



Murray Irrigation

Entitlements Contract

Parties

Murray Irrigation Limited
ABN 23 067 197 933

The person identified in Item 1 of Schedule 1

Registered office
443 Charlotte Street
(PO Box 528)
Deniliquin NSW 2710

Phone : 1300 138 265
Fax : 03 5898 3301

www.murrayirrigation.com.au

Contents

1.	Definitions and interpretation.....	1
2.	Customer must obtain own advice	8
3.	Commencement	8
4.	Application of parts	9
	Part A - Water.....	10
5.	Water entitlements.....	10
6.	Water entitlements certificates	10
7.	Annual allocation	10
	Part B - Delivery	12
8.	Delivery entitlements	12
9.	Delivery entitlements certificates.....	12
10.	Delivery of water	12
11.	Distribution rules.....	14
12.	Measurement of water usage.....	14
13.	Drainage	15
14.	Access to landholding.....	16
15.	Construction, maintenance and repair of works.....	16
16.	Construction, maintenance and repair of fence.....	17
17.	Land and water management plans	17
18.	Subdivision	18
	Part C - General	20
19.	Water allocation account	20
20.	Consolidated water allocation accounts	20
21.	Merged accounts	23
22.	Aggregated accounts.....	23
23.	Charges	23
24.	Deemed delivery of water.....	24
25.	Policies and other conditions.....	25
26.	Replacement of certificates	25
27.	Goods and services tax.....	26
28.	No contravention of the company's obligations.....	26
29.	Customer to provide information	26
30.	Default	27
31.	Termination by the customer.....	29
32.	Power of attorney	29
33.	Limitation of liability and indemnity.....	30
34.	Force majeure	33
35.	Confidentiality	34
36.	Privacy.....	34
37.	Time of the essence	34
38.	Further assurances.....	35
39.	Severability	35
40.	No reliance.....	35
41.	Variation.....	35
42.	Rights, powers and remedies	35
43.	Continuing obligations	36

44.	Costs.....	37
45.	Notices.....	37
46.	Joint holders	39
47.	Transmission of water entitlements and delivery entitlements.....	40
48.	Security interests	41
49.	Recognition of ownership	41
50.	Entire agreement	42
51.	Governing law.....	42
52.	Execution of counterparts.....	42
53.	Execution by attorney	42
	Schedule 1 - Details	43

Parties **Murray Irrigation Limited** ABN 23 067 197 933
 (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 Licence** has the meaning given to that term in the Act;
- (3) **Act** means the *Water Management Act 2000* (NSW);
- (4) **Aggregated Account** means an arrangement for the aggregation of the Water Allocation credited from time to time to the individual Water Allocation Accounts of the Participants;
- (5) **Applicant** means a party to an Application;
- (6) **Application** means an application in the form prescribed by the Company, which is completed to the Company's satisfaction, which includes all documents required for the application, and in respect of which the relevant Charge has been paid;
- (7) **Area of Operations** means the area that can be serviced by the Company's Works and includes the areas comprising:
 - (a) the former Tullakool Irrigation Area;
 - (b) the former Berriquin Provisional Domestic and Stock Water Supply and Irrigation District;
 - (c) the former Denimein Provisional Domestic and Stock Water Supply and Irrigation District;
 - (d) the former Deniboota Provisional Domestic and Stock Water Supply and Irrigation District; and
 - (e) the former Wakool Domestic and Stock Water Supply and Irrigation District;
- (8) **Association** has the same meaning as in the *Community Land Development Act 1989* (NSW);
- (9) **Association Property** has the same meaning as in the *Community Land Development Act 1989* (NSW);
- (10) **Annual Allocation** means the Water Allocation determined under clause 7 from time to time;

- (11) **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 Murray River;
- (12) **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;
- (13) **Carryover Unit** has the meaning given in the Distribution Rules Policy;
- (14) **Carryover Water** means the volume of Water Allocation remaining in a Water Allocation Account at the end of a Water Year to the extent that it is carried over, in accordance with the Policies, to the next Water Year;
- (15) **Charges** includes:
- (a) all charges and any other sums of money determined by the Company under the Fees and Prices Policy to be payable by the Customer in connection with the Documents or anything connected with their subject matter;
 - (b) any other sum of money owing or payable by the Customer to the Company;
 - (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;
- (16) **Claim** includes any claim, legal action or demand;
- (17) **Class A Water Entitlements** means domestic Water Entitlements;
- (18) **Class B Water Entitlements** means high security Water Entitlements;
- (19) **Class C Water Entitlements** means general security Water Entitlements;
- (20) **Company's Works** means Works owned by the Company;
- (21) **Contract** means this agreement and all schedules and annexures to it;
- (22) **Consolidated Water Allocation Account** means:
- (a) a Merged Account; or
 - (b) an Aggregated Account;
- (23) **Costs** 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;
- (24) **Customer's Works** means Works owned by the Customer;
- (25) **Damage** includes loss or damage to property;

- (26) **Delivery Entitlement** means the right, subject to the Documents, to delivery, in each Water Year:
- (a) of one Megalitre of Water Allocation, as measured by the relevant Meter (if any) or determined by the Company under clause 24;
 - (b) to the following point of supply:
 - (i) the Company's Supply Works (if any) set out in the Delivery Entitlements Registers, as varied by the Company from time to time, as servicing the relevant property described in Item 4 of Schedule 1 of the relevant Entitlements Contract (**Property**);
 - (ii) if no Company's Supply Works are set out in the Delivery Entitlements Registers as servicing the Property, the Company's Supply Works determined by the Company to be servicing the Property; or
 - (iii) despite anything to the contrary, if a pipe is constructed or used for the purpose of conveying Water Allocation to the Property, the outside toe of the Company's supply channel bank to which the pipe is connected;
- (27) **Delivery Entitlements Registers** means the registers maintained by the Company, as varied by the Company from time to time, which record:
- (a) the Customer's name and address;
 - (b) the number of Delivery Entitlements held by the Customer;
 - (c) details of the Customer's Landholding;
 - (d) the Company's Supply Works to which Water Allocation is to be delivered; and
 - (e) any lien, mortgage or charge over the Customer's Delivery Entitlements registered with the Company under clause 48.4;
- (28) **Distribution Rules Policy** means the rules determined by the Company in relation to the arrangements for, among other things, the ordering of water, the delivery of water and the priority of access to available water flows;
- (29) **Documents** means this Contract, the Policies, and any other Entitlements Contract between the Company and the Customer;
- (30) **Drainage** includes surface and subsurface water drainage;
- (31) **Drainage Work** has the same meaning in the Documents as *drainage work* has in the Act;
- (32) **Entitlements Contract** means a contract between the Company and a person in substantially the form of the Entitlements Contract published on the Company's web site;
- (33) **Event of Default** means any one of the events referred to in clause 30.2;
- (34) **Fees and Prices Policy** means the rules determined by the Company in relation to, among other things, Charges;
- (35) **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;
- (c) commonwealth, state, territorial or local;

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

(36) **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 judgment 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 an externally-administered body corporate under the *Corporations Act 2001* (Cth);
 - (ii) steps are taken by any person towards making the Customer an externally-administered 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 2001* (Cth)) 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 2001* (Cth); 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;

(37) **Internal Annual Transfer** has the meaning given in the Transfer Rules Policy;

