



**Murrumbidgee
Irrigation**

Murrumbidgee Irrigation Limited ABN 39 084 943 037

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Water Entitlements Contract

Effective 1 July 2021 to 30 June 2022

Contents

1	Definitions and interpretation.....	2
2	Customer must obtain own advice	8
3	Commencement	8
4	Water entitlements	8
5	Water entitlements certificates	8
6	Water allocation account	9
7	Annual allocation	9
8	Carryover water	10
9	Charges	10
10	Rules and other conditions	10
11	Goods and services tax.....	11
12	No contravention of the company's obligations.....	12
13	Customer to provide information	12
14	Default	12
15	Termination by the customer	13
16	Power of attorney	14
17	Limitation of liability and indemnity.....	14
18	Force majeure	16
19	Disputes.....	17
20	Privacy.....	18
21	Time of the essence	18
22	Further assurances	18
23	Severability	18
24	No reliance	19
25	Variation	19
26	Rights, powers and remedies.....	19
27	Continuing obligations	20
28	Costs	20
29	Notices.....	20
30	Joint holders	21
31	Transmission of water entitlements.....	22
32	Security interests.....	22
33	Recognition of ownership	23
34	Entire agreement.....	23
35	Governing law	23
36	Execution of counterparts.....	23
37	Execution by attorney	23
	Schedule 1 - Details	24
	Schedule 2 - Categories of water entitlements	25

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

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

It is agreed

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 and Conversion 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) **General Security Water Entitlements** means category 1 (as defined in Schedule 2) Water Entitlements;
- (22) **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;
- (23) **High Security Water Entitlements** means category 3, 5, 6 or 7 (as defined in Schedule 2) Water Entitlements;
- (24) **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;
- (25) **Legal Requirement** means law; regulations; any notice, order or direction received from, or given by, any Government Agency; and the Company's Licences;
- (26) **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;
- (27) **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;
- (28) **Megalitre** means one million litres;
- (29) **Meter** means a water measurement apparatus used to measure and account for water;
- (30) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;
- (31) **Privacy Statement** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;
- (32) **Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act;
- (33) **Rights of Access** has the meaning given to that term in the Water Delivery Contract;
- (34) **Rights of Access Certificate** has the meaning given to that term in the Water Delivery Contract;
- (35) **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;
- (36) **Single Water Allocation Account** has the same meaning as that given by the Transfer and Conversion Rules;
- (37) **Surplus Water Rules** means the rules determined by the Company in relation to, among other things, access to available supplementary water flows;
- (38) **Transfer and Conversion 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;

- (39) **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;
- (40) **Water Allocation Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Water Allocation;
- (41) **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;
- (42) **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;
- (43) **Water Entitlements Certificate** means a certificate issued by the Company:
- (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);
- (44) **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;
- (45) **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;
- (46) **Water Year** means any period of one year ending on 30 June; and
- (47) **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.

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.

3 Commencement

- 3.1 This Contract commences:
- (1) on the date set out in Item 3 of Schedule 1; or
 - (2) when one party accepts the other party's offer to enter into this Contract or the parties otherwise become bound by this Contract,
- whichever is later.

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.

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 original certificate for the Water Entitlements registered in the Customer's name.
- 5.2 Where Water Entitlements are held jointly by several persons, the Company is not bound to issue more than one certificate.
- 5.3 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).

- 5.4 The default position is that the Company will hold all original Water Entitlements Certificates of the Customer. However, the Customer may, by notice in writing to the Company, elect one or more of the following:
- (1) direct the Company to provide the Customer or the Customer's nominated agent with a copy of an original Water Entitlements Certificate, at no cost to the Customer; or
 - (2) direct the Company to release the original Water Entitlements Certificate to the Customer or the Customer's nominated agent, for a fee to be paid by the Customer.
- 5.5 If any original Water Entitlements Certificate issued under clause 5.4 is lost, worn out or defaced, then the Company may, on the request of the Customer, order that lost, worn out or defaced original to be cancelled and issue the Customer a new original certificate for a fee.
- 5.6 The Customer acknowledges that, to the extent of any inconsistency:
- (1) an original Water Entitlements Certificate prevails over a copy of a Water Entitlements Certificate;
 - (2) a later dated original Water Entitlements Certificate prevails over an earlier dated original Water Entitlements Certificate; and
 - (3) 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.

