



**Murrumbidgee  
Irrigation**

Murrumbidgee Irrigation Limited ABN 39 084 943 037

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# **Water Entitlements Contract**

**Effective 1 July 2023 to 30 June 2024**

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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)        **Annual Allocation** means the Water Allocation determined under clause 7 from time to time;
- (6)        **Australian Consumer Law** has the meaning given to that term in section 130 of the *Competition and Consumer Act 2010* (Cth);
- (7)        **Availability Announcement** means any determination made from time to time by the relevant Government Agency with respect to the water available to the Company in any Water Year under the Company's Access Licences for diversion from the Murrumbidgee River;
- (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 Works** means Works owned by the Company;
- (14) **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;
- (15) **Contract** means this agreement and all schedules and annexures to it;
- (16) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (17) **Corresponding Water Entitlements** has the meaning given to that term in the Transfer Rules;
- (18) **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;
- (19) **Documents** means this Contract, the Rules, and any Water Delivery Contract, any Rights of Access Certificate, any other Water Entitlements Contract and any Water Entitlements Certificate between the Company and the Customer;
- (20) **Event of Default** means any of the events referred to in clause 14.1;
- (21) **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;
- (22) **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;
- (23) **Legal Requirement** means law; regulations; any notice, order or direction received from, or given by, any Government Agency; and the Company's Licences;
- (24) **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;
- (25) **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;
- (26) **Megalitre** means one million litres;
- (27) **Meter** means a water measurement apparatus used to measure and account for water;
- (28) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;
- (29) **Privacy Statement** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;
- (30) **Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act;
- (31) **Rights of Access** has the meaning given to that term in the Water Delivery Contract;
- (32) **Rights of Access Certificate** has the meaning given to that term in the Water Delivery Contract;
- (33) **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;
- (34) **Single Water Allocation Account** has the same meaning as that given by the Transfer Rules;
- (35) **Surplus Water Rules** means the rules determined by the Company in relation to, among other things, access to available supplementary water flows;
- (36) **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;
- (37) **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;
- (38) **Water Allocation Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Water Allocation;
  - (39) **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;
  - (40) **Water Entitlement** means the right, expressed according to the categories set out in Schedule 2, to a notional volume of one Megalitre of water which is used to calculate the Annual Allocation;
  - (41) **Water Entitlements Certificate** means a certificate issued by the Company (which may be in digital or electronic form):
    - (a) evidencing (but not conferring an entitlement to) Water Entitlements; and
    - (b) setting out binding conditions that apply with respect to the Water Entitlements under clause 10.2(2);
  - (42) **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;
  - (43) **Water Entitlements Register** means a register maintained by the Company which records:
    - (a) the Customer's name and address;
    - (b) the date of this Contract; and
    - (c) the number and category of Water Entitlements held by the Customer;
  - (44) **Water Year** means any period of one year ending on 30 June; and
  - (45) **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 of 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
  - (d) if (as per the Transfer Rules) the Customer is the transferee to a Permanent Transfer, the earlier of the date on which the Permanent Transfer takes effect or the date on which Water Entitlements are issued to the Customer; or
- (2) if this Contract is not commenced in accordance with clause 3.1(1), and if:
- (a) a copy of this Contract was posted on the Company's website or otherwise sent to the Customer on a given date (the "**Reference Date**"); and
  - (b) two months after the Reference Date the Customer holds, or continues to hold, Water Entitlements as recorded on the Company's Water Entitlements Register;

then the Customer is taken to have entered into the Water Entitlements Contract with the Company from the date two months after the Reference Date and is taken to accept all rights and obligations contained in the Water Entitlements Contract.

- 3.2 If the Contract is commenced under clause 3.1(2), the Company is deemed, with authorisation from the Customer, to have completed Schedule 1 of the Water Entitlements Contract by entering:
- (1) the name and contact details of the Customer;
  - (2) the Commencement Date, being two months after the Reference Date; 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 Water entitlements**

- 4.1 Subject to the Documents, the Customer is entitled to the number of Water Entitlements in respect of which the Customer is the registered holder in the Water Entitlements Register.
- 4.2 Despite anything to the contrary, nothing in the Documents gives the Customer any interest in the Company's Access Licences or the water that the Company is entitled to receive under them.