- (38) **Joint Water Supply Scheme** means an agreement, made with the prior approval of the Company, between registered proprietors of separate parcels of land for the joint ownership of Delivery Entitlements (without the land being in corresponding joint ownership) and the joint use of Works for the supply and distribution of water solely for domestic and stock purposes;
- (39) **Land and Water Management Plans** means the Land and Water Management Plan or Plans (if any) from time to time required and approved by the relevant Government Agency for the Area of Operations;
- (40) **Landholding** means the property described in Item 4 of Schedule 1;
- (41) **Landholding Reference Number** means a unique number used by the Company to identify a Landholding;
- (42) **Legal Requirement** means law; regulations; notice, order or direction received from, or given by, any Government Agency; the Mulwala Deed and the Company's Licences;
- (43) **Licences** means:
- (a) any licence issued under section 122 of the Act;
 - (b) any Access Licence; and
 - (c) any licence issued under the *Protection of the Environment Operations Act 1997* (NSW);
- (44) **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;
- (45) **Management Statement** has the same meaning as in the *Community Land Development Act 1989* (NSW);
- (46) **Megalitre** means one million litres;
- (47) **Merged Account** means a single account which replaces one or more existing Water Allocation Accounts of the Participants;
- (48) **Meter** means a water measurement apparatus used to measure and account for water;
- (49) **Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by the Act;
- (50) **Mulwala Deed** means any agreement between the Ministerial Corporation and the Company governing the circumstances in which the Ministerial Corporation may require the Company to carry through the Mulwala Canal and related Works, flows of water at different rates at different times;
- (51) **Part A** means clauses 5 to 7;
- (52) **Part B** means clauses 8 to 18;
- (53) **Part C** means clauses 1 to 4 and 19 to 53 and Schedule 1;
- (54) **Participant** means a Customer participating in a Consolidated Water Allocation Account approved by the Company;
- (55) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;

- (56) **PIN** means a personal identification number issued by the Company to the Customer associated with a Water Allocation Account;
- (57) **Policies** means the policies and rules of, or determinations by, the Company published on the Company's web site and includes the Distribution Rules Policy, Drainage/Supply Escape Extraction Policy, Fees and Prices Policy, Privacy Policy, Transfer Rules Policy, Water Exchange Terms and Conditions and Works Policy;
- (58) **Primary PIN** means a PIN issued under clause 19.4(1);
- (59) **Privacy Policy** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;
- (60) **Proprietor** has the same meaning as in the *Community Land Development Act 1989* (NSW);
- (61) **Secondary PIN** means a PIN issued under clause 19.4(2);
- (62) **Shares** means ordinary shares in the capital of the Company;
- (63) **Supply Work** has the same meaning in the Documents as *water supply work* has in the Act;
- (64) **Transaction** has the meaning given in the Transfer Rules Policy;
- (65) **Transfer Rules Policy** means the rules determined by the Company in relation to, among other things:
- (a) the annual transfer of Water Allocation into or out of a Water Allocation Account;
 - (b) the permanent transfer, termination and surrender of, and other dealings with, Water Entitlements and Delivery Entitlements;
 - (c) the arrangements for 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
 - (d) the conversion of Water Entitlements from one category to another;
- (66) **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;
- (67) **Water Allocation Account** means:
- (a) an account with the reference number set out in Item 3 of Schedule 1; or
 - (b) a Consolidated Water Allocation Account,

maintained by the Company which records:

- (c) the crediting, acquiring, debiting and withdrawal of Water Allocation;
 - (d) the crediting, acquiring, debiting and withdrawal of Carryover Units;
 - (e) the usage of Delivery Entitlements for ordering Water Allocation; and
 - (f) Internal Annual Transfers of Delivery Entitlements;
- (68) **Water Entitlement** means the right, expressed according to the classes set out in clauses 1.1(17) to (19), to a notional volume of one Megalitre of water which is used to calculate the Annual Allocation;
- (69) **Water Entitlements Register** means a register maintained by the Company which records:
- (a) the Customer's name and address;
 - (b) the number and class of Water Entitlements held by the Customer; and
 - (c) any lien, mortgage or charge over the Customer's Water Entitlements registered with the Company under clause 48.4;
- (70) **Water Exchange** means the market for the sale and purchase of Water Allocation conducted by the Company known as "*Murray Irrigation's Water Exchange*";
- (71) **Water Exchange Terms and Conditions** means the terms and conditions published on the Company's web site governing the Water Exchange;
- (72) **Water Year** means any period of one year ending on 30 June;
- (73) **Work** has the same meaning in the Documents as *water management work* has in the Act; and
- (74) **Works Policy** means the rules determined by the Company in relation to, among other things, a person or the Company carrying out construction work, constructing things, or planting or removing any trees, plants or crops near the Company's Works situated on or near the Landholding, watering of livestock and control of noxious weeds.

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, Policies, 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 Australian Eastern Standard Time;
 - (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 on the date set out in Item 6 of Schedule 1.

4. Application of parts

- 4.1 Part A applies only if the Customer holds Water Entitlements.
- 4.2 Part B applies only if the Customer holds Delivery Entitlements or wishes to have Water Allocation delivered to his, her or its Landholding.
- 4.3 Part C always applies.

Part A - Water

5. Water entitlements

- 5.1 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.
- 5.2 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.

6. Water entitlements certificates

- 6.1 Subject to clause 26, a Customer whose name is entered as a holder of Water Entitlements in the Water Entitlements Register is entitled to one certificate for the Water Entitlements registered in the Customer's name.
- 6.2 Where Water Entitlements are held jointly by several persons, the Company is not bound to issue more than one certificate.
- 6.3 Delivery of a 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 certificate in accordance with the instructions of the Customer. Delivery of a certificate to one of several joint holders is sufficient delivery to all of them.
- 6.4 A certificate must state:
- (1) the name of the Company;
 - (2) the Customer's name and address; and
 - (3) the number and class of Water Entitlements for which the certificate is issued.

7. Annual allocation

- 7.1 Subject to clauses 7.2, 7.3, 7.4 and 7.6, as soon as practicable after each relevant Availability Announcement during the relevant Water Year, the Company must, in respect of each class of the Customer's Water Entitlements, credit to the Customer's Water Allocation Account the same volume of Water Allocation per relevant Water Entitlement as is specified in the Availability Announcement with respect to the corresponding category of Access Licence held by the Company.
- 7.2 The Company is under no obligation to credit Annual Allocation into the Customer's Water Allocation Account under clause 7.1:
- (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) 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 crediting the Annual Allocation, in the reasonable opinion of the Company, would contravene the Company's obligations under a Legal Requirement;
 - (5) if the Company is entitled elsewhere in the Documents to suspend the crediting of Annual Allocation into the Customer's Water Allocation Account; or
 - (6) 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 The Company may decrease the Customer's Annual Allocation, and debit the Customer's Water Allocation Account accordingly, on one or more occasions in any Water Year:
- (1) following a decrease in any relevant Availability Announcement;
 - (2) if, in the reasonable opinion of the Company, restricted actual or anticipated availability justifies the decrease; or
 - (3) if, in the reasonable opinion of the Company, compliance with the Company's obligations under a Legal Requirement justifies the decrease.
- 7.5 The Company must publish the Annual Allocation and any increase or decrease under clauses 7.3 or 7.4, in percentage terms, on the Company's web site.
- 7.6 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 7.6 as soon as practicable.
- 7.7 Despite anything to the contrary, nothing in Part A or Part C obliges the Company to deliver, or entitles the Customer to delivery of, or to take, any water.

Part B - Delivery

8. Delivery entitlements

- 8.1 Subject to the Documents, the Customer is entitled to the number of Delivery Entitlements in respect of which the Customer is the registered holder in the Delivery Entitlements Register.
- 8.2 The Customer acknowledges that:
- (1) termination fees are payable under the Fees and Prices Policy in connection with the termination or surrender of all or any part of the Customer's Delivery Entitlements; and
 - (2) disconnection fees are payable under the Fees and Prices Policy if the Customer no longer holds any Delivery Entitlements.

9. Delivery entitlements certificates

- 9.1 Subject to clause 26, a Customer whose name is entered as a holder of Delivery Entitlements in the Delivery Entitlements Register is entitled to one certificate for the Delivery Entitlements registered in the Customer's name.
- 9.2 Where Delivery Entitlements are held jointly by several persons, the Company is not bound to issue more than one certificate.
- 9.3 Delivery of a 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 certificate in accordance with the instructions of the Customer. Delivery of a certificate to one of several joint holders is sufficient delivery to all of them.
- 9.4 A certificate must state:
- (1) the name of the Company;
 - (2) the Customer's name and address;
 - (3) the Delivery Entitlements held by the Customer for which the certificate is issued; and
 - (4) the Landholding Reference Number applicable to the Customer's Landholding.

10. Delivery of water

- 10.1 Subject to the Documents, if the Customer holds Delivery Entitlements, 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 Distribution Rules Policy.
- 10.2 The Company is under no obligation to deliver Water Allocation under clause 10.1:
- (1) unless and until the Company has a volume of water available to it under its regulated river (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 under clause 15.8;
 - (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 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 Landholding;
 - (12) if the Company is entitled elsewhere in the Documents to suspend the delivery of water to the Customer, including under clause 30 or clause 34; or
 - (13) where the Landholding is an Association Property, unless and until the relevant Management Statement includes provisions satisfactory to the Company to the effect that:
 - (a) each Proprietor agrees to observe the terms of the Documents as though it were the Customer and to do all things to enable the Customer to observe the terms of the Documents;
 - (b) each Proprietor grants rights of entry to the Association (for the benefit of the Association and the Company) on the same terms as section 120 of the Act;
 - (c) that the Association will not alter change or amend any provision of the Management Statement relating to any obligation of the Association and the Proprietors under the Documents; and
 - (d) the Association will if and when required by the Company furnish to the Company a certified and up-to-date copy of the Management Statement within 14 days of a request by the Company.
- 10.3 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.
- 10.4 Where the Customer has no Delivery Entitlements or has insufficient Delivery Entitlements for the delivery of all of the Water Allocation which the Customer wishes to have delivered, the Company may, at its discretion, elect to deliver Water Allocation, or the excess Water Allocation, as the case may be, to the Company's Supply Works determined by the Company for this purpose during the Water Year and in accordance with the Documents, provided that the Company must not elect to deliver Water Allocation, or the excess Water Allocation, as the case may be, to the Customer unless the Company is satisfied that it will have sufficient water

flows available to fulfil all water orders placed by holders of Delivery Entitlements in the relevant part of the Company's Supply Works during the relevant period.

- 10.5 Despite anything to the contrary, nothing in Part B or Part C entitles the Customer to any Water Entitlements.

11. Distribution rules

- 11.1 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.
- 11.2 The Customer must use water delivered under this Contract only on and within the boundaries of the Landholding and only for activities that are consistent with a use approved by the Company, all relevant Licences and all other relevant Legal Requirements.

12. Measurement of water usage

- 12.1 The delivery of water by the Company to the 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.
- 12.2 The Company may, at any time, on reasonable notice to the Customer, enter the 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.
- 12.3 Title to a Meter installed and commissioned by the Company (and property in it) remains solely with the Company.
- 12.4 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; and
 - (2) passes from the Customer to the Company with effect from installation and commissioning.
- 12.5 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 the Landholding for that purpose.
- 12.6 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.
- 12.7 In the absence of manifest error, 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.
- 12.8 The Customer must take all reasonable steps to ensure the safekeeping of the Meter on the Landholding and must not prevent access by the Company or the Company's Personnel to the Meter.

- 12.9 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.
- 12.10 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.
- 12.11 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 constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

13. Drainage

- 13.1 Subject to the Documents and any other agreement between the Company and the Customer, the Customer may discharge Drainage into the Company's Drainage Works.
- 13.2 The Customer must:
- (1) not discharge groundwater drainage from any groundwater extraction works on the Landholding into the Company's Drainage Works unless the Company has authorised the Customer to do so;
 - (2) in discharging Drainage into the Company's Drainage Works, comply with all water quality standards imposed by this Contract, all Licences under which the Customer is entitled to water and all relevant Legal Requirements;
 - (3) ensure that Drainage discharges only through the Company's Drainage Works servicing the Landholding as determined by the Company; and
 - (4) not take water from the Company's Drainage Works except in accordance with the Documents.
- 13.3 The Customer must comply with the reasonable directions of the Company, notified by the Company to the Customer, for the purpose of reducing the impact of pesticides, nutrients, salt and any other contaminant or water condition on receiving waters.
- 13.4 The Company is not obliged to allow the Customer to discharge any substance into any of the Company's Drainage Works if:
- (1) the Customer fails to comply with clauses 13.2 and 13.3; or

- (2) to do so may, in the reasonable opinion of the Company, contravene or cause a contravention of the Documents, any Licence under which the Customer is entitled to water or any Legal Requirement.

14. Access to landholding

- 14.1 The Customer acknowledges that the Company has rights to enter land within the Area of Operations under section 120 of the Act.
- 14.2 In addition to the Company's rights under the Act, the Customer must give the Company and the Company's Personnel reasonable access to the Landholding for any purpose related to or in connection with the subject matter of this Contract or any other contract between the Customer and the Company.

15. Construction, maintenance and repair of works

- 15.1 The Customer must not cause any Damage to the Company's Works.
- 15.2 The Customer must:
- (1) notify the Company of leaks, damage, malfunctions, blockages or changes to the quality of water in the Company's Works that are observed by the Customer; and
 - (2) at the Customer's Cost, ensure that all of the Customer's Works connected to the Company's Works are properly cleaned and maintained.
- 15.3 The Customer must, in accordance with any relevant Legal Requirements, construct, alter, remove or improve (or procure, in accordance with any relevant Legal Requirements, approval, construction, alteration, removal or improvement of) any of the Customer's Works as deemed necessary or desirable by the Company and notified by the Company to the Customer. The Customer must discharge his, her or its obligations under this clause within a reasonable period and, in any event, within one month, after the Company gives notice.
- 15.4 If the Customer defaults under clause 15.2 or 15.3, the Company or the Company's Personnel may enter the Landholding and clean, maintain, construct, alter, remove or improve the Customer's Works as deemed reasonably necessary or desirable by the Company at its discretion.
- 15.5 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.
- 15.6 The Company may enter the Landholding in connection with an act referred to in clause 15.5, and, for these purposes, carry out any work on, below or above the surface of the Landholding.
- 15.7 All Costs reasonably incurred by the Company or the Company's Personnel in:
- (1) entering the Landholding and cleaning, maintaining, constructing, altering, removing or improving the Customer's Works as deemed necessary or desirable by the Company; or
 - (2) installing, commissioning, operating, repairing, replacing, maintaining, removing, extending, expanding, connecting, disconnecting, improving or doing any other thing that the Company considers necessary or desirable to any of the Company's Works, or in constructing new Company's Works, in connection with the Landholding;

will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

- 15.8 The Company may close any of the Company's Works for maintenance or repairs from time to time.

16. Construction, maintenance and repair of fence

- 16.1 If the Customer does not hold, or no longer holds, any Delivery Entitlements in connection with a particular Landholding, the Company may, at any time, give a notice to the Customer requiring the Customer to construct, maintain, alter, improve, remove or replace a fence on any part of the Landholding adjoining the Company's Works to the reasonable satisfaction of, and complying with the reasonable standards specified by, the Company, including that the fence is effective to exclude stock from the Company's Works.
- 16.2 The Customer must, at the Customer's Cost, and in accordance with all relevant laws, comply with any notice given by the Company under clause 16.1 within three months after the notice is received.
- 16.3 If there is a fence on any part of a Customer's Landholding adjoining the Company's Works, the Customer must, at his, her or its own Cost, maintain and, if requested by the Company, replace, the fence to the reasonable satisfaction of, and in compliance with the reasonable standards specified by, the Company.
- 16.4 If the Customer defaults under clause 16.2 or 16.3, the Company may enter, or may procure another person to enter, the Customer's Landholding and take action to remedy the Customer's default as deemed necessary or desirable by the Company.
- 16.5 If the Customer transfers the Landholding, the Customer must procure that the purchaser agrees with the Company to observe the terms of this clause 16 as though the purchaser were the Customer.

17. Land and water management plans

- 17.1 The parties acknowledge and agree that:
- (1) the Area of Operations is, or may be, affected by a Land and Water Management Plan;
 - (2) the Company may be the person having responsibility for implementation of the Land and Water Management Plan;
 - (3) the Land and Water Management Plan may contain a number of obligations, some of which will apply to the Company, some to the Customer and some to third parties; and
 - (4) it may be necessary or expedient, as a result of implementation of the Land and Water Management Plan:
 - (a) for the Company to make mandatory certain new practices and to change some customary practices to enable the objectives of the Land and Water Management Plan to be achieved; and
 - (b) for the Customer to obtain appropriate training and certification to comply with the Land and Water Management Plan provisions.
- 17.2 At his, her or its own Cost, the Customer must adopt any new or changed practices, obtain any appropriate training and certification, referred to in clause 17.1(4) provided such practices or training and certification are, in the Company's reasonable opinion, necessary or expedient for achieving the objectives of the Land and Water Management Plan.

18. Subdivision

18.1 The Customer must not:

- (1) lodge a plan of subdivision of the Landholding or other document outlining a proposal to subdivide a Landholding with a Government Agency; or
- (2) where no plan of subdivision needs to be lodged, decide to subdivide a Landholding;

without:

- (3) submitting an application to the Company to:
 - (a) reallocate between the subdivisions:
 - (i) the Customer's Delivery Entitlements; and
 - (ii) the Customer's Shares; or
 - (b) enter into new contractual arrangements so that the subdivisions may receive delivery of water from alternative nominated Supply Works;
- (4) submitting to the Company certificates in respect of the Customer's Delivery Entitlements and Shares associated with the Landholding; and
- (5) the Company's prior consent, which may be subject to conditions determined by the Company, including conditions requiring the Customer to carry out works at his, her or its own Cost.

18.2 If the Customer submits an application under clause 18.1(3)(a), the Company may:

- (1) determine a new allocation of the Customer's Delivery Entitlements and Shares, either in accordance with the Customer's application or as differently determined by the Company;
- (2) cancel the certificates in respect of the Customer's Delivery Entitlements and Shares associated with the Landholding and issue new certificates in respect of the reallocated Delivery Entitlements and Shares; and
- (3) determine new Drainage arrangements in respect of any one or more of the landholdings created by the subdivision.

18.3 The Customer must, with respect to each of the landholdings created by a subdivision, enter into a new Entitlements Contract.

18.4 If the Customer submits an application under clause 18.1(3)(b) and the Company, at its discretion, accepts the application, the Customer must enter into, and procure that any relevant third parties enter into, any new contractual arrangements determined by the Company in connection with the subdivisions receiving delivery of water from, or being permitted to discharge Drainage into, alternative nominated Supply Works.

18.5 All Costs incurred by the Company or the Company's Personnel in:

- (1) entering the Landholding and cleaning, maintaining, constructing, altering, removing or improving the relevant Customer's Works as deemed necessary or desirable by the Company; or
- (2) installing, commissioning, operating, repairing, replacing, maintaining, removing, extending, expanding, connecting, disconnecting, improving or doing any other thing that the Company considers necessary or desirable to any of the Company's Works or

any Meter, or in constructing new Company's Works, or in installing and commissioning any new Meters;

in connection with any subdivision of the Landholding will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

- 18.6 Any Delivery Entitlements not allocated to a landholding under clause 18.2 are, by the Company giving one month's notice, terminated, unless earlier transferred by the Customer.

Part C - General

19. Water allocation account

19.1 The Company must maintain a Water Allocation Account for the Customer.

19.2 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;

at the Company's discretion.

19.3 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.

19.4 The Company may issue:

- (1) a PIN that the Customer may use:
 - (a) to access restricted areas of the Company's web site;
 - (b) to identify himself, herself or itself in telephone correspondence with the Company;
 - (c) in connection with the Water Exchange; and
 - (d) to order Water Allocation for delivery in accordance with the Distribution Rules Policy; and
- (2) a PIN that the Customer may use in accordance with the Transfer Rules Policy.

19.5 The persons to whom a PIN may be issued are:

- (1) where a Customer is the sole registered holder of a Water Entitlement or Delivery Entitlement – the Customer;
- (2) where two or more persons are registered as the holders of a Water Entitlement or Delivery Entitlement – any of those persons; and
- (3) in respect of a Consolidated Water Allocation Account – any Participants.

19.6 The Primary PIN and Secondary PIN in respect of a Water Allocation Account are the same number unless any of the persons referred to in clause 19.5 requests different numbers or the Company decides to issue different numbers.

20. Consolidated water allocation accounts

20.1 Any two or more Customers who are eligible under clause 20.2 may make an Application to establish a Consolidated Water Allocation Account under this clause 20.

20.2 Two or more Customers are eligible to make an Application for a Consolidated Water Allocation Account if:

- (1) the Customers are treated as a single entity for the purposes of assessment of income tax;
 - (2) the Customers are treated as a single business entity under one registered Australian Business Number;
 - (3) the Customers have established a share-farming relationship to the satisfaction of the Company; or
 - (4) in any other case, at the Company's discretion.
- 20.3 If a Landholding is associated with a Water Allocation Account which is participating in a Consolidated Water Allocation Account, all Delivery Entitlements associated with the Landholding will be associated with the Consolidated Water Allocation Account.
- 20.4 By submitting to the Company an Application for a Consolidated Water Allocation Account, each Applicant acknowledges that:
- (1) the Applicants are responsible for any arrangements that they make between themselves with respect to the Application for, operation of, and termination of the Consolidated Water Allocation Account; and
 - (2) all exclusions and limitations of liability and all indemnities set out in this Contract and any other relevant Entitlements Contract for the benefit of the Company apply in respect of the Consolidated Water Allocation Account.
- 20.5 The Company may, at its discretion, accept or refuse an Application for a Consolidated Water Allocation Account.
- 20.6 A Consolidated Water Allocation Account commences on the date on which it is registered by the Company after the Application is approved, and continues indefinitely until it is terminated in accordance with this clause 20.
- 20.7 If a Participant in a Consolidated Water Allocation Account orders Water Allocation in the Consolidated Water Allocation Account for delivery, then:
- (1) first, to the extent that:
 - (a) the Participant's Delivery Entitlements associated with the Consolidated Water Allocation Account have as their point of supply the Company's Supply Works (if any) set out in the Delivery Entitlements Registers as servicing the property to which the Participant has ordered the Water Allocation; and
 - (b) those Delivery Entitlements have not been exercised for the delivery of Water Allocation in the relevant Water Year,

those Delivery Entitlements will be exercised for the delivery of the Water Allocation the subject of the order; and
 - (2) otherwise, to the extent necessary to satisfy the order:
 - (a) Delivery Entitlements associated with other Participants' Landholdings which are associated with the Consolidated Water Allocation Account will be taken to have been varied (with effect from immediately before delivery until the end of the Water Year) to relate to the Landholding to which the Water Allocation has been ordered; and
 - (b) the right to exercise those Delivery Entitlements will be taken to have been assigned (for a term commencing immediately before delivery and expiring at the end of the Water Year) by the other Participants to the Participant ordering the Water Allocation.

- 20.8 Each Participant is jointly and severally liable for Charges in respect of:
- (1) the Consolidated Water Allocation Account;
 - (2) Landholdings which are associated with the Consolidated Water Allocation Account, and associated outlets and Delivery Entitlements;
 - (3) the delivery of Water Allocation ordered for delivery by any Participant to a Landholding which is associated with the Consolidated Water Allocation Account;
 - (4) Water Entitlements which are associated with the Consolidated Water Allocation Account; and
 - (5) in respect of a Merged Account, Transactions.
- 20.9 Each Participant releases the Company and its Personnel from all Claims, whether in tort (including negligence), statute, contract, or otherwise, and all Losses which the Participant has or may have, arising directly or indirectly as a result of or in connection with the Company acting on any Participant's instructions within the scope of clause 21 or 22. Each Participant agrees that each of the Company's Personnel are entitled to the benefit of the release, which may be enforced by the Company on behalf of any of them. The Company holds on trust for those people, jointly and severally, the benefit conferred by this clause 20.9.
- 20.10 Each Participant indemnifies the Company against all Claims (including Claims by other Participants or other third parties), arising directly or indirectly as a result of or in connection with the Company acting on any Participant's instructions within the scope of clause 21 or 22.
- 20.11 If any Participant gives notice to the Company of a dispute between the Participants in respect of the Consolidated Water Allocation Account, the Company may, at its discretion, suspend the Participants' right to use, transfer, terminate, surrender or otherwise deal with, the Water Allocation, Carryover Units or Delivery Entitlements in, subject to, or associated with, the Consolidated Water Allocation Account:
- (1) until the Company has received notice from all of the Participants jointly that the dispute has been resolved; and
 - (2) subject to any order of a court in respect of the Consolidated Water Allocation Account.
- 20.12 All of the Participants in a Consolidated Water Allocation Account may jointly make an Application for the termination of the Consolidated Water Allocation Account.
- 20.13 Any Participant in a Consolidated Water Allocation Account may make an Application for that Participant to exit the Consolidated Water Allocation Account.
- 20.14 A Consolidated Water Allocation Account is terminated automatically if there is only one remaining Participant and, in the case of a Merged Account, is replaced by an individual Water Allocation Account.
- 20.15 The Company may, at its discretion, approve or refuse an Application for termination or exit. Approval may be given subject to fulfilment of specified conditions. A Consolidated Water Allocation Account terminates on the later of the date nominated in the Application for termination, or the date on which the Application for termination is approved by the Company (unless the Consolidated Water Allocation Account is terminated earlier by the Company).
- 20.16 The Company may, at its discretion, terminate a Consolidated Water Allocation Account by giving notice to the Participants, and credit the Water Allocation and Carryover Units among the Participants at the Company's discretion.
- 20.17 If an Event of Default occurs in relation to a Participant, then, without limiting the Company's rights under any relevant Entitlements Contract, the Company's rights under this Contract

apply in respect of all of the Water Allocation and Carryover Units credited to the Water Allocation Accounts participating in the Consolidated Water Allocation Account.

21. Merged accounts

- 21.1 Upon the establishment of a Merged Account, the Water Allocation Accounts nominated in the Application for replacement by the Merged Account will be closed.
- 21.2 The Participants in a Merged Account are entitled to the Water Allocation credited from time to time to the Merged Account as joint tenants.
- 21.3 Each Participant in a Merged Account may, without the consent of the other Participants:
- (1) order for delivery in accordance with the Participant's Entitlements Contract; and
 - (2) carry out a Transaction in respect of,
- any Water Allocation credited from time to time to the Merged Account.

22. Aggregated accounts

- 22.1 Upon the establishment of an Aggregated Account, the Water Allocation Accounts nominated in the Application for participation in the Aggregated Account will continue to exist.
- 22.2 Other than as provided by clause 22.3, a Participant in an Aggregated Account is not entitled to any Water Allocation credited to the Water Allocation Accounts of other Participants in the Aggregated Account.
- 22.3 Each Participant in an Aggregated Account may, subject to clause 22.4, order for delivery, in accordance with the Participant's Entitlements Contract, any Water Allocation credited from time to time to any Water Allocation Account participating in the Aggregated Account.
- 22.4 A Participant in an Aggregated Account may not order Water Allocation for delivery or carry out a Transaction if the order or the Transaction would cause the aggregate balance of the Water Allocation Accounts participating in the Aggregated Account to have a balance of less than zero.

23. Charges

- 23.1 The Customer must pay the Charges in full, irrespective of whether any Annual Allocation is credited or any Water Allocation is available or the Company delivers any water in any Water Year.
- 23.2 The Customer must pay to the Company the Charges shown as payable on each notice issued by 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.
- 23.3 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) the Customer's obligation to pay the Charges will not arise until the Customer receives a notice from the Company setting out the Charges payable by the Customer and the date by which those Charges must be paid; and
 - (5) the Company may not charge interest under clause 23.5 on the Charges to be paid by the Customer until the expiry of the due date for payment under clause 23.3(4).
- 23.4 All payments by the Customer must be made without deduction or withholding (including set-off, counterclaim, duty, tax or charge).
- 23.5 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. This rate of interest applies to all Charges and not just those referred to in section 356 of the Act.

24. Deemed delivery of water

- 24.1 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.
- 24.2 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.
- 24.3 Where:
- (1) there is no Meter or other instrument measuring delivery of water;
 - (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 (**Unmetered Water**) using any reasonable means it considers fit.
- 24.4 The Company's determination of the volume of Unmetered Water will be taken to be the actual volume of Unmetered Water.
- 24.5 If clause 24.3(1) applies and the Company makes a determination under clause 24.3, the Company need not give the Customer notice of its determination. If clause 24.3(2), 24.3(3) or 24.3(4) applies and the Company makes a determination under clause 24.3, the Company must give the Customer notice of its determination.
- 24.6 If the Company makes a determination under clause 24.3, then, without limiting the Company's rights under clause 30:
- (1) the Company may debit a volume of Water Allocation from the Customer's Water Allocation Account equal to the volume of Unmetered Water;
 - (2) if the Customer has less Water Allocation in his, her or its Water Allocation Account than the volume of Unmetered 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 to compensate the Company for the volume of Unmetered Water that is not debited under clause 24.6(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 to compensate the Company for the Cost of delivery of the Unmetered Water.

25. Policies and other conditions

- 25.1 The Company must publish the Policies on the Company's web site.
- 25.2 The parties must comply with:
- (1) the Policies; and
 - (2) any other conditions set out in Item 7 of Schedule 1.
- 25.3 To the extent that there is any inconsistency between a provision in any of the documents specified in clause 25.3(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 Item 7 of Schedule 1;
 - (b) this Contract; and
 - (c) the Policies..
- 25.4 If a Customer enters into a transaction with respect to the Customer's Water Allocation, Water Entitlements or Delivery Entitlements, the Customer must, if requested by the Company, execute a new Entitlements Contract.

26. Replacement of certificates

- 26.1 If any certificate issued under clause 6 or clause 9 is out-of-date, worn out or defaced the Company may, upon production to them of the certificate, 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.
- 26.2 If:
- (1) satisfactory evidence is received by the Company that any certificate issued under clause 6 or clause 9 has been stolen, lost or destroyed and has not been pledged, sold or otherwise disposed of;
 - (2) an indemnity and undertaking which the Company thinks adequate is given; and
 - (3) 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 5 Business Days after those conditions are satisfied.
- 26.3 The Company may charge a fee for each new certificate issued under this clause 26.

27. Goods and services tax

27.1 In this clause 27:

- (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.

27.2 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.

27.3 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.

27.4 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.

28. No contravention of the company's obligations

28.1 The Customer must not do or omit to do anything 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.

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

29. Customer to provide information

29.1 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.

30. Default

30.1 If any money payable by the Customer to the Company or any of its related bodies corporate, including money payable under any of the Documents or otherwise, remains unpaid after the due date for payment although no formal or legal demand has been made, then, to the maximum extent permitted by law, the Company may do any, some or all of the following immediately without giving notice to the Customer:

- (1) suspend any determination of, or increase in, or crediting of, the Annual Allocation, until the money is paid in full, without any obligation to make up any delay or shortfall once the money is paid in full;
- (2) suspend delivery of water, until the money is paid in full, without any obligation to make up any delay or shortfall in delivery once the money is paid in full;
- (3) require the Customer to suspend the discharge of Drainage into the Company's Drainage Works, until the money is paid in full, without any liability for the consequences, including flooding; or
- (4) suspend the Customer's right to use, transfer, terminate, surrender or otherwise deal with, the Customer's Water Entitlements, the Water Allocation and the Customer's Delivery Entitlements, until the money is paid in full.

30.2 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 or otherwise, remains unpaid for 3 months after the due date for payment although no formal or legal demand has been made;
- (2) the Customer breaches any of the Documents other than in the manner contemplated by clause 30.1;
- (3) the Customer repudiates any of the Documents;
- (4) an event of default (as defined in the relevant contract) occurs under any other Entitlements Contract between the Company and the Customer;
- (5) the Customer becomes subject to an Insolvency Event;
- (6) the Customer holds Delivery Entitlements and the Customer is not, or ceases to be, the registered proprietor of the Landholding, unless:
 - (a) the Company has approved an application by the Customer to transfer, terminate or surrender all of the Customer's Delivery Entitlements 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 Delivery Entitlements 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; or
- (7) the Customer's existing manner of use of the 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.

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

30.4 If an Event of Default occurs, then, to the maximum extent permitted by law, 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;
- (2) 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;
- (3) 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;
- (4) 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, the Water Allocation and the Customer's Delivery Entitlements, until the Event of Default is remedied;
- (5) after giving 14 days' notice to the Customer:
 - (a) transfer some or all of the Customer's Water Entitlements or Water Allocation and apply the proceeds towards the satisfaction of any money due for payment by the Customer under any of the Documents or otherwise;
 - (b) cancel some or all of the Customer's Water Entitlements or Water Allocation and apply a reasonable estimate of the value of the cancelled Water Entitlements or Water Allocation to the money due for payment by the Customer under any of the Documents or otherwise; and
 - (c) if the Customer's Water Allocation Account has a balance of zero, record a negative balance in the Customer's Water Allocation Account and apply a reasonable estimate of the value of the Water Allocation that would be required to return the negative balance to zero to the money due for payment by the Customer under any of the Documents or otherwise;and the Company must pay any surplus to the person entitled to it;
- (6) after giving 14 days' notice to the Customer, terminate some or all of the Customer's Delivery Entitlements (in which case the termination fee will be payable in accordance with clause 8.2(1)); or
- (7) terminate this Contract by giving two months' notice to the Customer, in which case:
 - (a) the Customer's Water Entitlements, the Water Allocation and the Customer's Delivery Entitlements will be terminated unless they are transferred or, in the case of Water Allocation, used, in accordance with clause 25, within two months after the date of the notice;
 - (b) the Company must apply a reasonable estimate of the value of the terminated Water Entitlements, Water Allocation or Delivery Entitlements 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 Customer may be required to pay termination fees and disconnection fees in accordance with clause 8.2;
 - (d) subject to this Contract, upon termination, each party is released from his, her or its obligation to further perform this Contract; and
 - (e) 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.

- 30.5 The rights of the Company under clause 30.3 are available whether or not the Event of Default is capable of being remedied.
- 30.6 If the Company exercises a power of sale with respect to the Landholding under the *Conveyancing Act 1919* (NSW) or clause 48 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.
- 30.7 Without notice to the Customer, any Costs incurred by the Company directly or indirectly 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.
- 30.8 The Company may, by giving notice to the Customer, terminate this Contract with immediate effect if the Customer no longer holds any Water Entitlements, Water Allocation or Delivery Entitlements, 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.

31. Termination by the customer

- 31.1 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.
- 31.2 A notice of termination under clause 31.1 is ineffective unless:
- (1) all of the Customer's Water Entitlements and Water Allocation have been transferred or terminated in accordance with clause 25;
 - (2) all of the Customer's Delivery Entitlements have been terminated or surrendered in accordance with clause 8.2 or transferred in accordance with clause 25;
 - (3) the Customer has paid all Charges which are associated with the termination of this Contract and discharging, surrendering, terminating or transferring the Customer's Water Entitlements, the Water Allocation and the Customer's Delivery Entitlements; and
 - (4) the Customer's Water Allocation Account does not have a negative balance.

32. Power of attorney

- 32.1 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.
- 32.2 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 exercise the Company's powers:

- (1) under the Documents, including under clause 30.4(5)(a); and
 - (2) under any statute, including under the *Conveyancing Act 1919* (NSW).
- 32.3 The Company may exercise its powers under this clause 32:
- (1) in its own name or in the name of the Customer; and
 - (2) even if it benefits from the exercise of the power.
- 32.4 The Customer declares that all acts and things done by the Company in exercising powers under this clause 32 will be as good and valid as if they had been done by the Customer and agreed to ratify and confirm whatever the Company does in exercising its powers under this clause 32.
- 32.5 If the Company requests, the Customer must execute a power of attorney to give effect to the appointment under this clause 32, appointing the Company as the Customer's attorney and conferring on the Company the rights and powers set out in this clause 32.
- 32.6 The appointment under this clause 32 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.
- 32.7 The Customer indemnifies the Company against any Loss incurred by the Company in reliance on its power under this clause 32.

33. Limitation of liability and indemnity

- 33.1 To the maximum extent permitted by law:
- (1) all terms, conditions, warranties, statements or representations by the Company (whether express, implied, written, oral, collateral, statutory or otherwise) in connection with the subject matter of the Documents which are not expressly set out in the Documents are excluded, and to the extent they cannot be excluded, the Company disclaims all liability that it may have in relation to them; and
 - (2) the Customer must not make any Claim under or in connection with the Documents unless it is based solely on and limited to the express provisions of the Documents.
- 33.2 To the maximum extent permitted by law, the Customer agrees not to make and irrevocably waives all rights that it may have to make any Claim against the Company or any of its Personnel under:
- (1) Part 7.10 of the *Corporations Act 2001* (Cth);
 - (2) the *Australian Securities and Investments Commission Act 2001* (Cth) in connection with a breach of section 12DA of that Act; or
 - (3) section 18 of the *Australian Consumer Law*,
- or any corresponding or similar provision of any Australian State or Territory legislation or any similar provision of any legislation in any relevant jurisdiction or any other applicable laws, in connection with the subject matter of the Documents.
- 33.3 Except as expressly set out in the Documents, the Customer releases the Company and its Personnel from all Claims, whether in tort (including negligence), statute, contract, or otherwise, and all Losses which the Customer has or may have which arise out of the negotiations for, or subject matter of, the Documents. The Customer agrees that each of the Company's Personnel are entitled to the benefit of the release, which may be enforced by the

Company on behalf of any of them. The Company holds on trust for those people, jointly and severally, the benefit conferred by this clause 33.3.

33.4 The Customer acknowledges and agrees that:

- (1) except as expressly set out in the Documents, 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;
- (2) without limiting clause 33.4(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
 - (ii) fitness for watering livestock, crops or plants, spraying, manufacturing or any other use;
 - (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;
 - (e) the regulation of the water industry, including any act or omission by the ACCC or any other Government Agency;
 - (f) the principles to be applied by the ACCC or any other Government Agency with respect to the regulation of the water industry and, in particular, matters affecting water availability, Charges and service levels;
 - (g) the results of reviews by the ACCC or any other Government Agency or any policies or procedures which they adopt; or
 - (h) the accuracy, reliability or completeness of the Policies;
- (3) without limiting clause 33.4(1) or clause 33.4(2), except as expressly set out in the Documents, no statement or representation, no advice, opinion, warranty, undertaking, promise, estimate, projection or forecast and no conduct:
 - (a) has induced or influenced the Customer to enter into the Documents or agree to any or all of their provisions;
 - (b) has been relied on in any way by the Customer;
 - (c) has been warranted to the Customer as being true or accurate; or
 - (d) has been taken into account by the Customer as being important to the Customer's decision to enter into the Documents or agree to any or all of their provisions;

- (4) except as expressly set out in the Documents, the Customer enters into the Documents relying on his, her or its own evaluation, advice and investigations;
- (5) the Customer is capable of evaluating the merits and risks of filtering the water made available or delivered by the Company;
- (6) 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;
- (7) 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
- (8) 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 33.4(8) 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.

33.5 The Company is not liable for any breach of the Documents:

- (1) 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:
 - (a) that is required or permitted by any provision of the Documents; or
 - (b) that is for the purpose (directly or indirectly) of compliance with any Legal Requirement;
- (2) to the extent that the breach has arisen out of, or the Loss suffered is increased as a result of:
 - (a) a new law, or a change in the law (including its interpretation);
 - (b) a new rule or decision being made by any Government Agency, or a change in any rule or decision of any Government Agency;
 - (c) a new administrative practice or policy being introduced by any Government Agency, or a change in any administrative practice or policy of any Government Agency; or
- (3) for any Loss (including any indirect, consequential or economic loss or loss of profits) which does not flow directly, naturally or in the usual course of things from that breach, whether or not that Loss was in the reasonable contemplation of the parties when the Documents were entered into.

33.6 The Company's liability, if any, under the Documents, in relation to the supply of a service not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited to payment of the cost of having the service supplied again.

33.7 The Customer indemnifies the Company against all Losses incurred by the Company or the Customer arising directly or indirectly as a result of or in connection with:

- (1) a breach by the Customer of a Document, whether express or implied;

- (2) the performance by the Company of any of the obligations of the Company under a Document or a Legal Requirement, whether express or implied; or
 - (3) any default, or any negligent or wilful act or omission of the Customer or its Personnel.
- 33.8 The limitations on the liability of the Company and indemnities contained in this clause 33 are in addition to:
- (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.

34. Force majeure

34.1 In this clause 34, **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.

34.2 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.

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

35. Confidentiality

- 35.1 The Customer must keep confidential the existence and terms of:

- (1) this Contract; and
- (2) all negotiations in connection with it,

and must ensure that his, her or its Personnel do likewise.

- 35.2 However, the Customer may disclose information:

- (1) on a confidential basis to his, her or its advisers (including bankers) to enable them to advise in connection with the Documents (including their administration or enforcement);
- (2) to a person whose consent is needed in connection with the Documents if the Customer uses reasonable endeavours to get the consenting person to agree to keep the information confidential (and then only to the extent that the consenting person needs to know the information in order to decide whether to consent);
- (3) to any of his, her or its employees who need to know the information;
- (4) if that information is in the public domain (other than because the Customer has disclosed it);
- (5) if the Customer lawfully had the information before it was disclosed to him, her or it in connection with the Documents;
- (6) with the consent of the Company;
- (7) in connection with legal or other proceedings relating to the Documents;
- (8) if compelled by law or by any Government Agency, including any stock exchange; or
- (9) if the Documents expressly require or permit the Customer to disclose information.

- 35.3 If the Customer is disclosing under clause 35.2(8), he, she or it must, as far as practical, consult with the Company beforehand as to the content and timing of the disclosure.

36. Privacy

- 36.1 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) either:

- (1) in accordance with the Privacy Policy; or
- (2) to National Irrigation Corporation Water Entitlement Register Pty Ltd ACN 126 360 772, as required by that company to establish or maintain the National Irrigation Corporations Water Entitlement Register.

37. Time of the essence

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

38. Further assurances

38.1 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).

38.2 The Customer must:

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

that the Company determines is reasonably 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.

39. Severability

39.1 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.

39.2 The rights and obligations of each party are not affected by any law that, but for this clause 39.2, would affect those rights and obligations.

40. No reliance

40.1 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.

41. Variation

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

41.2 In addition to its rights under clause 41.1, the Company may, from time to time, without the Customer's prior consent, vary, amend, supplement or replace this Contract or any of the Policies by giving notice to the Customer. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).

42. Rights, powers and remedies

42.1 The rights, powers and remedies of each party are additional to other rights, powers and remedies independently given by law.

42.2 Each right, power and remedy provided in the Documents (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in the Documents.

42.3 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.
- 42.4 The failure of a party to exercise or enforce, or a delay by a party in exercising or enforcing, a right, power or remedy does not operate as a waiver of the exercise or enforcement by that party of that or any other right, power or remedy.
- 42.5 The exercise or enforcement by a party of a right, power or remedy does not preclude the further exercise or enforcement by that party of that right, power or remedy or the exercise or enforcement by that party of any other right, power or remedy.
- 42.6 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).
- 42.7 A provision of this Contract may only be waived if the waiver is signed by the person who has the benefit of the provision and who is therefore to be bound by the waiver. The Company will be bound by a waiver only if it is signed by an authorised officer of the Company.
- 42.8 No custom or practice which evolves between the parties will constitute a waiver or lessen the Company's right to insist upon the Customer's strict performance or observance of any provision of the Documents, or to exercise any of the Company's other rights.
- 42.9 Regardless of the Company's knowledge at the time, a demand by the Company for Charges or the subsequent acceptance of Charges will not constitute a waiver of any earlier default by the Customer.
- 42.10 In exercising or enforcing, or deciding not to exercise or enforce, a right, power or remedy, a party is not required to take into account any adverse effect on another party.
- 42.11 Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.
- 42.12 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.
- 42.13 The certificate of any authorised officer of the Company as to:
- (1) the amount by which Charges are in arrears;
 - (2) the amount of Costs for the purposes of the Documents, including clauses 12.11, 15.7, 24.6(3) or 30.7; or
 - (3) the Company's determination of a volume of water under clause 24.3;
- is conclusive evidence of the matter certified.

43. Continuing obligations

- 43.1 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.
- 43.2 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.

- 43.3 Despite clause 4.2, clauses 14, 15, 16 and 48 continue to apply even if the Customer does not hold, or no longer holds, any Delivery Entitlements or does not wish, or no longer wishes, to have Water Allocation delivered to his, her or its Landholding.
- 43.4 Clauses 14, 15, 16, 33 and 48 survive the expiry or termination of this Contract.

44. Costs

- 44.1 Each party must pay his, her or its own Costs connected with the negotiation, preparation and execution of the Documents.
- 44.2 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.
- 44.3 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.

45. Notices

- 45.1 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.
- 45.2 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 prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
 - (3) sent by facsimile to the facsimile number of the addressee;
 - (4) sent by email to the email address of the addressee;
 - (5) sent by text message to the addressee's number for receipt of text messages;
 - (6) delivered at the address for service of the addressee;
 - (7) delivered personally to the addressee; or
 - (8) given by the Company, in the case of a variation, amendment, supplementation or replacement of this Contract or any of the Policies, by the Company publishing the variation, amendment, supplementation or replacement on the Company's web site.
- 45.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 45.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 45.4 If a Notice is sent or delivered in a manner provided by clause 45.2, 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 second Business Day (at the address to which it is posted) after posting;

- (2) if sent by post to an address outside Australia or sent by post from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting;
- (3) if sent by facsimile 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;
- (4) 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;
- (5) 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;
- (6) 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
- (7) if published on the Company's web site, on the second Business Day (at the Company's registered office) after publication.

45.5 Despite clause 45.4:

- (1) a facsimile is not deemed given and received:
 - (a) if at the end of the transmission the sender's facsimile machine fails to issue a report confirming the transmission of the number of pages in the Notice; and
 - (b) if it is not received in full and in legible form and the addressee notifies the sender of that fact within three hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later;
- (2) an email is not deemed given and received:
 - (a) if the sender's computer reports that the message has not been delivered; and
 - (b) if it is not received in full and in legible form and the addressee notifies the sender of that fact within three hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later; and
- (3) a text message is not deemed given and received:
 - (a) if the sender's mobile telephone or other device used for sending text messages reports that the message has not been delivered; and
 - (b) if it is not received in full and in legible form and the addressee notifies the sender of that fact within three hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

45.6 If a Notice is served by a method which is provided by law but is not provided by clause 45.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.

45.7 A Notice sent or delivered in a manner provided by clause 45.2 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).
- 45.8 The Company's address for service, and facsimile number and email address are:
- Attention: Company Secretary
Address: Murray Irrigation Limited
PO Box 528
Deniliquin NSW 2710
Facsimile No: (03) 5898 3301
Email: info@murrayirrigation.com.au
- 45.9 The Customer's address for service, facsimile number, email address and number for receipt of text messages are set out in Item 2 of Schedule 1.
- 45.10 A party may change his, her or its address for service, facsimile number, 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 45.10, he, she or it must notify the same change:
- (1) under each other 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.
- 45.11 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.
- 45.12 Any Notice issued by the Company is binding on the Customer unless it contains a manifest error. The Customer must immediately notify the Company of any manifest error of which the Customer becomes aware.
- 45.13 The Company may from time to time issue amending Notices. These Notices will replace or amend any prior relevant notices issued to the Customer.
- 45.14 A Notice relating to the Documents must be written in English and may be given by an authorised representative of the sender.

46. Joint holders

- 46.1 Where two or more Customers who are parties to a Joint Water Supply Scheme are registered as the holders of a Water Entitlement or Delivery Entitlement, the Company is not bound to treat them other than as tenants in common in equal shares, subject to clause 46.3 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 or Delivery Entitlement;
 - (2) the joint holders of the Water Entitlement or Delivery Entitlement are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Water Entitlement or Delivery Entitlement;
 - (3) on the death of any one of the joint holders, clauses 47.1 to 47.4 apply, but the Company may require such evidence of death as it sees fit;
 - (4) any one of the joint holders may give effective receipts for any bonus or return of capital payable to the joint holders; and

- (5) only the person whose name stands first in the Water Entitlements Register or Delivery Entitlements Register as one of the joint holders of the Water Entitlement or Delivery Entitlement is entitled to delivery of the certificate relating to the Water Entitlement or Delivery 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.
- 46.2 Except as provided in clause 46.1, where two or more persons are registered as the holders of a Water Entitlement or Delivery Entitlement, the Company is not bound to treat them other than as holding the Water Entitlement or Delivery Entitlement as joint tenants with benefits of survivorship, subject to clause 46.3 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 or Delivery Entitlement;
 - (2) the joint holders of the Water Entitlement or Delivery Entitlement are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Water Entitlement or Delivery 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 or Delivery 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 or Delivery Entitlements Registers as one of the joint holders of the Water Entitlement or Delivery Entitlement is entitled to delivery of the certificate relating to the Water Entitlement or Delivery 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.
- 46.3 Where three or more persons are registered holders of a Delivery Entitlement or 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 Delivery Entitlement or 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.

47. Transmission of water entitlements and delivery entitlements

- 47.1 If the Customer dies, and the Customer is not a joint holder or clause 46.1 applies, the Company is not obliged to recognise anyone except the personal representative of the deceased Customer as being entitled to the deceased Customer's interest in their Water Entitlements and Delivery Entitlements.
- 47.2 If the person entitled to the Customer's Water Entitlements or Delivery 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 or Delivery 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 Delivery Entitlements; or
 - (b) by giving a completed transfer form to the Company, transfer the Customer's Water Entitlements or Delivery Entitlements to another person; and
 - (2) the Successor, whether or not registered as the holder of the Customer's Water Entitlements or Delivery 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 or Delivery Entitlements.

- 47.3 On receiving an election under clause 47.2(1)(a), the Company must register the Successor as the holder of the Customer's Water Entitlements or Delivery Entitlements.
- 47.4 A transfer under clause 47.2(1)(b) is subject to the Transfer Rules Policy.
- 47.5 If a Customer dies, and the Customer is a joint holder and clause 46.1 does not apply, the Company will recognise only the survivor as being entitled to the deceased Customer's interest in their Water Entitlements and Delivery Entitlements. The estate of the deceased Customer is not released from any liability in respect of the Customer's Water Entitlements or Delivery Entitlements.
- 47.6 This clause 47 has effect subject to clause 25 and the *Bankruptcy Act 1966* (Cth).

48. Security interests

- 48.1 The Customer acknowledges that certain Charges are a charge on the Landholding in favour of the Company under section 355 of the Act.
- 48.2 The Customer charges the Landholding with due payment of the Charges.
- 48.3 If required by the Company, the Customer must execute a first-ranking registrable charge or other security nominated by the Company over the Customer's Water Entitlements, the Customer's Delivery Entitlements, the Landholding or any other assets of the Customer in such form as the Company requires in favour of the Company as security for the payment of Charges.
- 48.4 A Customer may grant and register with the Company in the prescribed form a lien, mortgage or charge to any third party over the Customer's Water Entitlements or the Customer's Delivery Entitlements or both, with the approval of the Company which shall not be unreasonably withheld, and on condition that:
- (1) the third party agrees that any security interest of the Company under the Documents ranks ahead of the third party's security interest and the third party's security interest is subject to the Company's rights under the Documents, including the right to transfer, cancel or terminate Water Entitlements, Water Allocation or Delivery Entitlements under clause 30.3;
 - (2) the Company has no obligations to the third party, including having no obligation to notify the third party of the Company's exercise, or intention to exercise, any of its rights under the Documents;
 - (3) only one lien, mortgage or charge may be registered under this clause over the Customer's Water Entitlements; and
 - (4) only one lien, mortgage or charge may be registered under this clause over the Customer's Delivery Entitlements.
- 48.5 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.

49. Recognition of ownership

- 49.1 Except as required by law, the Company is not bound to recognise a person as holding Water Entitlements or Delivery Entitlements or entering into this Contract upon any trust.
- 49.2 Subject to clause 48, 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 Delivery Entitlements or this Contract except, where applicable, an absolute right of the Customer.

- 49.3 Clause 49.2 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.
-

50. Entire agreement

50.1 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.
-

51. Governing law

51.1 The law of New South Wales governs the Documents.

51.2 The Company and the Customer submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

52. Execution of counterparts

52.1 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.

53. Execution by attorney

53.1 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**

Facsimile number

Email address

Number for receipt of text messages

Item 3 **Water allocation account number**

Item 4 **Landholding – folio identifiers**

Item 5 **Landholding reference number**

Item 6 **Commencement date**

Item 7 **Other conditions**

Executed as an agreement.

Signed for and on behalf of
Murray Irrigation Limited
 ABN 23 067 197 933 by its authorised
 representative:

 Signature of authorised representative

 Name of authorised representative
 (BLOCK LETTERS)

If the Customer is an individual or multiple individuals:

Signed by the **Customer** in the presence
 of:

 Signature of witness

 Signature of Customer

 Name of witness (BLOCK LETTERS)

 Signature of additional Customer (if more
 than one person)

 Address of witness

 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)