



Murrumbidgee
Irrigation

Murrumbidgee Irrigation Limited ABN 39 084 943 037

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Water Delivery Contract

Effective 1 July 2019 to 30 June 2020

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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

1 Definitions and interpretation

1.1 Definitions

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

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

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

- (c) in relation to the Customer, Charges; and
 - (d) in relation to the Company, administrative costs and the cost of the Company's Personnel's time, including time spent investigating, obtaining advice in connection with, assessing, dealing with and determining a matter;
- (20) **Customer's Works** means Works owned by the Customer;
- (21) **Damage** includes loss or damage to property;
- (22) **Delivery Entitlement** means the right, subject to the Documents, to delivery of Water Allocation:
- (a) equal to one Megalitre in each Water Year, as measured by the relevant Meter (if any) or determined by the Company under clause 11;
 - (b) at the Flow Rate; and
 - (c) to the following point of supply in respect of a Landholding:
 - (i) the Connection; or
 - (ii) if there is no Connection, the Company's Supply Works determined by the Company to be servicing the Landholding;
- (23) **Development Rules** means the rules determined by the Company in relation to, among other things, a person carrying out construction work, or constructing things, or planting any trees, plants or crops near the boundary between the Company's land and a Landholding or near any Company's Works situated on or near a Landholding;
- (24) **Documents** means this Contract, the Rules, and any Water Entitlements Contract, any Water Entitlements certificate, any other Water Delivery Contract and any Rights of Access Certificate between the Company and the Customer;
- (25) **Drainage** includes surface and subsurface water drainage;
- (26) **Drainage Rules** means the rules determined by the Company in relation to, among other things, the arrangements for the discharge of Drainage into the Company's Drainage Works;
- (27) **Drainage Work** has the same meaning in the Documents as *drainage work* has in the Act;
- (28) **Event of Default** means any of the events referred to in clause 26.1;
- (29) **Expiry Date** means, in relation to a Fixed Term Delivery Entitlement, the date set out in the Rights of Access Register;
- (30) **Fixed-Term Delivery Entitlement** means a Delivery Entitlement with an Expiry Date;
- (31) **Flow Rate** means:
- (a) where there are sufficient water flows available to meet all orders for water in the relevant part of the Company's Supply Works during the relevant period, an average flow rate per day per Delivery Entitlement equal to the minimum flow rate per day per Delivery Entitlement in the relevant part of the Company's Supply Works during the relevant period determined under the Access and Ordering Rules; and
 - (b) where there are insufficient water flows available to meet all orders for water in the relevant part of the Company's Supply Works during the relevant period, an average flow rate per day per Delivery Entitlement equal to the water flows available for all

holders of Delivery Entitlements in the relevant part of the Company's Supply Works during the relevant period divided by the total number of Delivery Entitlements held by all holders of Delivery Entitlements who have ordered Water in the relevant part of the Company's Supply Works during the relevant period;

(32) **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;

(33) **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 \$10,000 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 \$10,000 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);
 - (iv) the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) a resolution is passed for the reduction of capital of the Customer or notice of intention to propose such a resolution is given, without the prior consent of the Company;
- (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 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;
- (34) **Landholding** means a property described in the Rights of Access Register in respect of the Customer;
- (35) **Legal Requirement** means law; regulations; any notice, order or direction received from, or given by, any Government Agency; and the Company's Licences;
- (36) **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;
- (37) **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;
- (38) **Megalitre** means one million litres;
- (39) **Meter** means a water measurement apparatus used to measure and account for water;
- (40) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;
- (41) **Positive Covenant** means a positive covenant (on terms acceptable to the Company acting reasonably) benefiting the Company as a prescribed authority in accordance with section 88E of the *Conveyancing Act 1919* (NSW) and burdening a Landholding, requiring the registered proprietor from time to time (at his, her or its own Cost) to:
- (a) if requested by the Company, construct;
 - (b) maintain and repair; and
 - (c) if requested by the Company, remove, alter, improve or replace,
a fence on any part of the Landholding adjoining the Company's Works or on which the Company's Works are situated, to:
 - (d) the reasonable satisfaction of; and
 - (e) in compliance with the reasonable standards specified from time to time by,
the Company;
- (42) **Privacy Statement** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;