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## **5 Water entitlements certificates**

- 5.1 A Customer whose name is entered as a holder of Water Entitlements in the Water Entitlements Register is entitled to one certificate for the Water Entitlements registered in the Customer's name.
- 5.2 The Company may prepare and maintain Water Entitlements Certificates in any form convenient to the Company, including (without limitation) in electronic or digital form.
- 5.3 Where Water Entitlements are held jointly by several persons, the Company is not bound to issue more than one certificate.
- 5.4 A certificate must state:
- (1) the name of the Company;
  - (2) the name of the Customer;
  - (3) the number and category of Water Entitlements for which the certificate is issued; and
  - (4) any conditions which apply for the purposes of clauses 10.2(2) and 10.3(2)(a).
- 5.5 The Company will hold all Water Entitlements Certificates of the Customer. However, the Customer may, by notice in writing to the Company, direct the Company to make the Customer's Water Entitlements Certificate(s) available for inspection, or provide the Customer with a copy of the Customer's Water Entitlements Certificate(s).
- 5.6 The Customer acknowledges that, to the extent of any inconsistency:
- (1) a later dated Water Entitlements Certificate prevails over an earlier dated Water Entitlements Certificate; and
  - (2) the Water Entitlements Register prevails over any Water Entitlements Certificate.
- 5.7 The Company may, at any time, vary, amend, supplement or replace a Water Entitlements 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 Subject to clause 6.3, 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 If the Customer also has a Water Delivery Contract with the Company, then the Customer's Water Allocation Account may be permitted to have a balance of less than zero, subject to the terms of the Water Delivery Contract.
- 6.4 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.

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## **7 Annual allocation**

- 7.1 Subject to the balance of this clause 7, as soon as practicable after each relevant Availability Announcement during the relevant Water Year, the Company must, as soon as practicable after each relevant Availability Announcement during the relevant Water Year, credit or debit the Customer's Water Allocation Account the same volume of Water Allocation per relevant Water Entitlement as is specified per Megalitre of share component in the Availability Announcement.
- 7.2 The Company is under no obligation to credit Annual Allocation into the Customer's Water Allocation Account:
- (1) unless and until the Company has had water made available to it under an Access Licence, the category of which corresponds with the Customer's Water Entitlements, in accordance with the Availability Announcement for the relevant Water Year;
  - (2) unless and until the relevant Annual Allocation has been determined;
  - (3) to the extent that the aggregate of the Annual Allocation and Carryover Water credited in respect of any of the Customer's Water Entitlements in a Water Year would exceed a limit corresponding with the limit imposed by the Legal Requirements applicable in the relevant Water Year in respect of the corresponding category of Access Licence held by the Company;
  - (4) 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);
  - (5) if crediting the Annual Allocation would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;
  - (6) if the Company is entitled elsewhere in the Documents to suspend the crediting of Annual Allocation into the Customer's Water Allocation Account; or
  - (7) if the Customer has otherwise agreed, including under any contract with the Company.
- 7.3 The Company may increase the Customer's Annual Allocation, and credit the Customer's Water Allocation Account accordingly, on one or more occasions in any Water Year, at the Company's discretion, for any reason. The Company may, at its discretion, decrease or cancel any increase under this clause.
- 7.4 Water Allocation may be withdrawn or suspended by the Company to the extent that any water allocation of the Company is withdrawn or suspended under the Act. The Company must notify the Customer of a withdrawal or suspension of Water Allocation under this clause 7.4 as soon as practicable.
- 7.5 Despite anything to the contrary, nothing in this Contract obliges the Company to deliver, or entitles the Customer to delivery of or to take, any water.

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## **8 Carryover water**

- 8.1 The Company must permit the Customer to carry over the same volume of Carryover Water per relevant Water Entitlement as is specified per Megalitre of share component in the relevant Legal Requirement in respect of the corresponding category of Access Licence held by the Company.

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## 9 Charges

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

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## 10 Rules and other conditions

10.1 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 25.

10.2 The parties must comply with:

- (1) the Rules; and
- (2) any other conditions set out in a Water Entitlements Certificate.

10.3 To the extent that there is an inconsistency between a provision in any of the documents specified in clause 10.3(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 Water Entitlements Certificate;
  - (b) this Contract; and
  - (c) the Rules.

10.4 If the Customer enters into a transaction with respect to the Customer's Water Allocation or Water Entitlements, the Customer must, if requested by the Company, execute a new Water Entitlements Contract and, if the Customer is entitled to any Rights of Access, a new Water Delivery Contract.

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## 11 Goods and services tax

11.1 In this clause 11:

- (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.

- 11.2 Unless expressly stated otherwise in the Documents, all monetary amounts under the Documents are exclusive of GST.
- 11.3 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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## **12 No contravention of the company's obligations**

- 12.1 The Customer must now knowingly do or omit to do anything within their control that may cause a contravention of the Documents, any Licence or any approval that the Company has been granted under the Act or any relevant Legal Requirement.
- 12.2 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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## **13 Customer to provide information**

- 13.1 The Company may, by written Notice to the Customer, require the Customer to provide any information required for the Company to comply with a Legal Requirement.
- 13.2 A Customer must comply with a Notice given under clause 13.1 within 45 days of that Notice, or such lesser period determined by the Company as may be required for the Company to comply with the Legal Requirement.

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## **14 Default**

- 14.1 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.
- 14.2 The Customer must not permit an Event of Default to occur.
- 14.3 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 any determination of, or increase in, or crediting of, the Annual Allocation, without any obligation to make up any delay or shortfall once the Event of Default is remedied; or
  - (2) by giving notice to the Customer, suspend the Customer's right to use, transfer, terminate, surrender or otherwise deal with the Customer's Water Entitlements and Water Allocation.

- 14.4 To the maximum extent permitted by law, without limiting clause 14.3 and subject to sections 415D, 434J and 451E of the Corporations Act, if an Event of Default occurs and is either incapable of being remedied or is not remedied within 28 days after notice to the Customer requiring it to be remedied, then to the maximum extent permitted by law, the Company may terminate this Contract by giving two months' notice to the Customer, in which case:
- (1) the Customer's Water Entitlements and Water Allocation will be terminated unless they are used or transferred (in accordance with the Transfer Rules) within two months after the date of the notice;
  - (2) the Company must apply a reasonable estimate of the value of any terminated Water Entitlements or Water Allocation to the money due for payment by the Customer and pay any surplus to the person entitled to it;
  - (3) subject to this Contract, upon termination, each party is released from his, her or its obligation to further perform this Contract; and
  - (4) 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 arose before termination.
- 14.5 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.
- 14.6 Despite anything else in this Contract, the Company may, by giving notice to the Customer, terminate this Contract with immediate effect if the Customer no longer holds any Water Entitlements or Water Allocation, in which case, the consequences of termination set out in clauses 14.4(3) and (4) will apply.

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## **15 Termination by the customer**

- 15.1 The Customer may terminate this Contract by giving 30 days' notice to the Company, if:
- (1) all of the Customer's Water Entitlements and Water Allocations have been transferred or terminated in accordance with the Transfer Rules;
  - (2) the Customer has paid all Charges; and
  - (3) the Customer's Water Allocation Account does not have a negative balance.
- 15.2 Upon termination under clause 15.1:
- (1) subject to this Contract, each party is released from its obligation to further perform this Contract;
  - (2) each party retains the rights, remedies and powers it may have in connection with any past breach or any Claim or obligation (including an obligation to pay money) that arose before termination.

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## **16 Power of attorney**

- 16.1 For the purposes of this clause 16, the Company has only the powers set out in clause 16.2. The Customer irrevocably appoints the Company to be his, her or its attorney, for valuable consideration (including in consideration for the Company entering into this Contract).

- 16.2 If the Customer holds more shares in the Company than Corresponding Water Entitlements, the Company may do in the name of the Customer, and on his, her or its behalf, everything necessary or expedient, in the Company's discretion, to cancel the excess number of shares. The Company's power in this clause 16.2 may be exercised at any time, including after any termination or expiry of this Contract.
- 16.3 The appointment under this clause 16 is exclusive and the Company has authority to represent the Customer to the exclusion of the Customer. The Customer is not permitted to interfere with the Company's exercise of rights as attorney.

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## **17 Limitation of liability and indemnity**

- 17.1 Each party releases the other party's Personnel from all Claims, whether in tort (including negligence), statute, contract or otherwise.
- 17.2 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).
- 17.3 Subject to clause 17.11, 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 is an amount equal to the sum of all Charges paid by the Customer to the Company during 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 for any Claim for Charges.
- 17.4 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 engaged in, regarding:
- (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 water made available or delivered by the Company;
  - (3) the fitness of water for human or animal consumption, or use in spraying or irrigating crops, food, beverage or ice preparation;
  - (4) whether or not the water has been filtered or filtered in a particular way;
  - (5) to the maximum extent permitted by law, the subject matter of the Documents.
- 17.5 To the maximum extent permitted by law, the Customer releases the Company and its Personnel from all Claims (whether in tort [not including negligence] or in statute, contract or otherwise) and Loss which the Customer may have or incur.
- 17.6 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.
- 17.7 The Customer is responsible for deciding to filter or how to filter water made available or delivered by the Company.
- 17.8 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.
- 17.9 The Customer agrees that from time to time the Company treats, or may treat, 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.

- 17.10 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 or on behalf of the Company for the purpose (directly or indirectly) of compliance with any Legal Requirement.
- 17.11 The Customer indemnifies the Company against all Loss 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.
- 17.12 The limitations of liability and indemnities under this clause 17 are in addition to any limitations of liability and indemnities available to the Company by law including under the Act.

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## **18 Force majeure**

- 18.1 In this clause 18, a **Force Majeure Event** means any serious event or circumstance (including a change of law, an Act of God, a natural disaster (including flood or 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) that a party did not cause and was unable to prevent or control by taking reasonable steps.
- 18.2 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 payment of Charges) and gives the other party immediate notice and particulars of:
- (1) the Force Majeure Event;
  - (2) its impact on the performance of that party's obligations;
  - (3) the expected duration of that impact;
  - (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 payment of Charges) will not constitute an Event of Default, but only for as long as the Force Majeure Event continues.

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## **19 Disputes**

- 19.1 If a dispute (other than a dispute relating to unpaid Charges) arises between the Customer and the Company, out of or in connection with this Contract, a 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 19 has been complied with.
- 19.2 The parties must confer within five Business Days after the Notice of Dispute was given.



- 19.3 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.
- 19.4 If the dispute subject to the Notice of Dispute is not resolved after conferral and the parties have complied with clauses 19.1 and 19.2 in good faith, the parties may commence Court proceedings in relation to the dispute.

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## **20 Privacy**

- 20.1 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.
- 20.2 In addition to clause 20.1 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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## **21 Time of the essence**

- 21.1 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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## **22 Further assurances**

- 22.1 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).
- 22.2 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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## **23 Severability**

- 23.1 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.
- 23.2 The rights and obligations of each party are not affected by any law that, but for this clause 23.2, would affect those rights and obligations.

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## **24 No reliance**

- 24.1 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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**25 Variation**

- 25.1 This Contract may be varied, amended, supplemented or replaced by agreement between the Company and the Customer.
- 25.2 In addition to its rights under clause 25.1, but subject to clause 25.4, 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.
- 25.3 On or before the date on which the Company gives notice of a variation, amendment, supplementation or replacement under clause 25.2, 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.
- 25.4 Despite any other clause, any variation, amendment, supplementation or replacement pursuant to clause 25.2 must not contravene any Legal Requirement, including the Australian Consumer Law.

