.5. ACCEPTANCE OF REPORTS.....	8
9.6. AMENDMENT OF PROJECT, MILESTONE, MILESTONE DATE, COMPLETION DATE, WORK PLAN OR BUDGET..	9
10. ACKNOWLEDGMENT OF FUND SUPPORT	9
10.1.ACKNOWLEDGMENT OF FUND SUPPORT	9
10.2.FORM OF ACKNOWLEDGMENT	9

11. INSURANCE	10
11.1. GRANTEE TO EFFECT AND MAINTAIN INSURANCES	10
11.2. REQUIREMENTS IN RELATION TO INSURANCES	10
11.3. APPLICATION OF INSURANCE PROCEEDS.....	10
11.4. CONTINUING APPLICATION OF CLAUSE 11	10
12. INTELLECTUAL PROPERTY	10
13. WARRANTIES	11
14. TERMINATION FOR DEFAULT	12
14.1. EVENTS OF DEFAULT	12
14.2. TERMINATION FOR EVENT OF DEFAULT.....	12
14.3. REPAYMENT OF GRANT FUNDS.....	12
14.4. RECOVERY OF OTHER AMOUNTS	13
15. NEGATION OF PARTNERSHIP AND AGENCY	13
15.1. NO PARTNERSHIP OR AGENCY	13
15.2. AUTHORITY TO BIND OTHER PARTY.....	13
16. NOTICES	13
16.1. HOW TO GIVE A NOTICE	13
16.2. WHEN A NOTICE IS GIVEN.....	13
16.3. ADDRESS FOR NOTICES.....	13
17. GENERAL	14
17.1. GOVERNING LAW	14
17.2. GIVING EFFECT TO THIS AGREEMENT	14
17.3. WAIVER OF RIGHTS	14
17.4. OPERATION OF THIS AGREEMENT	14
17.5. OPERATION OF INDEMNITIES	15
17.6. LIABILITY FOR EXPENSES.....	15
17.7. CONSENTS.....	15
17.8. INCONSISTENCY WITH OTHER DOCUMENTS.....	15
17.9. COUNTERPARTS	15
17.10. ATTORNEYS	15
SCHEDULE 1	17
1. PROJECT	17
2. CONDITIONS OF GRANT.....	17
3. MILESTONES AND PAYMENTS	19
4. BUDGET	20
SCHEDULE 2 WORK PLAN	21
ANNEXURE A GRANTEE'S APPLICATION	22

FUNDING AGREEMENT

DATE / /

PARTIES

Pacifica Group Ltd
t/as PBR Australia ABN 59 006 530 641 / ACN 006 530 427 (the "Grantee")

and

South East Water Limited ACN 066 902 547 ("SEW")

RECITALS

- A. South East Water Limited (SEW) has established a fund known as the South East Water Business Water Grants (the "Fund") to provide funding for environmentally sustainable water projects in its area of operation. The Fund will seek to provide an incentive for SEW's customers that use greater than 10 ML per annum to complete and implement Water Management Plans Action Plans (waterMAP) that will lead to significant savings in existing potable water supplies.
- B. The day to day administration of the Fund will be undertaken by the Key Customer Manager, being a representative from SEW. The progress and performance of the projects will be monitored by the Water Conservation Steering Committee ("Steering Committee").
- C. A Technical Review Committee reports to the Steering Committee.
- D. The Grantee submitted an application for funding from the Fund, which is attached as Annexure A to this Agreement.
- E. The Steering Committee approved a grant from the Fund to the Grantee for the purposes of carrying out the Project.
- F. In accordance with the decision of the Steering Committee, the Fund has agreed to provide the Grant Funds to the Grantee for the purposes of carrying out the Project on the terms and conditions in this Agreement.
- G. The Grantee accepts the Grant Funds on the terms and conditions in this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1. Definitions

The following definitions apply in this document.

"**Agreement**" means this document including the Schedules.

"**Authorisation**" means:

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- (a) an authorisation, permit, licence, approval, consent, declaration, exemption, notarisation or waiver, however it is described; and
 - (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

"Budget" means the budget for the purposes of carrying out the Project contained in Item 4 of Schedule 1, as amended in accordance with this Agreement.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

"Change of Control" means for a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital), and

that, in the opinion of the Fund Manager, has a potentially detrimental impact to achievement of the objectives of the Fund.

"Claim" means any claim, action, demand, proceeding, notice, order or judgment however arising whether under a law or otherwise.

"Commencement Date" means the date of this Agreement.

"Completion Date" means the date on which the Project must be completed, which is the date specified in Item 3 of Schedule 1, as amended in accordance with this Agreement.

"Control" means a power or control that is direct or indirect or that is, or can be, exercised as a result of, by means of or by the revocation or breach of a trust, an agreement, a practice, or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else.

"Event of Default" means an event or circumstance described in clause 14.

"Excluded Information" means information which is at the Commencement Date, or which subsequently becomes, information in the public domain (except as a result of breach by the recipient of this Agreement or of an obligation of confidence owed to the disclosing Party or any employee, agent or client of any of them).

"Final Evaluation Report" means the final report to be provided by the Grantee to the Key Customer Manager under clause 9.2.

"Fund Manager" means South East Water as represented by South East Water's Key Customer Manager for South East Water, Business Water Grants.

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Grant Funds" means the funds payable to the Grantee under this Agreement, as specified in Item 2.1 of Schedule 1.

"Grantee" means the person specified in Item 2.5 of Schedule 1.

"GST" and "GST law" have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) (the "GST Act") or any replacement or other relevant legislation and regulations, except that "GST law" also includes any other legislation enacted to validate, recapture or recoup tax collected as GST.

"Insolvency Event" means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

"Intellectual Property" means all copyright and neighbouring rights, all rights in relation to inventions including but not limited to patents and patent applications, modification or improvements to inventions, plant breeders rights, registered and unregistered trade marks, service marks, domain names and business names, registered and unregistered designs, rights in relation to trade secrets, know-how, Confidential Information, and all data produced in connection with the Project, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Key Customer Manager" means the person referred to in Clause 16.3 who has the day to day management of the Fund.

"Liability" means any loss, cost, liability or expense whatsoever, including without limitation, legal costs on a full indemnity basis, loss of profit, and consequential loss.

"Material" includes documents, reports, results of tests or experiments, receipts, invoices, accounts, equipment, software, goods, information and data stored by any means, including all copies and extracts.

"Milestone" means a stage at which agreed parts of the Project will be completed as specified in the first column of Item 3 of Schedule 1, as amended in accordance with this Agreement.

"Milestone Date" means the date which a Milestone is due to be achieved, as set out in the third column of Item 3 of Schedule 1, as amended in accordance with this Agreement.

"Milestone Report" means a report of the work carried out by the Grantee to achieve a Milestone, as required under clause 9.2 of this Agreement.

"Party" means a party to this Agreement.

"Project" means the project described in Schedule 1 and Schedule 2, as amended in accordance with this Agreement.

"Project Manager" means the person nominated by the Grantee and specified in Item 2.4 of Schedule 1, or as otherwise notified by the Grantee to the Manager, for the purposes specified in clause (a).

"Reports" means the reports to be prepared by the Grantee under clause 9.2.

"SEW" means South East Water Limited.

"Steering Committee" means the Water Conservation Standing Committee nominated to oversee the administration of the Fund on behalf of SEW.

"Technical Review Committee" means the nominated staff representatives from South East Water.

"Termination Date" means the date on which the Steering Committee notifies the Grantee that it accepts the Final Evaluation Report, unless the Agreement is terminated earlier in accordance with clause 13.

"Water Management Plan" means a plan developed by a water user complying with the conditions established by South East Water and the Key Customer Manager, providing a complete analysis of a business total water cycle and framework for improvements in water efficiency.

"Work Plan" means the plan specified in Schedule 2, which contains a detailed description of how the Grantee intends to carry out the Project, as amended in accordance with this Agreement.

2. PURPOSE OF FUNDING AGREEMENT

The Steering Committee on behalf of SEW agrees to provide, and the Grantee accepts, the Grant Funds, on the terms and conditions of this Agreement.

3. COMMENCEMENT AND DURATION OF AGREEMENT

This Agreement commences on the Commencement Date and ends on the Termination Date.

4. STEERING COMMITTEE'S CAPACITY AND LIABILITY

4.1. Steering Committee Capacity

The Grantee acknowledges that to the maximum extent permitted by law, the Steering Committee is not liable in its personal capacity for the performance of the obligations under this Agreement, or for any act, matter or thing arising out of or in connection with this Agreement

4.2. Release

The Grantee releases the Steering Committee and its individual members from all Claims and Liabilities directly or indirectly arising out of the Project or this Agreement.