6 Water allocation account

- 6.1 The Company must maintain a Water Allocation Account for the Customer.
- 6.2 The Company may:
- (1) permit the Customer's Water Allocation Account to have a balance of less than zero; or
 - (2) refuse to do anything or allow anything to occur that would cause the Customer's Water Allocation Account to have a balance of less than zero.
- 6.3 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.

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.

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.

9 Charges

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

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.

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) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (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 the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 11.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of the Documents for any supply made under or in connection with the Documents does not include GST.
- 11.3 To the extent that any supply made under or in connection with the Documents is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that

amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

- 11.4 To the extent that one party is required to reimburse or indemnify another party for a Loss incurred by that other party, that Loss does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

12 No contravention of the company's obligations

- 12.1 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.
- 12.2 Despite any other provision of a Document, the Company is not obliged to do anything that would contravene a Legal Requirement.

13 Customer to provide information

- 13.1 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.

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 or otherwise, remains unpaid for 28 days after the due date for payment even if no formal or legal demand has been made;
 - (2) the Customer breaches the terms of an arrangement made to settle outstanding Charges;
 - (3) the Customer commits a material or persistent breach of any of the Documents;
 - (4) the Customer repudiates any of the Documents; or
 - (5) the Customer becomes subject to an Insolvency Event.
- 14.2 The Customer must not permit an Event of Default to occur.
- 14.3 If an Event of Default occurs, then, 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) immediately by giving notice to the Customer, suspend any determination of, or increase in, or crediting of, the Annual Allocation, until the Event of Default is remedied, without any obligation to make up any delay or shortfall once the Event of Default is remedied; or

- (2) immediately 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, until the Event of Default is remedied.
- 14.4 Without limiting clause 14.3 and subject to sections 415D, 434J and 451E of the Corporations Act, if an Event of Default occurs and either the Event of Default is not capable of being remedied, or the Event of Default is capable of being remedied and the Customer does not remedy the Event of Default 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 transferred or, in the case of Water Allocation, used, in accordance with the Transfer and Conversion Rules, within two months after the date of the notice;
 - (2) the Company must apply a reasonable estimate of the value of the terminated Water Entitlements or Water Allocation to the money due for payment by the Customer under any of the Documents or otherwise 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 has arisen before termination.
- 14.5 The rights of the Company under clause 14.3 are available whether or not the Event of Default is capable of being remedied.
- 14.6 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.
- 14.7 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.

15 Termination by the customer

- 15.1 At any time on the giving of 30 days' notice to the Company, the Customer may terminate this Contract, in which case:
- (1) subject to this Contract, upon termination, each party is released from his, her or its obligation to further perform this Contract; and
 - (2) 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.
- 15.2 A notice of termination under clause 15.1 is ineffective unless:
- (1) all of the Customer's Water Entitlements and Water Allocation have been transferred or terminated in accordance with the Transfer and Conversion Rules;
 - (2) the Customer has paid all Charges; and

- (3) the Customer's Water Allocation Account does not have a negative balance.

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), until this Contract is terminated.
- 16.2 If the Customer holds, by number, 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 sole discretion, to cancel the excess number of shares.
- 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 its rights as attorney.

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 clauses 17.4 and 17.7, the maximum aggregate amount that either party may recover from the other party in respect of any Claim, whether in contract, tort (including negligence), statute or any other cause of action, 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 under the Documents in the 12-month period immediately preceding the date on which the party receives notice of the Claim.
- 17.4 Clause 17.3 does not limit the amount the Company may recover from the Customer in respect of any Claim for Charges.
- 17.5 The Customer acknowledges and agrees that:
- (1) except as expressly set out in the Documents and to the maximum extent permitted by law, neither the Company nor any of its Personnel is responsible to the Customer for, and 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 the subject matter of the Documents and the Customer releases the Company and its Personnel from all Claims, whether in tort (but not including negligence), statute, contract, or otherwise, and all Losses which the Customer has or may have accordingly;
 - (2) without limiting clause 17.5(1), neither the Company nor any of its Personnel is responsible to the Customer for, and 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:
 - (a) the availability or delivery of water at any particular time or its flow rate, pressure or height or depth relative to any Works, including where this restricts or prevents the taking of water through those Works;