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**26 Rights, powers and remedies**

- 26.1 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.
- 26.2 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.
- 26.3 If a party does not exercise a right, power or remedy fully, or at a given time, the party may still exercise it later.
- 26.4 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.
- 26.5 Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.
- 26.6 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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## 27 Continuing obligations

- 27.1 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.
- 27.2 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.
- 27.3 Clauses 16, 17 and 32 survive the expiry or termination of this Contract.

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## 28 Costs

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

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## 29 Notices

- 29.1 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.
- 29.2 For the purpose of this clause 29, 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).
- 29.3 Notices may be delivered from one party to the other:
- (1) by prepaid post, hand delivery, or email to the other party's address, or email address as per its Contact Details;
- (2) by hand delivery in person;
- (3) by SMS text message to the other party's nominated mobile phone number for receipt of text messages;
- (4) in the case of variation, amendment, supplementation or replacement of this Contract, by publication on the Company's website.
- 29.4 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.
- 29.5 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

- 29.6 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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### **30 Joint holders**

- 30.1 Where two or more persons are registered as the holders of a Water Entitlement, the Company is not bound to treat them other than as holding the Water Entitlement 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 trustees, executors or administrators of a deceased holder) as the holders of the Water Entitlement;
  - (2) the joint holders are jointly and severally liable in respect of all payments in respect of the Water Entitlement;
  - (3) if one holder dies, the Company is only bound to recognise the surviving holders as having interest in the Water Entitlement; and
  - (4) only the first named person of a joint holding on the Water Entitlement is entitled to receive Notices from the Company and receipt by that person is deemed notice to all joint holders.

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### **31 Transmission of water entitlements**

- 31.1 If Customer who is a sole holder of Water Entitlements dies, the Company is only obliged to recognise the personal legal representative of the deceased Customer as being entitled to the deceased Customer's interest in their Water Entitlements.
- 31.2 If a Customer who is a joint holder of Water Entitlement dies, clause 30.1(3) applies and the estate of the deceased customer is not released from any liability in respect of the Customer's Water Entitlement.
- 31.3 If a person ("**Successor**") becomes entitled to the deceased Customer's Water Entitlement 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 the Customer's interest, the Successor may:
- (1) by written notice require the Company to register the Successor as the holder of the Water Entitlement; or
  - (2) transfer the Water Entitlements to another person.
- 31.4 Regardless of whether a Successor is registered as the holder of Water Entitlements, unless a transfer to another person under clause 31.3(2) is completed, the Successor has the same rights and is subject to the same liabilities as if the Successor was registered as the holder of Water Entitlements.
- 31.5 This clause 31 has effect subject to the Transfer Rules and the *Bankruptcy Act 1966* (Cth).

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### **32 Recognition of ownership**

- 32.1 Except as required by law, the Company is not bound to recognise a person as holding Water Entitlements or entering into this Contract upon any trust.

32.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of the Customer's Water Entitlements or Water Allocation or this Contract except, where applicable, an absolute right of the Customer.

32.3 Clause 32.2 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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**33 Entire agreement**

33.1 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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**34 Governing law**

34.1 The law of New South Wales governs the Documents.

34.2 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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**35 Execution of counterparts**

35.1 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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**36 Execution by attorney**

36.1 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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## Schedule 2 - Categories of water entitlements

<b>Category</b>	<b>1</b>	- General security water entitlement
<b>Category</b>	<b>3</b>	- High security water entitlement
<b>Category</b>	<b>5</b>	- High security (domestic and stock) water entitlement
<b>Category</b>	<b>6</b>	- High security (non-potable domestic) water entitlement
<b>Category</b>	<b>7</b>	- High security (towns) water entitlement

### Notes:

(1) Former type 2 (normal security allocation for recreation use) has been incorporated into category 1 (general security water entitlement).

(2) Former type 4 (high security allocation for industrial purposes) has been incorporated into category 3 (high security water entitlement).

**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:**