5. COMMUNICATION BETWEEN THE PARTIES

5.1. Appointment of Project Manager

- (a) The Grantee acknowledges that it has appointed the Project Manager for the purpose of:
- i. liaising with the Key Customer Manager as required under clause 5.2;
 - ii. liaising with the Key Customer Manager as required under clause 9.2;
 - iii. receiving, sending and signing written communications on behalf of the Grantee under this Agreement; and
 - iv. accepting any request or direction on behalf of the Grantee in relation to this Agreement.
- (b) The Grantee must immediately notify the Key Customer Manager in writing of the appointment of a new Project Manager.

5.2. Liaison as Required

The Project Manager and the Key Customer Manager must liaise with each other, as reasonably required by the other, during the term of this Agreement.

6. PROVISION OF GRANT FUNDS

6.1. Payment of Grant Funds

The Steering Committee must pay the Grant Funds to the Grantee in accordance with clause.

6.2. Timing of Payment

- (a) If Item 2.1 of Schedule 1 specifies that the Grant Funds are payable in a lump sum, the Steering Committee must pay the total amount of Grant Funds to the Grantee by the date specified in Item 2.1.
- (b) If Item 2.1 of Schedule 1 specifies that the Grant Funds are payable to the Grantee by instalments, the Steering Committee must pay the amounts and at the times specified in the fifth column of Item 3 of Schedule 1.
- (c) For the avoidance of doubt, the Steering Committee is not required to pay any instalment referable to a Milestone Date in Item 3 of Schedule 1 unless the Milestone is achieved by the Milestone Date and the Milestone Report is accepted by Steering Committee under clause 9.5.

6.3. No Additional Payments

For the avoidance of doubt, the Steering Committee is not required to pay any amount to the Grantee in addition to the Grant Funds because of any circumstance whatsoever.

6.4. GST

- (a) If GST is levied or imposed on or in respect of any supply made under or in connection with this agreement for which the consideration is monetary or otherwise (non-monetary), then the consideration provided for that supply is increased by the rate at which that GST is levied or imposed.
- (b) The recipient of any consideration (whether money or otherwise) must provide to the other party a GST tax invoice (or any other thing required under any legislation) in the form required by the GST Act and the GST Regulations.
- (c) Each party agrees to promptly exchange adjustment notes in the form required by the GST Act and the GST Regulations, in the event that an adjustment event under the GST Act arises in connection with this agreement.

7. USE OF GRANT FUNDS

7.1. Expenditure of Grant Funds

The Grant Funds:

- (a) must be used by the Grantee solely and specifically for the purpose of carrying out the Project in accordance with this Agreement; and
- (b) must not be used by the Grantee for any other purpose whatsoever, including, without limitation, as security for the purpose of obtaining any form of finance, or for meeting existing debts, liabilities or obligations.

7.2. Refund of Non-Expended Grant Funds

If, at the date on which the Final Evaluation Report is due under clause 9.2 (b), any part of the Grant Funds has not been expended in carrying out the Project, the Grantee must immediately pay that amount to SEW, unless otherwise agreed in writing by the Key Customer Manager.

8. PERFORMANCE OF PROJECT

8.1. Commencement, Completion and Operation

In consideration of the Grant Funds, the Grantee must:

- (a) carry out the Project in accordance with the Milestones, the Work Plan and the Budget;
- (b) perform the additional obligations (if any) set out in Item 2.3 of Schedule 1; and
- (c) otherwise comply with the terms and conditions of this Agreement.

8.2. Acknowledgment and Release

- (a) The Parties acknowledge that the Grantee is solely responsible for carrying out the Project and that SEW is in no way liable for the actions of the Grantee, its members, employees, officers, agents or contractors.

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- (b) The Grantee releases SEW from all Liabilities and Claims directly or indirectly incurred or suffered by the Grantee, its members, employees, officers, or agents or any of them arising from the Project. This clause does not apply where the Liabilities or Claims are the result of negligent acts or omissions by members, employees, officers or agents of SEW.

8.3. Indemnity

The Grantee must indemnify and keep indemnified SEW from and against all Liabilities and Claims directly or indirectly incurred or suffered by SEW arising from the Project and any breach by the Grantee of this Agreement (including, but not limited to, any breach of the warranties in clause 13). This clause does not apply where the Liabilities or Claims are the result of negligent acts or omissions by members, employees, officers or agents of SEW.

8.4. Right of Indemnity

The right of SEW to be indemnified under clause 8.3 is in addition to, and not exclusive of, any other right, power or remedy provided by law.

8.5. Authorisations

The Grantee must:

- (a) obtain all necessary Authorisations for the Project, including, without limitation, all environmental, planning, and occupational health and safety Authorisations; and
- (b) ensure that it, its members, officers, employees, agents and contractors comply at all times with all laws in relation to the Project.

8.6. Use of Specified Personnel

For the avoidance of doubt, if the Work Plan specifies that certain activities in relation to the Project are to be carried out by particular persons, the Grantee must ensure those activities are carried out by those persons, unless otherwise agreed in writing by the Key Customer Manager.

9. MILESTONES AND REPORTS

9.1. Compliance with Milestones

The Grantee must achieve each Milestone by the relevant Milestone Date.

9.2. Reports

The Grantee must prepare and submit to the Key Customer Manager:

- (a) a Milestone Report in relation to each Milestone within 5 Business Days of the Milestone Date;
- (b) the Final Evaluation Report within 10 Business Days of the Completion Date;
- (c) monthly status reports that allow status of all milestones and associated dates to be tracked within 5 Business Days following the end of each calendar month.

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- (d) If delays are likely to be incurred in achieving milestone dates, a status report no later than five business days prior to the milestone date. Report to set out reasons for the proposed delay, any revision to milestone date(s) and proposed action to be taken by the Grantee that will minimise the impact of the delay; and
 - (e) any other written reports specified in Item 2.2 of Schedule 1, by the time specified in that Item.

9.3. Form of Reports

The Grantee must prepare the Reports in accordance with the Key Customer Manager's directions and requirements, as notified to the Grantee from time to time.

9.4. Independent Verification of Reports

- (a) The Steering Committee may require the Grantee to arrange for an independent third person acceptable to the Steering Committee to verify any information contained in a Report if it considers that there is a significant error or omission in the Report.
- (b) The Grantee must promptly provide all assistance and information required by the independent verifier for the purpose of verifying information in a Report.
- (c) Except where otherwise determined by the Steering Committee, the Grantee is responsible for:
 - i. its own costs in providing assistance and information under clause 9.4(b); and
 - ii. the costs of the independent verifier under clause 9.4(a),

and such costs are not to be paid out of the Grant Funds.

9.5. Acceptance of Reports

- (a) The Steering Committee must notify the Grantee within 10 Business Days of receipt of the Report from the Key Customer Manager whether SEW:
 - i. accepts the Report; or
 - ii. does not accept the Report.
- (b) The Grantee acknowledges that the Key Customer Manager can make a recommendation to the Steering Committee that the Report does not satisfy the requirements of clause 9.2.
- (c) For the purposes of sub clause (a), the grounds on which the Steering Committee can refuse to accept a Report are:
 - i. If, in the opinion of the Key Customer Manager, there is a significant error or omission in the Report; or
 - ii. if the Report fails to address criteria listed in Schedule 1.

(d) If the Steering Committee does not notify the Grantee within 10 Business Days of the receipt of the report in accordance with clause (a), the Steering Committee is deemed to have accepted the Report.

(e) If the Steering Committee notifies the Grantee that it does not accept the Report, the Steering Committee:

i. must provide details of its reasons; and

ii. may:

(A) require the Grantee to submit a revised Report or to provide additional information in relation to matters in a Report within such reasonable time as specified by the Key Customer Manager;

(B) require the Grantee to arrange for independent verification of information in a Report under clause (a); or

(C) treat the Grantee as being in breach of this Agreement and serve a notice on the Grantee under clause 16

9.6. Amendment of Project, Milestone, Milestone Date, Completion Date, Work Plan or Budget

(a) The Project, a Milestone, a Milestone Date, the Completion Date, the Work Plan or the Budget may only be amended by agreement of the Parties.

(b) If a Party wishes to amend the Project, a Milestone, a Milestone Date, the Completion Date, the Work Plan or the Budget, that Party must make a written request to the other Party, setting out details of:

i. the proposed change;

ii. the reasons for the proposed change; and

iii. how the proposed change will affect the Project and to what extent, if any, the Milestone Dates, the Completion Date, the Work Plan or the Budget should change.

10. ACKNOWLEDGMENT OF FUND SUPPORT

10.1. Acknowledgment of Fund Support

The Grantee must acknowledge the financial support it has received or will receive from the Fund under this Agreement in any publication, promotional or publicity material, or advertising by the Grantee about the Project.

10.2. Form of Acknowledgment

The form of the acknowledgment must be approved by the Steering Committee prior to its use.

11. INSURANCE

11.1. Grantee to effect and maintain Insurances

With effect from the Commencement Date, the Grantee must at its cost take out and maintain during the term of this Agreement insurances from a reputable insurance provider or providers for the following insurance cover:

- (a) Public Liability with a minimum cover of \$10m;
- (b) (if appropriate) Industrial Special Risk with a minimum cover equal to the value of the Grant Funds;
- (c) (if appropriate) Professional Indemnity Insurance a minimum cover of \$2m.

The Grantee is solely responsible for the payment of all premiums, deductibles, brokerage fees and other insurance related costs.

11.2. Requirements in relation to Insurances

In respect of each insurance the subject of this clause 11, the Grantee must:

- (a) provide to the Key Customer Manager, on request, a copy of any relevant policy, a certificate of currency, and any other evidence to the reasonable satisfaction of the Steering Committee that the insurances have been effected, remain current and, where relevant, have been renewed;
- (b) ensure that each insurance policy contains a provision that requires the insurer to notify the Key Customer Manager, at the same time it notifies the Grantee, of any indemnity payment under, variation to, or cancellation of, any relevant policy or any other notice which has implications in respect of the continuation or extent of policy coverage; and
- (c) notify each insurer of clause 11.3.

11.3. Application of Insurance Proceeds

Any indemnity proceeds or other payment made or due to the Grantee under any insurance policy the subject of this clause 11 for any damage to, loss (including loss of use) or destruction of any property in any way associated with the Project is to that extent subject to an irrevocable charge in favour of SEW and must be promptly applied by the Grantee to ensure that such is repaired and reinstated.

11.4. Continuing Application of Clause 11

This clause 11 will continue notwithstanding the expiration or termination of this Agreement.

12. INTELLECTUAL PROPERTY

- (a) All right, title and interest in and to all and any Intellectual Property created by the Grantee in relation to the Project shall vest automatically in SEW upon its creation by the Grantee and the Grantee as beneficial owner assigns to SEW, absolutely, all its right, title and interest in and to all and any Intellectual Property created by the Grantee pursuant to this Agreement, including:

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- i. existing and future copyright; and
 - ii. all rights of action, powers and benefits in relation to the Intellectual Property belonging to the Grantee including the right to sue and recover damages or other remedies for any past breaches of any of the Grantee's Intellectual Property rights.
- (b) SEW grants and the Grantee accepts, a non-exclusive, royalty-free licence to exploit all and any Intellectual Property vested in or assigned to SEW pursuant to clause 12(a). The Grantee must not sub-license Intellectual Property without the prior written consent of SEW, and where such consent is granted, the Grantee must comply with any terms and conditions imposed on such consent.
- (c) The Grantee must execute all documents (and where necessary must procure its employees, agents and sub-contractors to execute all documents) and do all acts and things necessary to ensure that all right, title and interest in and to the Intellectual Property vests in SEW under clause 12(a).

13. WARRANTIES

The Grantee represents and warrants to SEW and participants in the Fund that, as at the Commencement date, each of the statements is true accurate and complete in every respect:

- (a) the Grantee has full legal capacity and power to:
- i. own its property and assets and to carry on business; and
 - ii. to enter into this Agreement and to carry out the transactions that it contemplates and can do so without the consent of any other person;
- (b) the Grantee has taken all action that is necessary to authorise its entry into this Agreement and its carrying out the transactions that it contemplates.
- (c) the Grantee holds each Authorisation that is necessary to:
- i. execute this Agreement ;
 - ii. ensure that this Agreement is legal, valid, binding and admissible in evidence ; and
 - iii. enable it to properly carry on its business,

And it is complying with any conditions to which any of these Authorisations is subject:

- (A) the Grantee has entered into this Agreement in its own right and not as a trustee of any trust;
- (B) this agreement constitutes a legal, valid and binding obligation of the Grantee, enforceable against it in accordance with its terms; and
- (C) neither the execution of this Agreement nor the carrying out of the transactions that it contemplates contravenes:
- i. any law to which the Grantee or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;

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- ii. the Conditions of any Authorisation;
 - iii. any undertaking or instrument binding on the Grantee or any of its property affecting its business; or
 - iv. the constitution (if any) of the Grantee.
- (d) the Grantee is not the subject of any actual, pending or threatened insolvency Event or any circumstances which may give rise to an Insolvency event; and
- (e) all information given by the Grantee to the Key Customer Manger in connection with its application for Grant Funds or otherwise in connection with this Agreement, including but not limited to the information contained in the Grantee's application in Annexure A to this Agreement, is true accurate and complete in all respects.

14. TERMINATION FOR DEFAULT

14.1.Events of Default

Each of these events or circumstances is an Event of Default:

- (a) the Grantee breaches a term of this Agreement and:
 - i. fails to remedy that breach within 14 days of the receipt of a notice from the Steering Committee requesting the Grantee to remedy or rectify the breach; or
 - ii. where the breach is not capable of being remedied, fails to pay compensation to the Steering Committee within 14 days of receipt of a notice from the Steering Committee requiring the Grantee to pay compensation;
- (b) there is a Change in Control of the Grantee without the Key Customer Manager's prior written approval; or
- (c) an Insolvency Event occurs in relation to the Grantee.

14.2.Termination for Event of Default

If an Event of Default occurs, the Steering Committee may immediately terminate this Agreement by written notice served on the Grantee.

14.3.Repayment of Grant Funds

If this Agreement is terminated under clause 14, the Grantee must immediately pay to the Fund Manager:

- (a) any Grant Funds which at the Termination Date have not been expended or committed in carrying out the Project; and
- (b) any part of the Grant Funds already expended that the Steering Committee considers reasonable having regard to the progress of the Project and the nature of the Event of Default.

14.4.Recovery of other amounts

Clause 14.4 does not limit or exclude the rights of the Steering Committee to recover any other amounts from the Grantee on termination of this Agreement under clause 14.3.

15. NEGATION OF PARTNERSHIP AND AGENCY

15.1.No Partnership or Agency

Nothing in this Agreement constitutes or is taken to constitute a partnership or any form of agency between the Grantee, SEW or its representatives.

15.2.Authority to Bind Other Party

Neither the Grantee, SEW or its representatives have the authority to bind the other or contract in the name of the other in any way or for any purpose.

16. NOTICES

16.1.How to give a Notice

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - i. delivered or sent by or on behalf the person giving it; or
 - ii. sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

16.2.When a Notice is Given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - i. by 5.00pm (local time in the place of receipt) on a Business Day- on that day; or
 - ii. after 5.00pm (local time in the place of receipt) on a Business Day , or on a day that is not a Business Day- on the next Business Day; and
- (b) if it is sent by mail – on actual receipt.

16.3.Address for Notices

A person's address and fax number are those set out below, or as the person notifies the sender:

Contact : Ms Lorraine Nelson
Manager Business Programs
South East Water
Business Water Grants
Fax : (03) 9552 3673
Address : Locked Bag 1
HEATHERTON VIC 3202

Grantee PBR Australia Ltd
Address 264 East Boundary Road, East Bentleigh
Fax Number (03) 9575 2174
Contact Mr Grant Forbes
Site Reliability Manager

17. GENERAL

17.1. Governing law

- (a) This Agreement is governed by the law in force in Victoria.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

17.2. Giving effect to this Agreement

Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Agreement.

17.3. Waiver of rights

A right may only be waived in writing, signed by the Party giving the waiver, and

- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

17.4. Operation of this Agreement

- (a) This Agreement contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

-
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

17.5.Operation of indemnities

- (a) Each indemnity in this Agreement survives the expiry or termination of this Agreement.
- (b) A Party may recover a payment under an indemnity in this Agreement before it makes the payment.

17.6.Liability for expenses

Each Party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.

17.7.Consents

Where this Agreement contemplates that SEW or its representatives agree or consent to something (however it is described), SEW or its representatives may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Agreement expressly contemplates otherwise.

17.8.Inconsistency with other documents

If this Agreement is inconsistent with any other document or agreement between the Parties, this Agreement prevails to the extent of the inconsistency. For the avoidance of doubt, if this Agreement is inconsistent with the Grantee's application attached as Annexure A, this Agreement prevails to the extent of the inconsistency.

17.9.Counterparts

This document may be executed in counterparts.

17.10.Attorneys

Each person who executes this Agreement on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as Agreement.

SIGNED BY

Glenn Goldsmith
Manager - Key Customer Relationships

FOR AND ON BEHALF OF
South East Water Limited.

Signature of authorised representative

Signature of witness

Name of authorised representative

Name of witness

EXECUTED by:

FOR AND ON BEHALF OF

Pacifica Group Ltd
t/as PBR Australia

Signature of director

Signature of witness

Name

Name

SCHEDULE 1

1. PROJECT

Potable water substitution by wastewater recycling via coagulation, settlement and reverse osmosis for re-use in plating lines.

2. CONDITIONS OF GRANT

2.1 Total Grant Funds Payable

The total Grant Funds to be paid to the Grantee will be up to **\$100,000**, payable in instalments as specified in Item 3 of this Schedule.

2.2 Written Reports

For the purpose of clause 9.2 (e) the Grantee must provide the following reports:

The Grantee must prepare and submit to the Key Customer Manager:

Annual summary of existing and forecast consumption targets from the funded project.

2.3 Additional Obligations

For the purpose of clause 8.1 (b) the Grantee must carry out the following additional obligations:

- a) Disseminate results of the project via means that include the following
 - a. Provision of material suitable for use in water retailer publications to domestic and industrial users
 - b. Press releases to all forms of media
 - c. Presentations at meetings and conferences to interested stakeholders and industry associations
 - d. Provision of material suitable for use in SEW publications
- b) Provide such additional information from the Water Management Plan, as the Key Customer Manager may request for the purposes of promoting the results of the project and placing context around the benefits of the project.

2.4 Project Manager

The Grantee has appointed the following person as Project Manager:

Name	Mr Grant Forbes
Address	264 East Boundary Road, East Bentleigh 3165
Telephone	(03) 9575 2574
Mobile	0419 563 829
Fax	(03) 9575 2174
email	grant_forbes@pbr.com.au

2.5 Grantee

The Grantee is Pacifica Group Limited t/as PBR Australia

3. MILESTONES AND PAYMENTS

Mile stones	Cost description	Milestone completion date	(\$ Applicant contribution	\$ Fund contribution required	\$ Other Contributions		\$ Total activity cost
					\$	Source	
Milestone 1 Signature of this Funding Agreement				\$15,000			\$15,000
Milestone 2 Place equipment order	Deposit upon ordering plant	01/11/2007	\$42,471	\$30,000			\$72,471
Milestone 3 Installation of R/O Plant and related infrastructure	Purchase and installation	01/02/2008	\$47,752	\$30,000			\$77,752
Milestone 4 Commissioning completion date : 1 March 2008	Finalise installation	01/03/2008	\$34,537	\$ 25,000 within 14 business days of acceptance of the final evaluation report by the Manager Key Customer Relationships			\$59,537
	N/A	N/A	\$124,760	\$100,000		N/A	\$224,760

4. **BUDGET**

Item	Grant Funds	Applicant Contribution	Other Funds	Total Costs	GST Component
Plant / Equipment Costs	\$100,000	\$94,380	N/A	\$194,380	N/A
Consultancy / contractor costs		\$12,380		\$12,380	N/A
Salary/ wages costs		\$8,000		\$8,000	N/A
Other materials		\$10,000		\$10,000	N/A
Administrative costs (including Audit costs)					
Travel costs					
Other Project Costs					
TOTAL	\$100,000	\$124,760	N/A	\$224,760	N/A

**SCHEDULE 2
WORK PLAN**

Activity	Item / Requirements	Timeframe (completion)
Approval of grant	Finance	30 / 09 / 2007
Approval of capital funds		19 / 10 / 2007
Order plant	Place order	22 / 10 / 2007
Delivery of plant	Installation start	22 / 12 / 2007
Complete installation	Practical completion	01 / 02 / 2008
Complete commissioning	Operational completion	01 / 03 / 2008

**ANNEXURE A
GRANTEE'S APPLICATION**

The South East Water “Business Water Grant” Application that was duly completed and submitted on or before 31 August 2007.