- (43) **Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act;
- (44) **Right of Access** includes a right to the delivery of water and a right to the drainage of water through the Company's Works and, in relation to this Contract, includes:
- (a) a right to have Water Allocation delivered to a Landholding pursuant to a Delivery Entitlement, the Surplus Water Rules or under clause 8.4;
 - (b) a right to have Water Allocation delivered to a Connection pursuant to a Delivery Entitlement, the Surplus Water Rules or under clause 8.4;
 - (c) a Delivery Entitlement; and
 - (d) a right under clause 12.1 to discharge Drainage into the Company's Drainage Works;
- (45) **Rights of Access Certificate** means a certificate issued by the Company in relation to a Landholding:
- (a) evidencing (but not conferring an entitlement to) Rights of Access; and
 - (b) setting out binding conditions that apply with respect to the Landholding under clause 14.2(2);
- (46) **Rights of Access Register** means a register maintained by the Company which records:
- (a) the Customer's name and address;
 - (b) the date of this Contract;
 - (c) details of each Landholding; and
 - (d) in respect of each Landholding:
 - (i) the Connections; and
 - (ii) the number of Delivery Entitlements;
 - (iii) the Expiry Date of any Fixed Term Delivery Entitlement; and
 - (iv) any inlets to the Company's Drainage Works which the Company has approved for Drainage for the purposes of clause 12;
- (47) **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;
- (48) **Supply Work** has the same meaning in the Documents as *water supply work* has in the Act;
- (49) **Surplus Water Rules** means the rules determined by the Company in relation to, among other things, access to available supplementary water flows;
- (50) **Single Water Allocation Account** has the same meaning as that given by the Transfer and Conversion Rules;
- (51) **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;
- (52) **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;
- (53) **Water Allocation Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Water Allocation;
- (54) **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;
- (55) **Water Entitlement** has the meaning given to that term in the Water Entitlements Contract;
- (56) **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;
- (57) **Water Year** means any period of one year ending on 30 June; and
- (58) **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 in 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 Rights of access

4.1 Subject to the Documents, the Customer is entitled to the Rights of Access in respect of which the Customer is the registered holder in the Rights of Access Register.

4.2 The Customer acknowledges and agrees that:

- (1) subject to clause 5.2, termination fees are payable under the Charges Rules in connection with the termination or surrender of all or any part of the Customer's Rights of Access; and
- (2) disconnection fees are payable under the Charges Rules in respect of the reasonable costs incurred by the Company by reason only of removing or disabling a physical connection between the Company's Works and the Customer's Works or a Landholding.

5 Fixed-term delivery entitlements

5.1 Despite anything to the contrary in the Documents, the Customer's Fixed-Term Delivery Entitlements cannot be:

- (1) transferred without the prior consent of the Company; or
- (2) discharged, terminated or surrendered without payment of the termination fee under the Charges Rules, except under clause 5.2.

5.2 Subject to clause 5.3, the Customer's Fixed-Term Delivery Entitlements held by the Customer on the Expiry Date will be discharged. Otherwise, the Customer's Fixed-Term Delivery Entitlements will not be discharged under this clause 5.2, and clause 4.2 will apply. The discharge of any Fixed-Term Delivery Entitlements in accordance with this clause 5.2 does not:

- (1) constitute a termination or surrender of Delivery Entitlements for the purposes of the Charges Rules; or
- (2) affect the application of clause 4.2 to the Customer's other Rights of Access.

5.3 Clause 5.2 does not apply if an Event of Default occurs on or before a Fixed Term Delivery Entitlement's Expiry Date 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 or by a Fixed Term Delivery Entitlement's Expiry Date, whichever is earlier.

6 Rights of access certificates

- 6.1 Subject to clause 15, a Customer whose name is entered as a holder of a Right of Access in the Rights of Access Register is entitled to one Rights of Access Certificate per Landholding, for the Rights of Access registered in the Customer's name in respect of that Landholding.
- 6.2 Where Rights of Access are held jointly by several persons, the Company is not bound to issue more than one Rights of Access Certificate in relation to those Rights of Access.
- 6.3 Delivery of a Rights of Access Certificate may be effected by delivering it personally to the holder or by posting it in a prepaid envelope addressed to the Customer or by delivering or posting the Rights of Access Certificate in accordance with the instructions of the Customer. Delivery of a Rights of Access Certificate to one of several joint holders is sufficient delivery to all of them.
- 6.4 A Rights of Access Certificate in respect of a Landholding must state:
- (1) the name of the Company;
 - (2) the name of the Customer;
 - (3) a description of the Landholding and the landholding reference number applicable to the Landholding;
 - (4) in respect of the Landholding:
 - (a) the Connections;
 - (b) the number of Delivery Entitlements;
 - (c) the Expiry Date of any Fixed Term Delivery Entitlement; and
 - (d) any inlets from the Landholding to the Company's Works which the Company has approved for Drainage for the purposes of clause 12; and
 - (5) any conditions which apply for the purposes of clauses 14.2(2) and 14.3(2)(a).
- 6.5 The Rights of Access Register prevails over any Rights of Access Certificate, to the extent of any inconsistency.
- 6.6 The Company may, at any time, vary, amend, supplement or replace a Rights of Access Certificate provided that:
- (1) the Company acts reasonably when doing so; and
 - (2) such action does not contravene any Legal Requirement.

7 Water allocation account

- 7.1 The Company must maintain a Water Allocation Account for the Customer.
- 7.2 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.

- 7.3 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.
- 7.4 This Contract does not:
- (1) entitle the Customer to any Carryover Water; or
 - (2) affect any terms of a Document governing Carryover Water.

8 Delivery of water

- 8.1 Subject to the Documents and if the Customer holds Delivery Entitlements and seasonal and operating conditions permit, the Company must use its reasonable endeavours to deliver Water Allocation to the Customer during the Water Year in accordance with the Customer's Delivery Entitlements and the Access and Ordering Rules.
- 8.2 The Company is under no obligation to deliver water:
- (1) unless and until the Company has a volume of water available to it under the Murrumbidgee Irrigation (conveyance) Access Licence which is sufficient for the delivery of water by the Company to the Customer and all other holders of Delivery Entitlements;
 - (2) in excess of the Water Allocation;
 - (3) unless and until the Company and the Customer have agreed upon satisfactory arrangements for:
 - (a) payment of arrears (if any) of, and security for the payment of, Charges; or
 - (b) repayment of water debts or water borrowings (including by debiting the Customer's Water Allocation Account);
 - (4) if the Customer has otherwise agreed, including under any contract with the Company;
 - (5) if the Company has closed any relevant part of the Company's Works, including under clause 18 or clause 19.3;
 - (6) unless and until the Company is reasonably satisfied that the Customer's Works and the Company's Works are adequate and have sufficient capacity to deal with the delivery of water to the Customer;
 - (7) unless and until the Customer has complied with reasonable requests (if any) from the Company to notify the Company of the Customer's intended use of water delivered to the Customer under this Contract for the relevant Water Year, including for the purposes either of demand management or water use efficiency monitoring programs, and the Company has approved that use;
 - (8) if the Company reasonably believes that the water to be delivered to the Customer is not of a quality suitable for delivery, including where it is contaminated;
 - (9) if delivery of water would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;
 - (10) if delivery of water would, in the reasonable opinion of the Company, result in a breach of any right or entitlement of a third party where such breach might reasonably expose the Company to liability to such third party;

- (11) if the Customer is not the registered proprietor of the relevant Landholding; or
 - (12) if the Company is entitled elsewhere in the Documents to suspend the delivery of water to the Customer, including under clause 26 or clause 29.
- 8.3 The Company is under no obligation to deliver to a Customer any water to which the Customer is entitled from time to time under an Access Licence held by the Customer. Only Water Allocation is capable of being delivered under the Documents.
- 8.4 Where, in respect of a Landholding, the Customer has no Delivery Entitlements or all of the rights under clause 1.1(22)(a) in respect of the Customer's Delivery Entitlements have been exercised in a Water Year, subject to the Documents and if seasonal and operating conditions permit, the Customer has the right to delivery of water to the Connection or, if there is no Connection, to the Company's Supply Works determined by the Company to be servicing the Landholding for the purposes of this clause 8.4.
- 8.5 Subject to the Documents, the Company must use its reasonable endeavours to deliver water ordered under clause 8.4 in accordance with the Access and Ordering Rules, provided that the Company is satisfied that it will have sufficient water flows available to fulfil all approved water orders placed by holders of Delivery Entitlements exercising rights under clause 1.1(22)(a) of their respective Water Delivery Contracts in the relevant part of the Company's Supply Works during the relevant period.
- 8.6 If the Company determines that it is under no obligation to deliver water on the basis of clause 8.2(1), the Company must publish on the Company's web site reasons for its determination but this is not a condition of the determination taking legal effect.
- 8.7 Despite anything to the contrary, nothing in this Contract entitles the Customer to any Water Entitlements.

9 Use of water

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

10 Measurement of water usage

- 10.1 The delivery of water by the Company to a Landholding must, where required by the Company, be measured by a Meter which must be installed and commissioned in accordance with the Company's design requirements.
- 10.2 The Company may, at any time, on reasonable notice to the Customer, enter a Landholding to install, commission, operate, repair, replace, maintain or improve a Meter on the Landholding to the reasonable satisfaction of, and complying with the standards specified by, the Company.
- 10.3 Title to a Meter installed and commissioned by the Company (and property in it) remains solely with the Company.
- 10.4 Where a Meter is installed and commissioned by the Customer, with the approval of the Company, title to the Meter (and property in it):

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

11 Deemed delivery of water

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

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

11.3 Where:

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

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

11.4 The Company's determination of the volume of Unmeasured Water will be taken to be the actual volume of Unmeasured Water, unless the Customer appeals under clause 11.5.

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

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

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

11.6 If the Company makes a determination under clause 11.3, or a varied or amended determination under clause 11.5, then, without limiting the Company's rights under clause 11.3:

- (1) the Company may debit a volume of Water Allocation from the Customer's Water Allocation Account equal to the volume of Unmeasured Water;
- (2) if the Customer has less Water Allocation in his, her or its Water Allocation Account than the volume of Unmeasured Water, the Company may do one or both of the following:
 - (a) require the Customer to pay to the Company an amount determined by the Company which constitutes a reasonable estimate of the market value of the volume of Unmeasured Water that is not debited under clause 11.6(1); or
 - (b) put the Customer's Water Allocation Account into a negative balance; and
- (3) the Customer must pay to the Company an amount determined by the Company which constitutes a reasonable estimate of the Charges payable for delivery of the Unmeasured Water.

12 Drainage

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

13 Charges

- 13.1 The Customer must pay the Charges to the Company. The Charges must be paid in full, irrespective of whether the Company delivers any water in any Water Year.

- 13.2 The Company must notify the Customer of the date by which Charges are due for payment. The Customer must pay the Charges to the Company by the date specified in the notice (or a later date determined by the Company) and by one of the methods specified in the notice.

- 13.3 The Customer's obligation to pay any Charges is not affected:

- (1) by a failure to receive a notice;
- (2) by virtue of the fact that a notice is addressed to the wrong person for any reason; or
- (3) by virtue of the fact that a notice is not addressed to the Customer;

unless it is established to the reasonable satisfaction of the Company that such failure is due to the neglect or default of the Company, in which case:

- (4) payment of the Charges is not due until the Customer receives a notice from the Company setting out the date by which those Charges are due for payment; and
- (5) the Company may not charge interest under clause 13.5 on the Charges to be paid by the Customer until the expiry of the due date for payment under clause 13.3(4).

- 13.4 All payments by the Customer must be made without deduction or withholding (including set-off, counterclaim, duty, tax or charge).

- 13.5 The Company may charge interest on any Charges due from the Customer from the date on which those amounts respectively fell due for payment until they are paid. The rate of interest to apply will be the rate of interest set by section 356 of the Act, unless the Company determines that a lower rate of interest is to apply. This rate of interest applies to all Charges and not just those referred to in section 356 of the Act.

14 Rules and other conditions

- 14.1 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 36.

- 14.2 The parties must comply with:

- (1) the Rules; and
- (2) any other conditions set out in a Rights of Access Certificate.

- 14.3 To the extent that there is an inconsistency between a provision in any of the documents specified in clause 14.3(2) and another provision in any of them or between a provision in any of those documents and a provision in another of those documents:

- (1) a specific provision takes precedence over a general provision; and

- (2) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
- (a) any other conditions set out in a Rights of Access Certificate;
 - (b) this Contract; and
 - (c) the Rules.

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

15 Replacement of certificates

15.1 If any certificate issued under clause 6 is out-of-date, worn out or defaced, the Company may, upon production to it of the certificate together with an application by the Customer in the approved form, order it to be cancelled and issue, after receipt of the out-of-date, worn out or defaced certificate, a new certificate in its place.

15.2 If:

- (1) the Customer makes an application to the Company in the approved form;
- (2) satisfactory evidence is received by the Company that any certificate issued under clause 6 has been stolen, lost or destroyed and has not been pledged, sold or otherwise disposed of;
- (3) an indemnity and undertaking which the Company thinks adequate is given; and
- (4) any other steps (including advertising) which the Company thinks necessary are taken,

a new certificate must be issued to the Customer entitled to the stolen, lost or destroyed certificate within 20 Business Days after those conditions are satisfied.

15.3 The Company may charge a fee for each new certificate issued under this clause 15.

16 Goods and services tax

16.1 In this clause 16:

- (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.

- 16.2 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.
- 16.3 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.
- 16.4 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.

17 Access to landholding

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

18 Closure of company's supply works

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

19 Construction, maintenance and repair of works

- 19.1 The Company or the Company's Personnel may install, commission, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Company considers are necessary or desirable to any of the Company's Works or construct new Company's Works.
- 19.2 If it is reasonably foreseeable that:
- (1) the Company proposes to carry out an act under clause 19.1;
 - (2) the act to be carried out is material in nature (and not a general day-to-day activity of the Company); and
 - (3) the act will have the effect of requiring the Customer to make significant changes (at the Customer's Cost) to the Customer's Works,

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

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

20 Construction or planting on or near company's land or works

- 20.1 The Customer must ensure that any construction work or planting that the Customer or the Customer's Associates carry out on or adjacent to the Company's land or the Company's Works is in accordance with the Development Rules.

21 No contravention of the company's obligations

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

22 Customer to provide information

- 22.1 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.

23 Subdivision

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

24 Livestock damage to company's works

- 24.1 The Customer must ensure that livestock owned or under the control of the Customer or any of the Customer's Associates do not cause any Damage to the Company's Works.
- 24.2 If the Company determines that, on the basis of available evidence, there are livestock owned or under the control of a Customer and there is a possibility that those livestock could cause damage to the Company's Works, then the Company may, where it would be detrimental to the Company's Works not

to do so, give a notice to the Customer requiring the Customer to construct, maintain and replace a fence in accordance with specifications required by the Company (which must not be unreasonable).

- 24.3 The Customer must, at the Customer's Cost, and in accordance with all relevant laws:
- (1) comply with any notice given by the Company under clause 24.2 within three months after the notice is received; and
 - (2) ensure that steps are taken in the interim to prevent livestock from causing Damage to the Company's Works.
- 24.4 If the Customer defaults under clause 24.3, the Company may enter, or may procure another person to enter, a Landholding and take action to remedy the Customer's default at the Customer's cost as deemed necessary or desirable by the Company, acting reasonably.
- 24.5 Unless stated otherwise, all fences constructed under this clause will be the responsibility of the Customer.

25 Damage to company's works

- 25.1 This clause 25 does not limit, or apply to Damage referred to in, clause 24.
- 25.2 The Customer must ensure that the Customer and the Customer's Associates do not Damage, destroy or interfere with the Company's Works.
- 25.3 If the Customer, or any of the Customer's Associates, Damages, destroys or interferes with the Company's Works in contravention of referred to in clause 25.2, then the Company may issue a warning to the Customer that it holds the Customer responsible for such Damage and provide an opportunity for the Customer to show cause why the Company should not hold the Customer responsible.
- 25.4 If, after the Customer has responded under clause 25.3, the Company is reasonably satisfied that neither the Customer nor any of the Customer's Associates is directly or indirectly responsible for the Damage, the Company must give the Customer notice that it does not hold the Customer responsible for the Damage.
- 25.5 If, after the Customer has responded under clause 25.3, the Company is reasonably satisfied that either the Customer or any of the Customer's Associates is directly or indirectly responsible for the Damage, the Company may:
- (1) require the Customer to pay the Cost of the Damage to the Company's Works and this Cost will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand; or
 - (2) give the Customer notice that any subsequent occasions of Damage to the Company's Works may result in the suspension or cancellation of any water deliveries to the adjacent Landholding, in addition to a Claim for recovery of the reasonable cost of repairing the Damage.

26 Default

- 26.1 An Event of Default occurs if:
- (1) any money payable by the Customer to the Company or any of its Related Bodies Corporate, including money payable under any of the Documents, the Charges Rules 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;
- (5) the Customer becomes subject to an Insolvency Event;
- (6) the Customer is not, or ceases to be, the registered proprietor of a Landholding, unless:
 - (a) the Company has approved an application by the Customer to transfer, terminate or surrender all of the Customer's Rights of Access associated with the Landholding; or
 - (b) the documents necessary for the Customer to be registered as the registered proprietor of the Landholding with which the Rights of Access are associated have been lodged with the relevant Government Agency and the Customer has not yet been registered as the registered proprietor of the Landholding;
- (7) the Customer's existing manner of use of a Landholding (including, if relevant, the application of water), in the reasonable opinion of the Company, breaches, or is likely to breach, any Licences held by the Company, the Customer or third parties;
- (8) the Customer no longer holds any Delivery Entitlements; or
- (9) no Water Allocation is delivered to a Landholding under this Contract and in accordance with the Access and Ordering Rules for a period of at least 36 consecutive months, provided that, at any time after the first 24 consecutive months the Company gives the Customer at least 12 months' notice that this Event of Default will occur at the expiry of the period of the notice and no Water Allocation is delivered to the Landholding under this Contract and in accordance with the Access and Ordering Rules during the period of the notice.

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

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

26.4 Without limiting clause 26.3 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 do any, some or all of the following:

- (1) after giving seven days' notice to the Customer, terminate some or all of the Customer's Rights of Access (in which case termination fees will be payable in accordance with clause 4.2(1)); or
- (2) terminate this Contract by giving two months' notice to the Customer, in which case:

- (a) the Customer's Rights of Access will be terminated unless they are transferred, in accordance with the Transfer and Conversion Rules, within two months after the date of the notice;
- (b) the Company must apply a reasonable estimate of the value of the terminated Rights of Access 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;
- (c) the Company may remove or disable any physical connection between the Company's Works and the Customer's Works;
- (d) the Customer may be required to pay termination fees and disconnection fees in accordance with clause 4.2;
- (e) subject to this Contract, upon termination, each party is released from his, her or its obligation to further perform this Contract; and
- (f) each party retains the rights, remedies and powers he, she or it has in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

26.5 The rights of the Company under clause 26.3 are available whether or not the Event of Default is capable of being remedied.

26.6 If the Company exercises a power of sale with respect to a Landholding under the *Conveyancing Act 1919* (NSW) or clause 43 of this Contract, the Customer must deliver possession of the Landholding to the Company within three months after the Company gives notice of its intention to exercise its power of sale.

26.7 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.

26.8 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 Delivery Entitlements.

26.9 If the Company gives the Customer a notice of termination under clause 26.8, then:

- (1) the Customer's Rights of Access will be terminated; and
- (2) the consequences of termination set out in clauses 26.4(2)(a) to (f) (inclusive of both clauses) will apply.

27 Termination by the customer

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

- (1) all of the Customer's Delivery Entitlements have been discharged in accordance with clause 5.2, terminated or surrendered in accordance with the Charges Rules or transferred in accordance with the Transfer and Conversion Rules;
- (2) all of the Customer's other Rights of Access have been terminated or surrendered in accordance with the Charges Rules or transferred in accordance with the Transfer and Conversion Rules;
- (3) the Customer has paid all Charges; and

- (4) the Customer's Water Allocation Account does not have a negative balance.
- 27.2 The Company may approve or reject an application by the Customer under clause 27.1, and give reasons for the approval or rejection.
- 27.3 If the Company approves an application by the Customer under clause 27.1, then:
- (1) the Company may give notice to the Customer of the Company's approval;
 - (2) subject to this Contract, upon receipt by the Customer of the notice of the Company's approval, this Contract is terminated and each party is released from his, her or its obligation to further perform this Contract; and
 - (3) each party retains the rights, remedies and powers he, she or it has in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

28 Limitation of liability and indemnity

- 28.1 Each party releases the other party's Personnel from all Claims, whether in tort (including negligence), statute, contract or otherwise.
- 28.2 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).
- 28.3 Subject to clauses 28.4 and 28.7, 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.
- 28.4 Clause 28.3 does not limit the amount the Company may recover from the Customer in respect of any Claim for Charges.
- 28.5 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 28.5(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;
 - (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 28.5(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.
- 28.6 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.
- 28.7 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.
- 28.8 The limitations on the liability of the Company, exclusions of liabilities of the Company and indemnities contained in this clause 28.8 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.

29 Force majeure

- 29.1 In this clause 29, **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 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) a major structural failure of any of the Company's Works or Customer's Works.

29.2 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.

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

30 Disputes

30.1 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 30 (**Notice of Dispute**).

30.2 Representatives of each party must confer within five Business Days after the Notice of Dispute is given to try to resolve the dispute.

30.3 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 Rules as amended by this clause 30 apply to the mediation, except where they conflict with this clause 30.

30.4 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.

30.5 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.

30.6 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 30 apply to the expert determination, except where they conflict with this clause 30.

30.7 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 Appointer's nominee, acting on the request of any party to the dispute.

30.8 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

30.9 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.

30.10 Despite the giving of a Notice of Dispute, the submission of a dispute to mediation or the submission of a dispute to expert determination under this clause 30:

- (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.

30.11 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 26, or commence court proceedings in relation to any dispute or claim arising under or in connection with this Contract.

31 Privacy

- 31.1 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.
- 31.2 In addition to clause 31.1 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.

32 Time of the essence

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

33 Further assurances

- 33.1 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).

- 33.2 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.

34 Severability

- 34.1 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.
- 34.2 The rights and obligations of each party are not affected by any law that, but for this clause 34.2, would affect those rights and obligations.

35 No reliance

- 35.1 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.

36 Variation

- 36.1 This Contract may be varied, amended, supplemented or replaced by agreement between the Company and the Customer.
- 36.2 In addition to its rights under clause 36.1, but subject to clause 36.4, 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.

36.3 On or before the date on which the Company gives notice of a variation, amendment, supplementation or replacement under clause 36.2, 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.

36.4 Despite any other clause, any variation, amendment, supplementation or replacement pursuant to clause 36.2 must not contravene any Legal Requirement, including the *Australian Consumer Law*.

37 Rights, powers and remedies

37.1 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.

37.2 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.

37.3 If a party does not exercise a right, power or remedy fully, or at a given time, the party may still exercise it later.

37.4 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.

37.5 Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.

37.6 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.

38 Continuing obligations

38.1 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.

38.2 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.

38.3 Clauses 17, 19, 24, 25, 28 and 43 survive the expiry or termination of this Contract.

39 Costs

- 39.1 Each party must pay his, her or its own Costs connected with the negotiation, preparation and execution of the Documents.
- 39.2 The Customer must pay all Costs connected with the negotiation, preparation and execution of any instrument required to be executed by the Customer under the Documents.
- 39.3 The Customer must pay all stamp duty (including all fines, penalties and interest) and other government imposts payable on, or in connection with, the Documents and any transaction contemplated by the Documents, and all other documents and matters referred to in the Documents, when due or earlier if requested by the Company.

40 Notices

- 40.1 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.
- 40.2 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) delivered at the address for service of the addressee;
 - (5) delivered personally to the addressee; or
 - (6) 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.
- 40.3 If a Notice is sent or delivered in a manner provided by clause 40.2, 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;
 - (2) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt (unless the sender's computer reports that it has not been delivered);
 - (3) if sent by text message before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt (unless the sender's mobile telephone or other device used for sending text messages reports that the text message has not been delivered);
 - (4) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery; or
 - (5) if published on the Company's web site, on the 2nd Business Day (at the Company's registered office) after publication.

- 40.4 A Notice sent or delivered in a manner provided by clause 40.2 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).
- 40.5 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
- 40.6 The Customer's address for service, email address and number for receipt of text messages are set out in Item 2 of Schedule 1.
- 40.7 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 40.7, he, she or it must notify the same change:
- (1) under each Water Entitlements Contract (if any) and each other Water Delivery 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.
- 40.8 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.
- 40.9 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.

41 Joint holders

- 41.1 Where two or more persons are registered as the holders of a Right of Access, the Company is not bound to treat them other than as holding the Right of Access as joint tenants with benefits of survivorship, subject to clause 41.2 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 Right of Access;
 - (2) the joint holders of the Right of Access are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Right of Access;
 - (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 Right of Access, but the Company may require such evidence of death as it sees fit; and
 - (4) only the person whose name stands first in the Rights of Access Register as one of the joint holders of the Right of Access is entitled to delivery of the Contract relating to the Right of

Access or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.

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

42 Transmission of rights of access

- 42.1 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 Rights of Access.
- 42.2 If the person entitled to the Customer's Rights of Access 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 Rights of Access:
- (1) the Successor may:
 - (a) by giving a signed notice to the Company, elect to be registered as the holder of the Customer's Rights of Access; or
 - (b) by giving a completed transfer form to the Company, transfer the Customer's Rights of Access to another person; and
 - (2) the Successor, whether or not registered as the holder of the Customer's Rights of Access, 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 Rights of Access.
- 42.3 On receiving an election under clause 42.2(1)(a), the Company must register the Successor as the holder of the Customer's Rights of Access.
- 42.4 A transfer under clause 42.2(1)(b) is subject to the Transfer and Conversion Rules.
- 42.5 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 Rights of Access. The estate of the deceased Customer is not released from any liability in respect of the Customer's Rights of Access.
- 42.6 This clause 42 has effect subject to the Transfer and Conversion Rules and the *Bankruptcy Act 1966* (Cth).

43 Security interests

- 43.1 The Customer acknowledges that certain Charges are a charge on a Landholding in favour of the Company under section 355 of the Act.
- 43.2 Unless the parties have agreed that the Customer will provide alternative security for payment of the Charges and that this clause 43.2 will not apply, the Customer charges the Landholdings with due payment of the Charges.
- 43.3 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 Rights of Access in favour of the Company as security for the payment of Charges.

- 43.4 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.

44 Recognition of ownership

- 44.1 Except as required by law, the Company is not bound to recognise a person as holding Rights of Access or entering into this Contract upon any trust.
- 44.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of the Customer's Rights of Access or this Contract except, where applicable, an absolute right of the Customer.
- 44.3 Clause 44.2 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.

45 Entire agreement

- 45.1 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.

46 Governing law

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

47 Execution of counterparts

- 47.1 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.

48 Execution by attorney

- 48.1 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**

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: