



Murrumbidgee  
Irrigation

Murrumbidgee Irrigation Limited ABN 39 084 943 037

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# Water Delivery Contract

Effective 1 July 2022 to 30 June 2023

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**Parties**            **Murrumbidgee Irrigation Limited ABN 39 084 943 037**  
**(Company)**

**The person identified in Item 1 of Schedule 1**  
**(Customer)**

**It is agreed**

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## **1**     **Definitions and interpretation**

### **1.1**   **Definitions**

In the Documents, the following words have these meanings unless the contrary intention appears:

- (1)     **ACCC** means the Australian Competition and Consumer Commission;
- (2)     **Access and Ordering Rules** means the rules determined by the Company in relation to the arrangements for, among other things, the ordering of water and the delivery of water;
- (3)     **Access Licence** has the meaning given to that term in the Act;
- (4)     **Act** means the *Water Management Act 2000* (NSW);
- (5)     **Area of Operations** means the area that can be serviced by the Company's Works;
- (6)     **Associate** means:
  - (a)     in relation to a corporation:
    - (i)     a Related Body Corporate of the corporation;
    - (ii)    a person that controls or is controlled by the corporation (as that term is defined in section 50AA of the Corporations Act);
    - (iii)   a person that has a substantial holding (as that term is defined in section 9 of the Corporations Act) in the corporation or of any body corporate in which the corporation has a substantial holding;
    - (iv)    a director, secretary or officer of the corporation or of any body corporate that is an Associate of the corporation;
    - (v)     any trustee of a trust under which the corporation benefits or may benefit;
    - (vi)    any person with whom the corporation is acting, or proposes to act, in concert and any person with whom the corporation is, or proposes to become, associated in any other way (whether formally or informally); and
    - (vii)   any person that is invited onto the relevant Landholding by the corporation;

- (b) in relation to a natural person:
    - (i) any person who resides at the natural person's Landholding or is controlled by, or is acting, or proposes to act, in concert with, or is invited onto the relevant Landholding by, the natural person; and
    - (ii) any corporation in respect of which the natural person is an Associate by reason of clause 1.1(6)(a); and
  - (c) in relation to a person (whether a corporation or natural person) who enters into this Contract as trustee of a trust, any person who benefits or may benefit under that trust;
- (7) **Australian Consumer Law** has the meaning given to that term in section 130 of the *Competition and Consumer Act 2010* (Cth);
- (8) **Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in New South Wales;
- (9) **Carryover Water** means a volume of Water Allocation remaining in a Water Allocation Account at the end of a Water Year that is permitted to be carried over, in accordance with the Documents, to the next Water Year;
- (10) **Charges** includes:
- (a) all charges and any other sums of money payable by the Customer to the Company under any Documents or the Charges Rules;
  - (b) any other sum of money owing or payable by the Customer to the Company or a Related Body Corporate;
  - (c) any other sum of money agreed between the Customer and the Company to be a Charge; and
  - (d) interest on those charges and sums of money;
- (11) **Charges Rules** means the rules determined by the Company in relation to, among other things, Charges;
- (12) **Claim** includes any claim, legal action or demand;
- (13) **Company's Supply Works** means Supply Works owned by the Company;
- (14) **Company's Works** means Works owned by the Company;
- (15) **Connection** means a connection to the Company's Supply Works (if any), including a connection via an outlet, or as otherwise set out in the Rights of Access Certificate in respect of a Landholding;
- (16) **Consequential Loss** means any special, indirect, loss or damage including loss of profits, loss of opportunity, or any other loss which is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission, whether or not the loss or damage was in the contemplation of the parties at the time when they entered into the Contract;
- (17) **Contract** means this agreement and all schedules and annexures to it;
- (18) **Corporations Act** means the *Corporations Act 2001* (Cth);

- (19) **Cost** includes:
- (a) costs, fees, expenses and outlays;
  - (b) in relation to a party, all costs actually payable by the party to his, her or its own legal representatives (whether or not under a costs agreement);
  - (c) in relation to the Customer, Charges; and
  - (d) in relation to the Company, administrative costs and the cost of the Company's Personnel's time, including time spent investigating, obtaining advice in connection with, assessing, dealing with and determining a matter;
- (20) **Customer's Works** means Works owned by the Customer;
- (21) **Damage** includes loss or damage to property;
- (22) **Delivery Entitlement** means the right, subject to the Documents, to delivery of Water Allocation:
- (a) equal to one Megalitre in each Water Year, as measured by the relevant Meter (if any) or determined by the Company under clause 10;
  - (b) at the Flow Rate; and
  - (c) to the following point of supply in respect of a Landholding:
    - (i) the Connection; or
    - (ii) if there is no Connection, the Company's Supply Works determined by the Company to be servicing the Landholding;
- (23) **Development Rules** means the rules determined by the Company in relation to, among other things, a person carrying out construction work, or constructing things, or planting any trees, plants or crops near the boundary between the Company's land and a Landholding or near any Company's Works situated on or near a Landholding;
- (24) **Documents** means this Contract, the Rules, and any Water Entitlements Contract, any Water Entitlements certificate, any other Water Delivery Contract and any Rights of Access Certificate between the Company and the Customer;
- (25) **Drainage** includes surface and subsurface water drainage;
- (26) **Drainage Rules** means the rules determined by the Company in relation to, among other things, the arrangements for the discharge of Drainage into the Company's Drainage Works;
- (27) **Drainage Work** has the same meaning in the Documents as *drainage work* has in the Act;
- (28) **Event of Default** means any of the events referred to in clause 24.1;
- (29) **Expiry Date** means, in relation to a Fixed Term Delivery Entitlement, the date set out in the Rights of Access Register;
- (30) **Flow Rate** means:
- (a) where there are sufficient water flows available to meet all orders for water in the relevant part of the Company's Supply Works during the relevant period,

an average flow rate per day per Delivery Entitlement equal to the minimum flow rate per day per Delivery Entitlement in the relevant part of the Company's Supply Works during the relevant period determined under the Access and Ordering Rules; and

- (b) where there are insufficient water flows available to meet all orders for water in the relevant part of the Company's Supply Works during the relevant period, an average flow rate per day per Delivery Entitlement equal to the water flows available for all holders of Delivery Entitlements in the relevant part of the Company's Supply Works during the relevant period divided by the total number of Delivery Entitlements held by all holders of Delivery Entitlements who have ordered Water in the relevant part of the Company's Supply Works during the relevant period;

(31) **Government Agency** means any government and any governmental body, whether:

- (a) legislative, judicial or administrative;
- (b) a department, commission, authority, instrumentality, corporation, tribunal agency or entity; or
- (c) commonwealth, state, territorial or local,

and includes any self-regulatory organisation established under any law;

(32) **Insolvency Event** means the happening of any of the following in relation to the Customer:

- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$50,000 upon any of the Customer's property and is not satisfied, set aside or withdrawn within seven days of its issue;
- (b) an order for payment is made or judgement for an amount exceeding \$50,000 is entered or signed against the Customer which is not satisfied within seven days;
- (c) the Customer suspends payment of his, her or its debts;
- (d) where the Customer is a body corporate:
  - (i) the Customer becomes a Chapter 5 body corporate under the Corporations Act;
  - (ii) steps are taken by any person towards making the Customer a Chapter 5 body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
  - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Customer or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days); or
  - (iv) the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;

- (e) where the Customer is a natural person:
    - (i) the Customer authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
    - (ii) a person holding a security interest in assets of the Customer for an amount exceeding \$50,000 enters into possession of, or takes control of, any of those assets or takes any steps to enter into possession of, or take control of, any of those assets; or
    - (iii) the Customer commits an act of bankruptcy; or
  - (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (33) **Landholding** means a property described in the Rights of Access Register in respect of the Customer;
- (34) **Legal Requirement** means law; regulations; any notice, order or direction received from, or given by, any Government Agency; and the Company's Licences;
- (35) **Licences** means:
- (a) any operating licence issued under section 122 of the Act;
  - (b) any Access Licence;
  - (c) any licence issued under the *Protection of the Environment Operations Act 1997* (NSW);
  - (d) any irrigation corporation licence issued under the *Irrigation Corporations Act 1994* (NSW); and
  - (e) any water supply work approval, water use approval, flood work approval, drainage work approval, controlled activity approval, aquifer interference approval or other approval issued under the Act;
- (36) **Loss** includes any damage, loss, liability or Cost of any kind and however arising (including as a result of any Claim), including penalties, fines and interest but does not include Consequential Loss;
- (37) **Megalitre** means one million litres;
- (38) **Meter** means a water measurement apparatus used to measure and account for water;
- (39) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;
- (40) **Positive Covenant** means a positive covenant (on terms acceptable to the Company acting reasonably) benefiting the Company as a prescribed authority in accordance with section 88E of the *Conveyancing Act 1919* (NSW) and burdening a Landholding, requiring the registered proprietor from time to time (at his, her or its own Cost) to:
- (a) if requested by the Company, construct;
  - (b) maintain and repair; and

- (c) if requested by the Company, remove, alter, improve or replace,  
a fence on any part of the Landholding adjoining the Company's Works or on which the Company's Works are situated, to:
  - (d) the reasonable satisfaction of; and
  - (e) in compliance with the reasonable standards specified from time to time by,  
the Company;
- (41) **Privacy Statement** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;
- (42) **Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act;
- (43) **Right of Access** includes a right to the delivery of water and a right to the drainage of water through the Company's Works and, in relation to this Contract, includes:
  - (a) a right to have Water Allocation delivered to a Landholding pursuant to a Delivery Entitlement, the Surplus Water Rules or under clause 7.4;
  - (b) a right to have Water Allocation delivered to a Connection pursuant to a Delivery Entitlement, the Surplus Water Rules or under clause 7.4;
  - (c) a Delivery Entitlement; and
  - (d) a right under clause 11.1 to discharge Drainage into the Company's Drainage Works;
- (44) **Rights of Access Certificate** means a certificate issued by the Company (which may be in digital or electronic form) in relation to a Landholding:
  - (a) evidencing (but not conferring an entitlement to) Rights of Access; and
  - (b) setting out binding conditions that apply with respect to the Landholding under clause 13.2(2);
- (45) **Rights of Access Register** means a register maintained by the Company which records:
  - (a) the Customer's name and address;
  - (b) the date of this Contract;
  - (c) details of each Landholding; and
  - (d) in respect of each Landholding:
    - (i) the Connections; and
    - (ii) the number of Delivery Entitlements;
    - (iii) the Expiry Date of any Fixed Term Delivery Entitlement; and
    - (iv) any inlets to the Company's Drainage Works which the Company has approved for Drainage for the purposes of clause 11;



- (46) **Rules** means the rules of, and determinations by, the Company published on the Company's web site and expressed to be binding under the Water Delivery Contract and the Water Entitlements Contract;
- (47) **Supply Work** has the same meaning in the Documents as *water supply work* has in the Act;
- (48) **Surplus Water Rules** means the rules determined by the Company in relation to, among other things, access to available supplementary water flows;
- (49) **Single Water Allocation Account** has the same meaning as that given by the Transfer Rules;
- (50) **Transfer Rules** means the rules determined by the Company in relation to, among other things, the arrangements for:
- (a) the transfer of Water Allocation into or out of a Water Allocation Account;
  - (b) the conversion of Water Entitlements from one category to another;
  - (c) the leasing of Water Entitlements;
  - (d) the permanent transfer, termination and surrender of, and other dealings with, Water Entitlements and Rights of Access;
  - (e) reducing the share component of an Access Licence held by the Company to allow Water Entitlements to be transformed, in whole or in part, into an Access Licence that is held by someone other than the Company; and
  - (f) the transfer and cancellation of, and other dealings with, shares in the Company;
- (51) **Water Allocation** means the volume of water to which the Customer is entitled from the Company from time to time:
- (a) under the Documents;
  - (b) as a result of the Customer assigning, under section 71T of the Act, water allocation in a water allocation account under section 85 of the Act for an Access Licence held by the Customer to the water allocation account under section 85 of the Act for an Access Licence held by the Company; or
  - (c) as a result of any other transactions of any kind which affect the volume of water to which the Customer is entitled from the Company,
- as recorded in the Water Allocation Account for the Customer;
- (52) **Water Allocation Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Water Allocation;
- (53) **Water Delivery Contract** means a contract between the Company and a person substantially in the form of the Water Delivery Contract published on the Company's web site from time to time;
- (54) **Water Entitlement** has the meaning given to that term in the Water Entitlements Contract;

- (55) **Water Entitlements Contract** means a contract between the Company and a person substantially in the form of the Water Entitlements Contract published on the Company's web site from time to time;
- (56) **Water Year** means any period of one year ending on 30 June; and
- (57) **Work** has the same meaning in the Documents as *water management work* has in the Act.

## 1.2 Interpretation

In the Documents, unless the contrary intention appears:

- (1) reference to:
- (a) one gender includes the other genders;
  - (b) the singular includes the plural and the plural include the singular;
  - (c) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Contract and references to this Contract include any recital, schedule or annexure;
  - (d) any contract (including this Contract), schedule, Rules, other instrument or determination includes any variation or replacement of it from time to time;
  - (e) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (f) a person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
  - (g) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (h) a group of persons is a reference to any two or more of them taken together and to each of them individually;
  - (i) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged, and a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body;
  - (j) time is a reference to the time in Hanwood, New South Wales;
  - (k) a day or a month means a calendar day or calendar month;
  - (l) money (including "\$", "AUD" or "dollars") is to Australian currency; and
  - (m) any thing (including any amount or any provision of the Documents) is a reference to the whole and each part of it;
- (2) an obligation, representation or warranty on the part of, or in favour of, more than one person binds or is for the benefit of each of them separately and all of them jointly;
- (3) a party which is a trustee is bound both personally and in his, her or its capacity as a trustee;

- (4) the meaning of any general language is not restricted by any accompanying example, and the words “includes”, “including”, “such as”, “for example” or similar words are not words of limitation;
- (5) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (6) headings and the table of contents are for convenience only and do not form part of the Documents or affect their interpretation;
- (7) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day; and
- (8) a provision of a Document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Document or the inclusion of the provision in the Document.

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## **2 Customer must obtain own advice**

- 2.1 The Company does not give advice to the Customer about the Documents or anything connected with the subject matter of the Documents.
- 2.2 The Customer should seek his, her or its own professional advice about the Documents and anything connected with the subject matter of the Documents, including legal, taxation, accounting and financial advice.

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## **3 Commencement**

- 3.1 This Contract commences:
  - (1) on the earlier of:
    - (a) the date set out in Item 3 in Schedule 1; or
    - (b) when one party accepts the other party's offer to enter into this Contract; or
    - (c) when the parties otherwise become bound by this Contract; or
  - (2) if this Contract is not commenced in accordance with clause 3.1(1); and if:
    - (a) a copy of the Water Delivery Contract has been posted on the Company's website or otherwise sent to the Customer; and
    - (b) after that date, the Customer or an Associate of the Customer takes water from or via any of the Company's Works (whether or not an order was placed in advance);

then the Customer is deemed to have entered into the Water Delivery Contract with the Company from the date when the Customer took water as per clause 3.1(2)(b) above, and is taken to accept all rights and obligations contained in the Water Delivery Contract.
- 3.2 If the Contract is commenced as per clause 3.1(2), the Company is deemed, with authorisation by the Customer, to have completed Schedule 1 of the Water Delivery Contract by entering:
  - (1) the name and contact details of the Customer;
  - (2) the Commencement Date (being the date noted at clause 3.1(2)(b)); and

- (3) any other information pertaining to the Customer that Schedule 1 (if varied) may require to be entered, from time to time.

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#### **4 Rights of access**

- 4.1 Subject to the Documents, the Customer is entitled to the Rights of Access in respect of which the Customer is the registered holder in the Rights of Access Register.
- 4.2 The Customer acknowledges and agrees that:
- (1) termination fees are payable under the Charges Rules in connection with the termination or surrender of all or any part of the Customer's Rights of Access; and
  - (2) disconnection fees are payable under the Charges Rules in respect of the reasonable costs incurred by the Company by reason only of removing or disabling a physical connection between the Company's Works and the Customer's Works or a Landholding.

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#### **5 Rights of access certificates**

- 5.1 A Customer whose name is entered as a holder of a Right of Access in the Rights of Access Register is entitled to one Rights of Access Certificate per Landholding, for the Rights of Access registered in the Customer's name in respect of that Landholding.
- 5.2 The Company may prepare and maintain Rights of Access Certificates in any form convenient to the Company, including (without limitation) in digital or electronic form.
- 5.3 Where Rights of Access are held jointly by several persons, the Company is not bound to issue more than one Rights of Access Certificate in relation to those Rights of Access.
- 5.4 A Rights of Access Certificate in respect of a Landholding must state:
- (1) the name of the Company;
  - (2) the name of the Customer;
  - (3) a description of the Landholding and the landholding reference number applicable to the Landholding;
  - (4) in respect of the Landholding:
    - (a) the Connections;
    - (b) the number of Delivery Entitlements;
    - (c) the Expiry Date of any Fixed Term Delivery Entitlement; and
    - (d) any inlets from the Landholding to the Company's Works which the Company has approved for Drainage; and
  - (5) any conditions which apply for the purposes of clauses 13.2(2) and 13.3(2)(a).
- 5.5 The Company will hold all Rights of Access Certificates of the Customer. However the Customer may, by notice in writing to the Company, direct the Company to make the

Customer's Rights of Access Certificate(s) available for inspection, or provide the Customer with a copy of the Customer's Rights of Access Certificate(s).

- 5.6 The Customer acknowledges that, to the extent of any inconsistency:
- (1) the Rights of Access Certificate as maintained by the Company prevails over a copy of a Rights of Access Certificate;
  - (2) a later dated Rights of Access Certificate prevails over an earlier dated Rights of Access Certificate; and
  - (3) the Rights of Access Register prevails over any Rights of Access Certificate.
- 5.7 The Company may, at any time, vary, amend, supplement or replace a Rights of Access Certificate provided that:
- (1) the Company acts reasonably when doing so; and
  - (2) such action does not contravene any Legal Requirement.

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## **6 Water allocation account**

- 6.1 The Company must maintain a Water Allocation Account for the Customer.
- 6.2 The Customer must not permit (including by trading of water by Annual Transfer, as defined in the Transfer Rules) the Customer's Water Allocation Account to have a balance of less than zero.
- 6.3 Notwithstanding clause 6.2, if the Customer:
- (1) has an urgent need for a quantity of water beyond the quantity available in the Customer's Water Allocation Account to be delivered to the Customer's Landholding; and
  - (2) then takes or orders water for delivery by the Company in accordance with that need;
- the Company may, subject to the Access and Ordering Rules and this Contract, permit the Customer's Water Allocation Account to have a balance of less than zero, but only to the extent of clause 6.3(1)-(2) above.
- 6.4 If the Company permits the Customer's Water Allocation Account to have a balance of less than zero as per clause 6.3:
- (1) the Customer is required (by way of Annual Transfer, as defined in the Transfer Rules, or otherwise) to do all things necessary to ensure that the Customer's Water Allocation Account is credited such that it has a balance not less than zero, by the end of the following month; and
  - (2) after the end of the following month, the Company may treat any remaining negative balance in the Customer's Water Allocation Account as being an Unauthorised Overdraw (as defined in the Charges Rules), in addition to any other rights or remedies available to the Company under the Documents.
- 6.5 If the Customer's Water Allocation Account has a balance of less than zero, the Company may set off the negative balance against any later credits or acquisitions to the Customer's Water Allocation Account.

- 6.6 This Contract does not:
- (1) entitle the Customer to any Carryover Water; or
  - (2) affect any terms of a Document governing Carryover Water.

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## **7 Delivery of water**

- 7.1 Subject to the Documents and seasonal and operating conditions permitting, the Company must use its reasonable endeavours to deliver Water Allocation to the Customer during the Water Year in accordance with the Customer's Delivery Entitlements and the Access and Ordering Rules.
- 7.2 The Company is under no obligation to deliver water:
- (1) unless and until the Company has a volume of water available to it under the Murrumbidgee Irrigation (conveyance) Access Licence which is sufficient for the delivery of water by the Company to the Customer and all other holders of Delivery Entitlements;
  - (2) in excess of the Water Allocation;
  - (3) unless and until the Company and the Customer have agreed upon satisfactory arrangements for:
    - (a) payment of arrears (if any) of, and security for the payment of, Charges; or
    - (b) repayment of water debts or water borrowings (including by debiting the Customer's Water Allocation Account);
  - (4) if the Customer has otherwise agreed, including under any contract with the Company;
  - (5) if the Company has closed any relevant part of the Company's Works, including under clause 16 or clause 17.3;
  - (6) unless and until the Company is reasonably satisfied that the Customer's Works and the Company's Works are adequate and have sufficient capacity to deal with the delivery of water to the Customer;
  - (7) unless and until the Customer has complied with reasonable requests (if any) from the Company to notify the Company of the Customer's intended use of water delivered to the Customer under this Contract for the relevant Water Year, including for the purposes either of demand management or water use efficiency monitoring programs, and the Company has approved that use;
  - (8) if the Company reasonably believes that the water to be delivered to the Customer is not of a quality suitable for delivery, including where it is contaminated;
  - (9) if delivery of water would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;
  - (10) if delivery of water would, in the reasonable opinion of the Company, result in a breach of any right or entitlement of a third party where such breach might reasonably expose the Company to liability to such third party; or
  - (11) if the Company is entitled elsewhere in the Documents to suspend the delivery of water to the Customer.

- 7.3 The Customer acknowledges that the Company is only obligated to deliver to a Customer water that is held in that Customer's Water Allocation Account.
- 7.4 Where, in respect of a Connection, the Customer has exercised all of the rights under clause 1.1(22)(a) in respect of the Customer's Delivery Entitlements in a Water Year, then, subject to the Documents and if seasonal and operating conditions permit, the Customer has the right to delivery of water to the Connection or, if there is no Connection, to the Company's Supply Works determined by the Company.
- 7.5 Subject to the Documents, the Company must use its reasonable endeavours to deliver water ordered under clause 7.4 in accordance with the Access and Ordering Rules, provided that the Company is satisfied that it will have sufficient water flows available to fulfil all approved water orders placed by holders of Delivery Entitlements exercising rights under clause 1.1(22)(a) of their respective Water Delivery Contracts in the relevant part of the Company's Supply Works during the relevant period.
- 7.6 If the Company determines that it is under no obligation to deliver water on the basis of clause 7.2(1), the Company must publish on the Company's web site reasons for its determination but this is not a condition of the determination taking legal effect.
- 7.7 Despite anything to the contrary, nothing in this Contract entitles the Customer to any Water Entitlements.

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## **8 Use of water**

- 8.1 Subject to sections 415D, 434J and 451E of the Corporations Act, the Customer must not take water from the Company's Supply Works:
- (1) if there is an Event of Default subsisting; or
  - (2) otherwise than in accordance with the Documents.
- 8.2 The Customer must use water delivered under this Contract only on and within the boundaries of a Landholding and only for activities that are consistent with a use approved by the Company, all relevant Licences and all other relevant Legal Requirements.

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## **9 Measurement of water usage**

- 9.1 The delivery of water by the Company to a Landholding must, where required by the Company, be measured by a Meter which must be installed and commissioned in accordance with the Company's design requirements.
- 9.2 The Company may, at any time, on reasonable notice to the Customer, enter a Landholding to install, commission, operate, repair, replace, maintain or improve a Meter on the Landholding to the reasonable satisfaction of, and complying with the standards specified by, the Company.
- 9.3 Title to a Meter installed and commissioned by the Company (and property in it) remains solely with the Company.
- 9.4 Where a Meter is installed and commissioned by the Customer, with the approval of the Company, title to the Meter (and property in it):
- (1) remains solely with the Customer until it is installed and commissioned to the satisfaction of the Company; and
  - (2) passes from the Customer to the Company with effect from installation and commissioning.

- 9.5 The Company must use its reasonable endeavours to maintain the Meter in good repair and condition in accordance with any standards specified by the Company. The Company may, after giving reasonable notice to the Customer where possible, enter a Landholding for that purpose.
- 9.6 The Company may, at such intervals as it determines:
- (1) take and record readings from the Meter; or
  - (2) require the Customer to take and record readings from the Meter.
- 9.7 The volume of water delivered by the Company as registered by the Meter will be taken to be conclusive evidence and proof of the volume of water actually delivered unless the Company determines, on reasonable grounds, that a materially different volume was delivered.
- 9.8 The Customer must take all reasonable steps to ensure the safekeeping of a Meter on a Landholding and must continually provide unimpeded access to the Company or the Company's Personnel to the Meter.
- 9.9 The Customer must not interfere with, alter or remove, or allow interference, alteration or removal of, a Meter without the prior consent of the Company.
- 9.10 If the Customer becomes aware that:
- (1) a person has interfered with, altered or removed a Meter without the prior consent of the Company; or
  - (2) a Meter has been damaged or is otherwise not operating correctly;
- the Customer must immediately notify the Company of such interference, alteration, removal, damage or incorrect operation.
- 9.11 All Costs reasonably incurred by the Company or the Company's Personnel in:
- (1) investigating the taking or use of water by the Customer not measured by a Meter;
  - (2) measuring or estimating the volume of water taken by the Customer not measured by a Meter;
  - (3) purchasing, installing, commissioning or improving a Meter;
  - (4) repairing any Damage to a Meter; or
  - (5) replacing a Meter that does not comply with the standards specified by the Company;
- will, to the extent that the Costs are incurred as a result of, or in connection with, the wilful misconduct of the Customer or the Customer's Associates or Personnel, constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

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## **10 Deemed delivery of water**

- 10.1 The Customer acknowledges that destroying, damaging, interfering with, or depositing anything in any of the Company's Works or taking water from the Company's Works without the authority of the Company is an offence under Part 3 of Chapter 7 of the Act.



10.2 The Customer must not take water from the Company's Works except by ordering it for delivery from the Company in accordance with the Documents or otherwise with the Company's consent.

10.3 Where:

- (1) there is no Meter or other instrument measuring delivery of water which has been approved by the Company for the purposes of assessing relevant Charges payable by the Customer;
- (2) in the opinion of the Company, the Meter is measuring incorrectly, not operating properly or not operating;
- (3) in the opinion of the Company, water has been taken by, or delivered to, the Customer without having been ordered for delivery under the Documents; or
- (4) in the opinion of the Company, more water has been taken by, or delivered to, the Customer than the Customer has ordered under the Documents,

the Company may determine the volume of water taken by, or delivered to, the Customer (**Unmeasured Water**) using any reasonable means it considers fit.

10.4 The Company's determination of the volume of Unmeasured Water will be taken to be the actual volume of Unmeasured Water, unless the Customer appeals under clause 10.5.

10.5 The Company must give to the Customer notice of its determination of the volume of Unmeasured Water. The Customer has the right to appeal the Company's decision by giving notice of the appeal to the Company (setting out particulars of, reasons for and information in support of, the Customer's appeal) within 14 days after the notice of the Company's determination is given to the Customer. If the Customer gives the Company notice of an appeal in accordance with this clause, the Company must:

- (1) examine and give due and proper consideration to the particulars, reasons and information set out in the notice of the appeal; and
- (2) make a determination regarding the Customer's appeal within 28 days after receipt of the notice of the appeal and give the Customer notice of the determination, including reasons.

If the Customer's appeal is upheld, the Company must vary or amend its notice of determination of the volume of Unmeasured Water.

10.6 If the Company makes a determination under clause 10.3, or a varied or amended determination under clause 10.5, then, without limiting the Company's rights under clause 10.3:

- (1) the Company may debit a volume of Water Allocation from the Customer's Water Allocation Account equal to the volume of Unmeasured Water;
- (2) if the Customer has less Water Allocation in his, her or its Water Allocation Account than the volume of Unmeasured Water, the Company may do one or both of the following:
  - (a) require the Customer to pay to the Company an amount determined by the Company which constitutes a reasonable estimate of the market value of the volume of Unmeasured Water that is not debited under clause 10.6(1); or
  - (b) put the Customer's Water Allocation Account into a negative balance; and

- (3) the Customer must pay to the Company an amount determined by the Company which constitutes a reasonable estimate of the Charges payable for delivery of the Unmeasured Water.

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## 11 Drainage

- 11.1 The Customer may only discharge Drainage into the Company's Drainage Works in accordance with the conditions set out in a Rights of Access Certificate and in accordance with the Rules.

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## 12 Charges

- 12.1 The Customer must pay the Charges to the Company in accordance with the Charges Rules.

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## 13 Rules and other conditions

- 13.1 The Company must publish the Rules on the Company's web site. The Rules may be varied, amended, supplemented or replaced from time to time in accordance with clause 34.
- 13.2 The parties must comply with:
- (1) the Rules; and
  - (2) any other conditions set out in a Rights of Access Certificate.
- 13.3 To the extent that there is an inconsistency between a provision in any of the documents specified in clause 13.3(2) and another provision in any of them or between a provision in any of those documents and a provision in another of those documents:
- (1) a specific provision takes precedence over a general provision; and
  - (2) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
    - (a) any other conditions set out in a Rights of Access Certificate;
    - (b) this Contract; and
    - (c) the Rules.
- 13.4 If a Customer enters into a transaction with respect to the Customer's Rights of Access, the Customer must, if requested by the Company, execute a new Water Delivery Contract and, if the Customer is entitled to any Water Entitlements, a new Water Entitlements Contract.

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## 14 Goods and services tax

- 14.1 In this clause 14:
- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
  - (2) unless otherwise defined in the Documents, words and expressions used or defined in the **GST law** (as defined in the GST Act) have the same meaning in the Documents;
  - (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;

- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
  - (5) if GST law treats a supply as mixed supply, any such part of the supply is to be treated as a separate supply.
- 14.2 Unless expressly stated otherwise in the Documents, all monetary amounts under the Documents are exclusive of GST.
- 14.3 If any supply made under or in connection with the Documents is a taxable supply, the consideration otherwise to be paid or provided for that supply is increased by the amount of any GST payable in respect of that supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is to be paid, provided that a valid tax invoice is delivered to the recipient of the taxable supply.

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## **15 Access to landholding**

- 15.1 The Customer acknowledges that the Company has rights to enter land within the Area of Operations under section 120 of the Act.

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## **16 Closure of company's supply works**

- 16.1 The Company may, one or more times each Water Year, after giving reasonable notice (which need not exceed 30 days) to the Customer, close the Company's Supply Works.
- 16.2 If the Company closes the whole or any part of the Company's Supply Works other than for maintenance or repairs, the Company must publish on the Company's web site reasons for the closure but this is not a condition of the closure taking effect. Where possible, the Company must give the Customer reasonable notice prior to the closure, taking into account the circumstances giving rise to the need to close the Company's Supply Works.

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## **17 Construction, maintenance and repair of works**

- 17.1 The Company or the Company's Personnel may install, commission, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Company considers are necessary or desirable to any of the Company's Works or construct new Company's Works.

- 17.2 If it is reasonably foreseeable that:

- (1) the Company proposes to carry out an act under clause 17.1;
- (2) the act to be carried out is material in nature (and not a general day-to-day activity of the Company); and
- (3) the act will have the effect of requiring the Customer to make significant changes (at the Customer's Cost) to the Customer's Works,

then the Company must give the Customer reasonable notice of the material act the Company proposes to carry out and must give the Customer a reasonable opportunity to raise matters of concern in connection with the proposal. The Company must take into account all legitimate and reasonable matters raised by the Customer and modify the proposal to the extent the Company considers practical and appropriate (acting reasonably and in good faith) to take account of legitimate and reasonable matters raised by the Customer.

- 17.3 The Company may close any of the Company's Works for maintenance or repairs from time to time. If a proposed closure will adversely affect the delivery of water to the Customer's Landholding, the Company must, where possible, give the Customer reasonable notice of the proposed closure, taking into account the facts and circumstances giving rise to the need to maintain or repair the Company's Works.

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## **18 Construction or planting on or near company's land or works**

- 18.1 The Customer must ensure that any construction work or planting that the Customer or the Customer's Associates carry out on or adjacent to the Company's land or the Company's Works is in accordance with the Development Rules, and are not in breach of any Legal Requirements, including Legal Requirements which may be imposed directly on the Customer by a Government Agency.

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## **19 No contravention of the company's obligations**

- 19.1 The Customer must not knowingly do or omit to do anything within their control that may cause a contravention of the Documents, any Licence, or any approval which the Company has been granted under the Act or any relevant Legal Requirement.
- 19.2 Despite any other provision of a Document, the Company is not obliged to do anything that would contravene a Legal Requirement.

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## **20 Customer to provide information**

- 20.1 The Customer must comply with a notice by the Company requesting that the Customer provide the Company with information required by the Company to comply with a Legal Requirement. The notice must give the Customer at least 45 days to comply except where the Company determines that it is necessary to require compliance within a lesser period in order for the Company to comply with the Company's obligations under a Legal Requirement, in which case the Company may require compliance within the lesser period.

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## **21 Subdivision**

- 21.1 Where a Customer intends to lodge a plan of subdivision with a Government Agency in respect of a Landholding, or, where no plan of subdivision is required, decides to subdivide a Landholding, the Customer must:
- (1) submit an application to the Company to:
    - (a) allocate the Customer's existing Rights of Access; and
    - (b) where applicable, enter into new contractual arrangements for the newly created Landholdings; and
  - (2) ensure that the subdivision of the Landholding otherwise complies with the Development Rules and the Drainage Use Rules.

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## **22 Livestock damage to company's works**

- 22.1 The Customer must ensure that livestock owned or under the control of the Customer or any of the Customer's Associates do not cause any Damage to the Company's Works.
- 22.2 If the Company determines that, on the basis of available evidence, there are livestock owned or under the control of a Customer and there is a possibility that those livestock could cause

damage to the Company's Works, then the Company may, where it would be detrimental to the Company's Works not to do so, give a notice to the Customer requiring the Customer to construct, maintain and replace a fence in accordance with specifications required by the Company (which must not be unreasonable).

- 22.3 The Customer must, at the Customer's Cost, and in accordance with all relevant laws:
- (1) comply with any notice given by the Company under clause 22.2 within three months after the notice is received; and
  - (2) ensure that steps are taken in the interim to prevent livestock from causing Damage to the Company's Works.
- 22.4 If the Customer defaults under clause 22.3, the Company may enter, or may procure another person to enter, a Landholding and take action to remedy the Customer's default at the Customer's cost as deemed necessary or desirable by the Company, acting reasonably.
- 22.5 Unless stated otherwise, all fences constructed under this clause will be the responsibility of the Customer.

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## **23 Damage to company's works**

- 23.1 This clause 23 does not limit, or apply to Damage referred to in, clause 22.
- 23.2 The Customer must ensure that the Customer and the Customer's Associates do not Damage, destroy or interfere with the Company's Works.
- 23.3 If the Customer, or any of the Customer's Associates, Damages, destroys or interferes with the Company's Works in contravention of clause 23.2, then the Company may issue a warning to the Customer that it holds the Customer responsible for such Damage and provide an opportunity for the Customer to show cause why the Company should not hold the Customer responsible.
- 23.4 If, after the Customer has responded under clause 23.3, the Company is reasonably satisfied that neither the Customer nor any of the Customer's Associates is directly or indirectly responsible for the Damage, the Company must give the Customer notice that it does not hold the Customer responsible for the Damage.
- 23.5 If, after the Customer has responded under clause 23.3, the Company is reasonably satisfied that either the Customer or any of the Customer's Associates is directly or indirectly responsible for the Damage, the Company may:
- (1) require the Customer to pay the Cost of the Damage to the Company's Works and this Cost will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand; or
  - (2) give the Customer notice that any subsequent occasions of Damage to the Company's Works may result in the suspension or cancellation of any water deliveries to the adjacent Landholding, in addition to a Claim for recovery of the reasonable cost of repairing the Damage.

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## **24 Default**

- 24.1 An Event of Default occurs if:
- (1) any money payable by the Customer to the Company, including money payable under any of the Documents, remains unpaid for 28 days after the due date for payment;

- (2) the Customer breaches the terms of an arrangement made to settle outstanding Charges;
- (3) the Customer repudiates, or commits a material or persistent breach of any of the Documents;
- (4) the Customer becomes subject to an Insolvency Event;
- (5) the Customer is not, or ceases to be, the registered proprietor of a Landholding, unless:
  - (a) the Company has approved an application by the Customer to terminate or surrender all of the Customer's Rights of Access associated with the Landholding; or
  - (b) the documents necessary for the Customer to be registered as the registered proprietor of the Landholding with which the Rights of Access are associated have been lodged with the relevant Government Agency and the Customer has not yet been registered as the registered proprietor; or
- (6) the Customer's existing manner of use of a Landholding (including application of water), in the reasonable opinion of the Company, breaches, or is likely to breach, any Licences held by the Company, the Customer or third parties, or is otherwise a breach of 21.1 of this Contract.

24.2 The Customer must not permit an Event of Default to occur.

24.3 From the point in time when an Event of Default occurs until the point in time, if any, at which it is remedied (including where an Event of Default has occurred and is not capable of being remedied), to the maximum extent permitted by law and subject to sections 415D, 434J and 451E of the Corporations Act, the Company may do any, some or all of the following:

- (1) by giving notice to the Customer, suspend delivery of water, without any obligation to make up any delay or shortfall in delivery once the Event of Default is remedied;
- (2) by giving notice to the Customer, require the Customer to suspend the discharge of Drainage into the Company's Drainage Works, without any liability for the consequences, including flooding; or
- (3) by giving notice to the Customer, suspend the Customer's right to use, terminate, surrender, or otherwise deal with, the Customer's Rights of Access.

24.4 Without limiting clause 24.3 and subject to sections 415D, 434J and 451E of the Corporations Act, if an Event of Default occurs and is incapable of being remedied, or is capable of being remedied but the Customer does not remedy it within 28 days after notice to the Customer requiring it to be remedied, then, to the maximum extent permitted by law, the Company may do any, some or all of the following:

- (1) after giving seven days' notice to the Customer, terminate some or all of the Customer's Rights of Access (in which case termination fees will be payable in accordance with clause 4.2(1)); or
- (2) terminate this Contract by giving two months' notice to the Customer, in which case:
  - (a) the Customer's Rights of Access and any Delivery Entitlements will be terminated;
  - (b) the Company must apply a reasonable estimate of the value of any terminated Delivery Entitlements to the money due for payment by the Customer and pay any surplus to the person entitled to it;

- (c) the Company may remove or disable any physical connection between the Company's Works and the Customer's Works;
- (d) the Customer may be required to pay termination fees and disconnection fees in accordance with clause 4.2;
- (e) subject to this Contract, upon termination, each party is released from his, her or its obligation to further perform this Contract; and
- (f) each party retains the rights, remedies and powers he, she or it has in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

24.5 If the Company exercises a power of sale with respect to a Landholding under the *Conveyancing Act 1919* (NSW) or otherwise, the Customer must deliver possession of the Landholding to the Company within three months after the Company gives notice of its intention to exercise its power of sale.

24.6 Subject to sections 415D, 434J and 451E of the Corporations Act, all Costs reasonably incurred by the Company directly as a result of, or in connection with, an Event of Default, including remedying an Event of Default, will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

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## **25 Termination by the customer**

25.1 The Customer may apply to the Company in the approved form to terminate this Contract if:

- (1) all of the Customer's Delivery Entitlements have been terminated or surrendered in accordance with the Charges Rules or transferred in accordance with the Transfer Rules;
- (2) all of the Customer's other Rights of Access have been terminated or surrendered in accordance with the Charges Rules;
- (3) the Customer has paid all Charges; and
- (4) the Customer's Water Allocation Account does not have a negative balance.

25.2 If the Company receives an application by the Customer that satisfies the requirements of clause 25.1, then:

- (1) the Company will give notice to the Customer that the application has been accepted by the Company;
- (2) subject to this Contract, upon receipt by the Customer of the notice of the Company's approval, this Contract is terminated and each party is released from his, her or its obligation to further perform this Contract; and
- (3) each party retains the rights, remedies and powers he, she or it has in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

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## **26 Limitation of liability and indemnity**

26.1 Each party releases the other party's Personnel from all Claims, whether in tort (including negligence), statute, contract or otherwise.

- 26.2 Neither party will be liable to the other party under or in respect of the Documents for any Consequential Loss arising from any cause of action (including negligence).
- 26.3 Subject to clause 26.10, the maximum total amount that either party may recover from the other party in respect of any Claim (whether in tort including negligence, statute, contract or otherwise) arising out of or in connection with the Documents (including the negotiations for, or subject matter of, or breach of the Documents) is an amount equal to the amount of all Charges paid by the Customer to the Company in the 12 months immediately preceding the breach or tortious conduct (as the case may be). However, this clause does not limit the amount the Company may recover from the Customer in respect of any Claim for Charges.
- 26.4 The Customer acknowledges and agrees that the Customer does not rely on, any statement or representation made, any advice, opinion, warranty, undertaking, promise, estimate, projection or forecast given, or any conduct of any kind engaged in, in relation to:
- (1) the availability or delivery of water, including the time, depth, flow rate or pressure of water;
  - (2) the quality or fitness for any purpose of any water made available or delivered by the Company;
  - (3) the fitness of water for human or animal consumption, or use in spraying, irrigating crops, food, beverage or ice preparation;
  - (4) whether or not the water has been filtered, or filtered in any particular way;
  - (5) to the extent permitted by law, the subject matter of the Documents; and
  - (6) to the maximum extent permitted by law, the Customer releases the Company and its Personnel from all Claims (whether in tort [but not including negligence], statute, contract or otherwise) and Losses which the Customer may have.
- 26.5 The Customer acknowledges and agrees that the Customer is capable of evaluating the merits and risks of filtering water made available or delivered by the Company.
- 26.6 The Customer is responsible for deciding whether or not to filter, or how to filter, water made available or delivered by the Company.
- 26.7 The Customer is responsible for any Costs of filtering water made available or delivered by the Company and any Loss arising from filtering or not filtering that water.
- 26.8 The Customer acknowledges and agrees that from time to time the Company treats the water that it makes available or delivers with chemicals including for managing weeds, algae, pests or water quality and that after being notified by the Company of such treatment, the Customer takes delivery of that water at the Customer's own risk.
- 26.9 The Company is not liable for any breach of the Documents to the extent that the breach has arisen out of, or the Loss suffered is increased as a result of any act or omission by on behalf the Company for the purpose (directly or indirectly) of compliance with any Legal Requirement.
- 26.10 The Customer indemnifies the Company against all Losses incurred by the Company arising out of or in connection with:
- (1) any death or injury to persons, and any loss or damage to real or personal property, caused by an act or omission of the Customer or its Personnel; or
  - (2) any negligent or wilful act or omission of the Customer or its Personnel.



- 26.11 The limitations of liability and indemnities under this clause 26 are in addition to any limitations of liability for indemnities available to the Company by law including under the Act.

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## 27 Force majeure

- 27.1 In this clause 27, a **Force Majeure Event** means any serious event or circumstance (including (without limitation) a change of law, an Act of God, a natural disaster (including flood and drought), water shortages, act of war, act of terrorism, act of vandalism, fire, power surge or failure, pandemic, industrial action, major structural failure of a Work, water supply failure, river interruption or biosecurity breach) which a party did not cause and was unable to prevent or control by taking reasonable steps.
- 27.2 If a party is unable in whole or in part, by reason of a Force Majeure Event to carry out any obligation under the Documents (not including the payment of Charges) and gives the other party immediate notice and particulars of:
- (1) the Force Majeure Event;
  - (2) its impact on performance of that party's obligations;
  - (3) the expected duration of that impact; and
  - (4) the steps the affected party will take to mitigate that impact;

then provided that the affected party uses all reasonable diligence to remove and mitigate the Force Majeure Event as quickly as possible, that party's obligations affected by the Force Majeure Event (not including the payment of Charges) shall be suspended and shall not constitute an Event of Default, but only for as long as the Force Majeure Event continues.

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## 28 Disputes

- 28.1 If a dispute (other than a dispute relating to unpaid Charges) arises between the Customer and the Company, out of or in connection with the Documents, the disputing party must give the other party written notice of the dispute, setting out with reasonable particularity the basis of the dispute (Notice of Dispute). Neither party may commence Court proceedings (other than for injunctive or other urgent relief) in respect of any such dispute before this clause 28 has been complied with.
- 28.2 The parties must confer within five Business Days after the Notice of Dispute is given.
- 28.3 Despite the issue of a Notice of Dispute, and the parties' engagement in conferral as per this clause the parties must continue to perform their obligations under the Documents.
- 28.4 If the dispute subject to the Notice of Dispute is not resolved after conferral and/or mediation and the parties have complied with clauses 28.1 and 28.2 in good faith, the parties may commence Court proceedings in relation to the dispute.

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## 29 Privacy

- 29.1 Without limiting the Company's rights, the Company may disclose, and the Customer consents to the disclosure of, any information (including personal information of the Customer) in accordance with the Privacy Statement.
- 29.2 In addition to clause 29.1 and in respect of a Single Water Allocation Account, all participants of a Single Water Allocation Account consent to the Company disclosing, or making available to the primary applicant of that Single Water Allocation Account any information (including

personal information of each participant of the Single Water Allocation Account) in accordance with the Documents.

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### **30 Time of the essence**

30.1 Time is of the essence in respect of obligations to pay money or repay water debts or water borrowings under the Documents.

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### **31 Further assurances**

31.1 Each party must, at his, her or its own Cost, from time to time, do all things, including executing or producing documents, getting documents executed or produced by others and obtaining consents necessary or desirable to give full effect to the Documents (including the transactions contemplated by the Documents).

31.2 The Customer must:

- (1) give to the Company any consent or authority; and
- (2) execute any document;

that the Company determines is necessary for the Company to comply with the Company's obligations under a Legal Requirement or to give effect to a provision of the Documents.

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### **32 Severability**

32.1 If anything in the Documents is unenforceable, illegal or void or contravenes the law then it is severed and the rest of the Documents remains in force.

32.2 The rights and obligations of each party are not affected by any law that, but for this clause 32.2, would affect those rights and obligations.

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### **33 No reliance**

33.1 Each party has entered into the Documents without relying on any representation (whether or not negligently) by any other party or any person purporting to represent that party except for representations expressly set out in the Documents.

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### **34 Variation**

34.1 This Contract may be varied, amended, supplemented or replaced by agreement between the Company and the Customer.

34.2 In addition to its rights under clause 34.1, but subject to clause 34.4, the Company may, from time to time, without the Customer's prior consent, vary, amend, supplement or replace:

- (1) this Contract, by giving at least two months' prior notice to the Customer; or
- (2) the Rules, by giving at least 10 Business Days' prior notice to the Customer,

except where the Company determines that it is necessary to give a lesser period of notice of the variation, amendment, supplementation or replacement in order for the Company to comply with the Company's obligations under a Legal Requirement, in which case the Company may give the lesser period of notice. The parties agree to be bound by the variation, amendment, supplementation or replacement.

- 34.3 On or before the date on which the Company gives notice of a variation, amendment, supplementation or replacement under clause 34.2, the Company must publish on the Company's web site an explanation of the variation, amendment, supplementation or replacement but this is not a condition of the notice taking legal effect.
- 34.4 Despite any other clause, any variation, amendment, supplementation or replacement pursuant to clause 34.2 must not contravene any Legal Requirement, including the *Australian Consumer Law*.

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## **35 Rights, powers and remedies**

- 35.1 The rights, powers and remedies of each party in this Contract (including any right of indemnity) are additional to other rights, powers and remedies independently given by law.
- 35.2 The parties acknowledge and agree that:
- (1) monetary damages alone may not be a sufficient remedy for breach of the Documents; and
  - (2) in addition to any other remedy that may be available at law or in equity, each party is entitled to interim, interlocutory or permanent injunctions or any combination of them to prevent a breach and to compel specific performance of the Documents.
- 35.3 If a party does not exercise a right, power or remedy fully, or at a given time, the party may still exercise it later.
- 35.4 A party may exercise or enforce a right, power or remedy (including giving or withholding his, her or its approval or consent, making elections or determinations) entirely at his, her or its discretion (including by imposing conditions), unless this Contract expressly states otherwise.
- 35.5 Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.
- 35.6 Waiver of a right, power or remedy is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

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## **36 Continuing obligations**

- 36.1 The rights and obligations of the parties do not merge on the completion of any transaction contemplated by the Documents. They also survive the execution and delivery of any conveyance, assignment, transfer or other document entered into for the purpose of implementing any transaction contemplated by the Documents.
- 36.2 Each indemnity in the Documents survives the expiry or termination of this Contract. A party may enforce a right of indemnity at any time, including before he, she or it has suffered Loss.
- 36.3 Clauses 15, 17, 22, 23 and 26 survive the expiry or termination of this Contract.

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## **37 Costs**

- 37.1 Each party must pay his, her or its own Costs connected with the negotiation, preparation and execution of the Documents.

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## 38 Notices

- 38.1 A Notice, including waiver, consent, demand, agreement or authorisation, under this Contract is not valid unless it is in writing, is legible and is in English.
- 38.2 For the purpose of this clause 38, a party's Contact Details means:
- (1) For the Company:

**Attention:** Company Secretary  
**Address:** Murrumbidgee Irrigation Limited  
Locked Bag 6010  
Griffith NSW 2680  
**Email:** [info@mirrigation.com.au](mailto:info@mirrigation.com.au)
  - (2) For the Customer, the name(s), address, facsimile and email details in Schedule 1 (or if none are in Schedule 1, such other details that the Company on reasonable grounds takes to pertain to the Customer).
- 38.3 Notices may be delivered from one party to the other:
- (1) by prepaid post, hand delivery, email, facsimile to the other party's address, email address or facsimile number as per its Contact Details;
  - (2) by hand delivery in person;
  - (3) through in-app notification or push notification from any app published for use by the Company;
  - (4) in the case of variation, amendment, supplementation or replacement of this Contract, by publication on the Company's website.
- 38.4 Notices sent by prepaid post are deemed to have been received four Business Days after posting. All other Notices are deemed to have been received on the same day that they are hand delivered, sent or published.
- 38.5 If a party to whom a Notice is given consists of more than one person, delivery to that party is effected if delivery is made to any one of the persons constituting that party.
- 38.6 Only the primary applicant for a Single Water Allocation Account (SWAA) is entitled to be given notices by the Company in respect of the SWAA and a Notice given to that person is deemed to be Notice given to all participants in the SWAA.

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## 39 Joint holders

- 39.1 Where two or more persons are registered as the holders of a Right of Access, the Company is not bound to treat them other than as holding the Right of Access as joint tenants with benefits of survivorship, subject to the following:
- (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the Right of Access and even if more than three persons are registered, the Company may disregard those other than the first three named holders on the Rights of Access Register;
  - (2) the joint holders are liable severally and jointly for all Charges payable in respect of the Right of Access;

- (3) if one holder of a jointly held Right of Access dies, the Company is only bound to recognise the surviving holders as having title to the Right of Access; and
- (4) only the person first named in the Rights of Access Register is entitled to receive Notices from the Company and receipt by that person is treated as notice to all joint holders.

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## **40 Transmission of rights of access**

- 40.1 If a Customer who is a sole holder of a Right of Access dies, the Company is only obliged to recognise that deceased Customer's personal legal representative as being entitled to the Right of Access.
- 40.2 If a Customer who is a joint holder of a Right of Access dies, clause 39.1(3) applies and the estate of the deceased Customer is not released from any liability in respect of the Right of Access.
- 40.3 If a person ("the Successor") becomes entitled to be registered as the holder of a Right of Access by reason of being the personal legal representative of a deceased Customer, or because of bankruptcy or mental incapacity of a Customer, and the Successor provides information that the Company may require to show the Successor's entitlement to be registered as the holder of the Right of Access:
  - (1) the Successor may (in writing) require the Company to register the Successor as the holder of the Right of Access, or transfer the Right of Access to another person; and
  - (2) whether or not registered as the holder of the Right of Access, the Successor is entitled to the same rights, and subject to the same liabilities, as if the Successor were registered as the holder.
- 40.4 This clause 40 has effect subject to the Transfer Rules and the *Bankruptcy Act 1966* (Cth).

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## **41 Recognition of ownership**

- 41.1 Except as required by law, the Company is not bound to recognise a person as holding Rights of Access or entering into this Contract upon any trust.
- 41.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of the Customer's Rights of Access or this Contract except, where applicable, an absolute right of the Customer.
- 41.3 Clause 41.2 applies whether or not the Company has notice of the interest or right, but does not apply where the Company is bound to recognise the interest or right by law.

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## **42 Entire agreement**

- 42.1 The Documents:
  - (1) are the entire agreement and understanding between the parties on everything connected with the subject matter of the Documents; and
  - (2) supersede any prior agreement or understanding on anything connected with that subject matter.

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**43 Governing law**

- 43.1 The law of New South Wales governs the Documents.
- 43.2 The Company and the Customer submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

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**44 Execution of counterparts**

- 44.1 This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

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**45 Execution by attorney**

- 45.1 Where this Contract is executed by an attorney, that attorney, by executing, declares that he, she or it has no notice of revocation, termination or suspension of the power of attorney under which he, she or it executes this Contract.

## Schedule 1 - Details

Item 1

**Name of Customer**

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**ABN**

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Item 2

**Address**

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**Email address**

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**Number for receipt of text messages**

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Item 3

**Commencement date**

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**Executed** as an agreement.

Executed by **Murrumbidgee Irrigation Limited** ABN 39 084 943 037 in accordance with section 127 of the *Corporations Act 2001*:

.....  
Director/company secretary

.....  
Director

.....  
Name of director/company secretary  
(BLOCK LETTERS)

.....  
Name of director  
(BLOCK LETTERS)

**If the Customer is an individual or multiple individuals:**

Signed by the **Customer**:

.....  
Name of Customer

.....  
Signature of Customer

.....  
Name of additional Customer  
(if more than one person)

.....  
Signature of additional Customer  
(if more than one person)

.....  
Name of additional Customer  
(if more than two persons)

.....  
Signature of additional Customer  
(if more than two persons)

**If the Customer is a company:**

Executed by the **Customer** in accordance with section 127 of the *Corporations Act 2001*:

.....  
Director/company secretary

.....  
Director

.....  
Name of director/company secretary  
(BLOCK LETTERS)

.....  
Name of director  
(BLOCK LETTERS)

**Reference details:**