- (b) the nature, quality or fitness for any purpose of any water made available or delivered by the Company, including in relation to:
 - (i) fitness for human consumption, or for use in contact with humans, or for washing or cooling food, or for making ice for consumption or preservation of unpackaged food; or
 - (ii) fitness for watering livestock, crops or plants, spraying, manufacturing or any other use; or
 - (c) whether or not any water made available or delivered by the Company has been filtered, or filtered to any particular standard;
 - (d) future matters, including future water availability, Charges and service levels;
 - (3) the Customer is capable of evaluating the merits and risks of filtering the water made available or delivered by the Company;
 - (4) the Customer is responsible for:
 - (a) determining whether or not to filter, or filter to any particular standard, the water made available or delivered by the Company; and
 - (b) at his, her or its own Cost, installing, commissioning, operating, repairing, replacing, maintaining and improving any filter;
 - (5) having conducted his, her or its own evaluation of the merits and risks of filtering the water made available or delivered by the Company, the Customer understands the consequences of his, her or its determination (including the potential Loss which may result from his, her or its determination); and
 - (6) from time to time the Company treats water the Company makes available or delivers with chemicals including for the purposes of controlling weeds, algae or pests, or managing water quality and the Company may offer the treated water referred to in this clause 17.5(6) to the Customer after having notified the Customer that the water is treated and the Customer takes delivery of that water at his, her or its own risk.
- 17.6 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 that is for the purpose (directly or indirectly) of compliance with any Legal Requirement.
- 17.7 The Customer indemnifies the Company against all Losses incurred by the Company arising directly or indirectly as a result of or in connection with:
- (1) any death or injury to persons, and any loss or damage to the real or personal property of the Company or a third party, caused by any act or omission of the Customer or its Personnel; or
 - (2) any negligent or wilful act or omission of the Customer or its Personnel.
- 17.8 The limitations on the liability of the Company, exclusions of liabilities of the Company and indemnities contained in this clause 17.8 are in addition to any other limitations on the liability of the Company, exclusions of liability of the Company and indemnities available to the Company by law including:
- (1) the indemnities provided by section 137 of the Act and section 36 of Schedule 9 of the Act; and

- (2) the exclusion of liability under section 397 of the Act for any act or omission done, or omitted to be done, in good faith for the purpose of executing the Act.

18 Force majeure

18.1 In this clause 18, **Prescribed Event** means an event that:

- (1) is beyond the control of a party (**Affected Party**);
- (2) occurs without the fault or negligence of the Affected Party,

and includes:

- (3) act of God;
- (4) war, terrorism, riot, insurrection, vandalism, sabotage, fire, lightning, explosion, earthquake, subsidence, flood, drought, power surge or failure, epidemic, pandemic or national emergency;
- (5) strike, lock out, ban, limitation of work and other industrial disturbance;
- (6) law, rule or regulation of any Government Agency, and executive or administrative order or act of general or particular application; and
- (7) any intervening third party event that restricts or limits the Company's ability to carry out its functions under this Contract, including but not limited to, a telecommunications failure or a cyber attack.

18.2 If the Affected Party:

- (1) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
- (a) the Prescribed Event;
- (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
- (c) the anticipated period of delay; and
- (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect;

then the obligation is suspended during, but for no longer than, the period of the Prescribed Event and its effects which continue to prevent the Affected Party from meeting such obligation.

18.3 The party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.

19 Disputes

- 19.1 If a dispute arises in connection with this Contract, a party to the dispute may give the other party to the dispute notice specifying the dispute and requiring its resolution under this clause 19 (**Notice of Dispute**).
- 19.2 Representatives of each party must confer within five Business Days after the Notice of Dispute is given to try to resolve the dispute.
- 19.3 If the dispute is not resolved within seven Business Days after the Notice of Dispute is given (**First Period**), the dispute may, if each of the parties agrees, be submitted to mediation. The mediation must be conducted at the place nominated by the Company. The Resolution Institute Mediation as amended by this clause 19 apply to the mediation, except where they conflict with this clause 19.
- 19.4 If the parties have not agreed upon the mediator and the mediator's remuneration within seven Business Days after agreeing to submit the dispute to mediation:
- (1) the mediator is the person appointed by; and
 - (2) the remuneration of the mediator is the amount or rate determined by;
- the Chair of the Resolution Institute (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- 19.5 The parties must pay the mediator's remuneration in equal shares. This liability is several and not joint. Each party must pay his, her or its own costs of the mediation.
- 19.6 If the dispute is not resolved within the First Period, the dispute may, if each of the parties agrees, be submitted to expert determination. Any conference in connection with the expert determination must be conducted at the place nominated by the Company. The Resolution Institute Expert Determination Rules as amended by this clause 19 apply to the expert determination, except where they conflict with this clause 19.
- 19.7 If the parties have not agreed upon the expert and the expert's remuneration within seven Business Days after agreeing to submit the dispute to expert determination:
- (1) the expert is the person appointed by; and
 - (2) the remuneration of the expert is the amount or rate determined by;
- the Principal Appointor or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- 19.8 The parties must pay the costs of the expert determination in equal shares. This liability is several and not joint. Each party must pay his, her or its own costs of the expert determination
- 19.9 If a dispute is submitted to expert determination, the determination of the dispute by the expert will be final and binding on the Company and the Customer, unless they agree otherwise in writing.
- 19.10 Despite the giving of a Notice of Dispute or the submission of a dispute to mediation or the submission of a dispute to expert determination under this clause 19:
- (1) the parties must continue to perform their obligations under this Contract;

- (2) the Company may take any action it sees fit to comply with, or avoid a contravention of, the Company's obligations under a Legal Requirement; and
- (3) each party is entitled to seek from the courts the remedies of interim or final injunctive relief, specific performance or other equitable or declaratory relief, or any combination of them, for any potential or actual breach of the Documents.

19.11 If:

- (1) a Notice of Dispute has not been issued; or
- (2) a Notice of Dispute has been issued but the parties have not agreed to submit the dispute to mediation or expert determination,

a party at any time may exercise his, her or its rights under this Contract, including under clause 14, or commence court proceedings in relation to any dispute or claim arising under or in connection with this Contract.

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.

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.

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.

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.

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.

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.

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.

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 17 and 32 survive the expiry or termination of this Contract.

28 Costs

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

29 Notices

- 29.1 Each communication in connection with the Documents (including a notice, agreement, authorisation, consent, request, waiver or demand) (**Notice**) has no legal effect unless it is in writing.
- 29.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia, and the Notice may be included in any newsletter posted by the Company;
 - (2) sent by email to the email address of the addressee;
 - (3) sent by text message to the addressee's number for receipt of text messages;
 - (4) sent by in-app notification or push notification from any app published for use by the Company;
 - (5) delivered at the address for service of the addressee;
 - (6) delivered personally to the addressee; or
 - (7) given by the Company, in the case of a variation, amendment, supplementation or replacement of this Contract or any of the Rules, by the Company publishing the variation, amendment, supplementation or replacement on the Company's web site.
- 29.3 If a Notice is sent or delivered in a manner provided by clause 29.2, it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post from within Australia to an address in Australia, on the 4th Business Day (at the address to which it is posted) after posting; or

- (2) in all other instances, on the day it is sent, delivered or published.
- 29.4 A Notice sent or delivered in a manner provided by clause 29.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - (2) the Notice is returned unclaimed; or
 - (3) in the case of a Notice sent by email, the email message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- 29.5 The Company's address for service and email address are:
- Attention:** Company Secretary
Address: Murrumbidgee Irrigation Limited
Locked Bag 6010
Griffith NSW 2680
Email: info@mirrigation.com.au
- 29.6 The Customer's address for service, email address and number for receipt of text messages are set out in Item 2 of Schedule 1.
- 29.7 A party may change his, her or its address for service, email address or number for receipt of text messages by giving notice of that change to the other party. If the Customer notifies a change under this clause 29.7, he, she or it must notify the same change:
- (1) under each Water Delivery Contract (if any) and each other Water Entitlements Contract (if any) between the Company and the Customer; and
 - (2) where relevant, with respect to the register of members of the Company, if the Customer is a member of the Company.
- 29.8 If the party to which a Notice is intended to be given consists of more than one person then the Notice must be treated as given to that party if given to any of those persons.
- 29.9 Only the primary applicant for a Single Water Allocation Account is entitled to be given notices by the Company in respect of the Single Water Allocation Account and a notice given to that person must be treated as notice to all participants in the Single Water Allocation Account

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 clause 30.2 and 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 Water Entitlement;
 - (2) the joint holders of the Water Entitlement are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Water Entitlement;
 - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the Water Entitlement, but the Company may require such evidence of death as it sees fit; and

- (4) only the person whose name stands first in the Water Entitlements Register as one of the joint holders of the Water Entitlement is entitled to delivery of the Contract relating to the Water Entitlement or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.

30.2 Where three or more persons are registered holders of a Water Entitlement (or a request is made to register more than three persons) only the first three named persons are regarded as holders of the Water Entitlement and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased member.

31 Transmission of water entitlements

31.1 If the Customer dies, and the Customer is not a joint holder, the Company is not obliged to recognise anyone except the personal legal representative of the deceased Customer as being entitled to the deceased Customer's interest in their Water Entitlements.

31.2 If the person entitled to the Customer's Water Entitlements as the personal representative of a deceased Customer or because of the bankruptcy or mental incapacity of the Customer (**Successor**) gives the Company the information it reasonably requires to establish the Successor's entitlement to be registered as holder of the Customer's Water Entitlements:

- (1) the Successor may:
- (a) by giving a signed notice to the Company, elect to be registered as the holder of the Customer's Water Entitlements; or
 - (b) by giving a completed transfer form to the Company, transfer the Customer's Water Entitlements to another person; and
- (2) the Successor, whether or not registered as the holder of the Customer's Water Entitlements, is entitled to the same rights, and is subject to the same liabilities, as if the Successor were registered as holder of the Customer's Water Entitlements.

31.3 On receiving an election under clause 31.2(1)(a), the Company must register the Successor as the holder of the Customer's Water Entitlements.

31.4 A transfer under clause 31.2(1)(b) is subject to the Transfer and Conversion Rules.

31.5 If a Customer dies, and the Customer is a joint holder, the Company will recognise only the survivor as being entitled to the deceased Customer's interest in their Water Entitlements. The estate of the deceased Customer is not released from any liability in respect of the Customer's Water Entitlements.

31.6 This clause 31 has effect subject to the Transfer and Conversion Rules and the *Bankruptcy Act 1966* (Cth).

32 Security interests

32.1 If after any:

- (1) transaction or dealing;
- (2) issue of Delivery Entitlements;
- (3) cancellation of Water Entitlements; or

- (4) reduction in the amount of security held by the Company (including as a result of the Company applying the security or otherwise);

the Customer holds, or will hold, at least five times more Delivery Entitlements than Water Entitlements, the Customer must, at the Company's reasonable request, grant security or additional security (as the case may be) over the Customer's Water Entitlements in favour of the Company as security for the payment of Charges.

- 32.2 The Company's rights, powers and remedies under the Documents are not affected by any security interest given to any person in connection with the Documents, whether or not the security interest is recognised by the Company.

33 Recognition of ownership

- 33.1 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.
- 33.2 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.
- 33.3 Clause 33.2 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.

34 Entire agreement

- 34.1 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.

35 Governing law

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

36 Execution of counterparts

- 36.1 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.

37 Execution by attorney

- 37.1 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

ABN

Item 2

Address

Email address

Number for receipt of text messages

Item 3

Commencement date

Schedule 2 - Categories of water entitlements

Category	1	- General security water entitlement
Category	3	- High security water entitlement
Category	5	- High security (domestic and stock) water entitlement
Category	6	- High security (non-potable domestic) water entitlement
Category	7	- 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: