

Water Entitlements Purchase Contract Don Irrigation District

Tasmanian Irrigation and the Purchaser agree to complete the sale and purchase of the Water Entitlements in accordance with and perform their other obligations under this Water Entitlements Purchase Contract.

The Schedule

This schedule constitutes the schedule for the purposes of this Water Entitlements Purchase Contract

THE PURCHASER'S AND GUARANTORS' DETAILS

1. Name of Purchaser

(a) Address

(b) Postal address

2. Name of Guarantor

(c) Address

(d) Postal address

3. Name of Guarantor

(e) Address

(f) Postal address

4. Name of Guarantor

(g) Address

(h) Postal address

Date of agreement

___ / ___ / ___

Parties

1. **TASMANIAN IRRIGATION PTY LTD** ACN 133 148 384
("Tasmanian Irrigation")
2. **THE PURCHASER** named in the schedule
("the Purchaser")

Background

1. Tasmanian Irrigation is proposing that the Irrigation District be appointed as an irrigation district under section 167(1) of the Water Management Act 1999 on the basis that Tasmanian Irrigation will be the responsible water entity and the undertaker under the *Irrigation Clauses Act 1973* for the Irrigation District.
2. This agreement sets out the terms on which Tasmanian Irrigation has agreed to grant the Water Entitlements to the Purchaser.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (b) "the BBSY" for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00am on that day or, if the BBSY is not quoted on that day, at 10.00am on the last prior day on which it was quoted;
- (c) "Commissioning" means commissioning of the Scheme after completion of construction as determined by Tasmanian Irrigation by notice to the Purchaser;
- (d) "Completion" means completion of the grant of the Water Entitlements under clause 4;
- (e) "the Completion Date" means the Completion Date specified in the schedule;
- (f) "the Conditions Precedent" means the conditions in clause 2.1;
- (g) "a Connection Agreement" means an agreement on the terms of the agreement forming Annexure 4 between Tasmanian Irrigation and an owner of or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (h) "the Connection Points" means the Connection Points nominated by Tasmanian Irrigation under clause 5.3;
- (i) "the Deposit" means the Deposit paid under clause 6.2(a);
- (j) "the Deposit Percentage" means the Deposit Percentage specified in the schedule;

- (k) "Final Government Approval" means that the Minister for Primary Industries and Water gives final approval for the construction of the Scheme by Tasmanian Irrigation;
- (l) "the Flow Rate" means the Flow Rate specified in the schedule;
- (m) "Force Majeure" means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (n) "GST" has the meaning given that term by the GST Act;
- (o) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;
- (p) "the Guarantors" means the Guarantors specified in the schedule;
- (q) "the Holders of the Rights" means the people registered from time to time on the WEPC Register as holding all or part of the Rights originally acquired by the Purchaser under this agreement;
- (r) "Insolvent" when used with reference to:
 - (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
 - (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors,and "Insolvency" has a corresponding meaning;
- (s) "the Irrigation District" means the Irrigation District specified in the schedule;
- (t) "the Irrigation Right" means a right to an annual allocation up to the Volume from the Scheme in each irrigation season of the Irrigation District to be conferred by one or more agreements on the terms of the agreement forming annexure 2;
- (u) "notify" means serve a written notice;
- (v) "the Preliminary Connection Points" means:
 - (i) the Preliminary Connection Point specified in the schedule; and
 - (ii) any other points which Tasmanian Irrigation and the Purchaser agree are Preliminary Connection Points for the purposes of this agreement;

- (w) "Public Funding Approval" means that either the State and/or the Federal Government approves funding for the construction of the Scheme by Tasmanian Irrigation in an amount which Tasmanian Irrigation, in its absolute discretion, considers sufficient;
- (x) "the Purchase Price" means the Purchase Price specified in the schedule;
- (y) "the Qualifying Land" means the Qualifying Land specified in the schedule;
- (z) "the Rights" means the rights of the Purchaser under this agreement to the grant of the Water Entitlements;
- (aa) "the Second Instalment" means the second instalment of the Deposit payable under clause 6.2(a)(ii)(B);
- (bb) "the Scheme" means the infrastructure planned for the purposes of the Irrigation District and after Commissioning means the infrastructure constructed for the purposes of the irrigation District;
- (cc) "Statute" includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (dd) "the Sunset Date" means the Sunset Date specified in the schedule;
- (ee) "the Trading Rules" means the Trading Rules specified in the Water Entitlements;
- (ff) "the Volume" means the Volume of water specified in the schedule;
- (gg) "the Water Entitlements" means the Irrigation Right and the Zoned Flow Delivery Right;
- (hh) "the Water Entitlements Register" means the Water Entitlements Register maintained by Tasmanian Irrigation in respect of the Irrigation District as required by Statute and the Trading Rules;
- (ii) "the WEPC Register" means a register to be maintained by Tasmanian Irrigation in respect of all rights to purchase water entitlements for the Irrigation District;
- (jj) "the Zone" means the Zone of the water delivery system of the Irrigation District specified in the schedule with reference to the Zone Map;
- (kk) "the Zone Map" means the map of the water delivery system of the Irrigation District identifying separate zones forming annexure 1; and
- (ll) "the Zoned Flow Delivery Right" means a right for a share of the capacity of the Scheme in each irrigation season of the Irrigation District to deliver water within the Zone at the Flow Rate to be conferred by one or more agreements on the terms of the agreement forming annexure 3.
- (f) a recital, schedule, annexure or a description of the parties forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (m) a reference to any Statute includes that Statute as amended, consolidated or replaced from time to time; and
- (n) a reference to any thing (including any right) includes any part of that thing, but nothing in this clause 1.2(n) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. Conditions Precedent

2.1 Conditions Precedent to satisfy

This agreement (other than clause 2 and the payment of the Deposit under clause 6.2(a)) does not come into force or effect unless:

- (a) Public Funding Approval is received by 30 June 2022; and
- (b) Final Government Approval is received, or Tasmanian Irrigation has waived that requirement, within 15 months after the Condition Precedent in clause 2.1(a) is satisfied.

2.2 Notification

Tasmanian Irrigation must notify the Purchaser when a Condition Precedent is satisfied.

2.3 Effect of failure to satisfy condition

- (a) If the Condition Precedent set out in clause 2.1(a) is not satisfied then either Tasmanian Irrigation or the Purchaser may terminate this agreement by notifying the other.
- (b) If the Condition Precedent set out in clause 2.1(b) is not satisfied then Tasmanian Irrigation may terminate this agreement by notice to the Purchaser.
- (c) If this agreement is terminated under clause 2.3(a) or 2.3(b):
 - (i) Tasmanian Irrigation must refund the Deposit and any interest earned by Tasmanian Irrigation on the Deposit to the Purchaser; and
 - (ii) the parties are automatically discharged from all other obligations under this agreement.

2.4 Satisfaction of the Conditions Precedent

- (a) Tasmanian Irrigation is under no obligation of any kind to procure the fulfilment of the Conditions Precedent.

1.2 General

In this agreement, unless the context otherwise requires:

- (a) the word "include" does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure or exhibit;

- (b) If the Conditions Precedent are not fulfilled, Tasmanian Irrigation will not under any circumstances lose its right to rely on the termination of this agreement under clause 2.3(a) or 2.3(b).

3. The Sunset Date and termination by Tasmanian Irrigation

3.1 Condition

The Purchaser is obliged to complete the purchase of the Water Entitlements if and only if Commissioning has taken place on or before the Sunset Date.

3.2 Extension of Sunset Date

- (a) The Sunset Date will be reasonably extended by the period of any delay in Commissioning to the extent that the delay was caused or contributed to by Force Majeure.
- (b) Tasmanian Irrigation must notify the Purchaser of any extension to the Sunset Date under clause 3.2(a).

3.3 Purchaser's right to terminate

If Commissioning has not taken place by the Sunset Date, the Purchaser may terminate this agreement by notifying Tasmanian Irrigation.

3.4 Waiver of condition

The condition contained in clause 3.1 is waived if and only if the Purchaser waives the condition by notice to Tasmanian Irrigation.

3.5 Fulfilling the condition

Tasmanian Irrigation is under no obligation of any kind to procure the fulfilment of the condition in clause 3.1.

3.6 Termination by Tasmanian Irrigation

Tasmanian Irrigation may terminate this agreement by notice to the Purchaser at any time before Commissioning.

3.7 Effect of termination

If this agreement is terminated under clause 3.3 or clause 3.6:

- (a) Tasmanian Irrigation must refund the Deposit and any interest earned by Tasmanian Irrigation on the Deposit to the Purchaser; and
- (b) the parties are automatically discharged from all other obligations under this agreement but retain any right or claim which has previously arisen.

4. Completion

The parties must complete the sale and purchase of the Water Entitlements on the Completion Date.

5. Grant of the Water Entitlements

5.1 Agreement to grant

Tasmanian Irrigation agrees to grant the Water Entitlements to the Holders of the Rights on Completion:

- (a) subject to and in exchange for the Purchaser paying the Purchase Price to Tasmanian Irrigation in full as required by this agreement; and
- (b) subject to each Holder of the Rights on Completion entering the agreements required under clause 5.3 in respect of the portion of the Water Entitlements granted to it.

5.2 The Connection Points

- (a) Tasmanian Irrigation must on Completion nominate a point in respect of each Preliminary Connection Point as a Connection Point being a point at which Tasmanian Irrigation is reasonably able to provide a connection for the supply of water from the Scheme.
- (b) Each Connection Point nominated under clause 5.2(a) must be:
- (i) within the Zone if the Preliminary Connection Point in respect of which it is nominated is within the Zone; and
- (ii) within or on the boundary of the Qualifying Land if the Preliminary Connection Point in respect of which it is nominated is within or on the boundary of the Qualifying Land.
- (c) Tasmanian Irrigation must do everything it reasonably can to ensure that the Connection Point nominated in respect of each Preliminary Connection Point is within fifty (50) metres of that Preliminary Connection Point.
- (d) Where the planned water delivery system of the Irrigation District does not border or pass through the Qualifying Land, the Purchaser agrees that:
- (i) no Connection Point nominated by Tasmanian Irrigation under clause 5.2(a) will be within or on the boundary of the Qualifying Land; and
- (ii) the Purchaser has no right to require Tasmanian Irrigation to extend the Scheme so as to provide the Purchaser with a Connection Point within or on the boundary of the Qualifying Land.
- (e) Subject to clause 5.2(f), on Completion Tasmanian Irrigation must offer to enter into a Connection Agreement in respect of each Connection Point where on completion:
- (i) the Purchaser remains the only Holder of the Rights and:
- A. the Purchaser has the same relationship to the Qualifying Land as existed at the date of this agreement;
- B. the Purchaser is an owner of the Qualifying Land; or
- C. Tasmanian Irrigation acting reasonably considers that the Purchaser is entitled to use the Qualifying Land; or
- (ii) the Purchaser is not the only Holder of the Rights:
- A. where the Connection Point is within or on the boundary of the Qualifying Land, with those Holders of the Rights who:
- (I) own that part of the Qualifying Land on which the Connection Point is located; or
- (II) Tasmanian Irrigation acting reasonably considers are entitled to use the that part of the Qualifying Land on which the Connection Point is located; or
- B. where the Connection Point is not within or on the boundary of the Qualifying Land, with those Holders of the Rights who have a right to transport water from the Connection Point to the Qualifying Land and:
- (I) own the Qualifying Land; or

- (II) Tasmanian Irrigation acting reasonably considers are entitled to use the Qualifying Land on which the Connection Point is located.
- (f) The obligation of Tasmanian Irrigation to enter a Connection Agreement in respect of a Connection Point under clause 5.2(e) is subject to the Purchaser making any payment the Purchaser has agreed to make to Tasmanian Irrigation in exchange for Tasmanian Irrigation approving and providing that Connection Point.

5.3 Method of grant

- (a) The Irrigation Right is to be granted by Tasmanian Irrigation and each Holder of the Rights entering an agreement in the form of annexure 2 for the volume of water being the portion of the Rights in respect of which the grantee is registered as the holder in the WEPC Register.
- (b) The Zoned Flow Delivery Right is to be granted by Tasmanian Irrigation and each Holder of the Rights entering an agreement in the form of annexure 3 for the flow rate being the portion of the Rights in respect of which the grantee is registered as the holder in the WEPC Register.
- (c) On Completion, the Irrigation Right issued under clause 5.3(a) and the Zoned Flow Delivery Right issued under clause 5.3(b) will each have attached to it as a connection point in the Water Entitlements Register each Connection Point in respect of which on Completion:
 - (i) a Connection Agreement is in place; and
 - (ii) the consent required by the Trading Rules for that attachment is provided.

5.4 Effect of the grants

The grant of the Water Entitlements under clause 5.3 fully discharges the obligations of Tasmanian Irrigation arising on Completion.

5.5 Effect of this agreement

This agreement to grant the Water Entitlements does not constitute an irrigation right within the meaning of section 23(2) of the *Irrigation Clauses Act 1973* and does not confer any right to take water from the Scheme or to any share of the delivery capacity of the Scheme.

6. The Purchase Price

6.1 Price

The Purchase Price is the price for the Water Entitlements.

6.2 How payable

The Purchaser must pay the Purchase Price to Tasmanian Irrigation without set off or counterclaim as follows:

- (a) a deposit equal to the Deposit Percentage multiplied by the Purchase Price as follows:
 - (i) if the Deposit Percentage is ten per cent (10%), by two instalments as follows:
 - A. an instalment equal to two per cent (2%) of the Purchase Price, payable on the signing of this agreement by both Parties; and
 - B. a Second Instalment equal to eight per cent (8%) of the Purchase Price payable within thirty (30) days after the Purchaser is notified by Tasmanian Irrigation that the Condition Precedent set out in clause 2.1(a) is satisfied.

- (b) subject to any termination of this agreement under clause 3.3 or clause 3.6, the balance of the Purchase Price on Completion by:
 - (i) a cheque that is restrictively endorsed with the words "Not Negotiable" payable to Tasmanian Irrigation Pty Ltd; or
 - (ii) another payment method approved by Tasmanian Irrigation.

6.3 Interest on Second Instalment

- (a) If the Deposit Percentage is ten per cent (10%) and the Purchaser fails to pay the Second Instalment pursuant to clause 6.2(a)(i)(B), then the Purchaser must pay interest at the rate determined pursuant to clause 6.3(b) on the unpaid balance of the Second Instalment from the date on which the Second Instalment is due until payment or until this agreement is effectively terminated by either party or by law.
- (b) For the purposes of clause 6.3(a), the interest rate is the rate of two per cent (2%) per annum above the BBSY.
- (c) Tasmanian Irrigation's right to recover interest under clause 6.3(a) is without prejudice to and in addition to any other rights Tasmanian Irrigation might have for failure to pay the Second Instalment.

7. Assignment of the Rights

7.1 Before satisfaction of Conditions Precedent

Before Tasmanian Irrigation has notified the Purchaser that the Conditions Precedent have been satisfied, the Rights are personal to the Purchaser and the Purchaser must not transfer, assign or trade the Rights in any way.

7.2 Right to assign

Subject to clause 7.1, the Purchaser and any other Holder of the Rights may assign the Rights to any other person by either:

- (a) assigning the Rights in their entirety; or
- (b) assigning to the same person a portion of the Rights being rights to:
 - (i) an Irrigation Right in respect of a specified part of the Volume; and
 - (ii) a Zoned Flow Delivery Right in respect of that proportion of the Flow Rate which the part of the Volume transferred bears to the total Volume.

7.3 Requirement for registration

Any assignment by the Purchaser or any other Holder of the Rights or any portion of the Rights is of no effect until that assignment is recorded on the WEPC Register by Tasmanian Irrigation.

7.4 Effect of assignment

The Purchaser acknowledges and agrees that any assignment of the Rights will not alter the Purchaser's obligations under this agreement to pay the Purchase Price.

8. Ownership of the Rights

8.1 The WEPC Register

The Purchaser will be registered on the WEPC Register as the Holder of the Rights.

8.2 Transfers and security interests

Tasmanian Irrigation will register on the WEPC Register any transfer of and any security interest held in the Rights that is:

- (a) permitted under this agreement;
- (b) notified to Tasmanian Irrigation by the Purchaser, any other Holder of the Rights or the security interest holder as the case may be; and
- (c) evidenced to the extent and in the manner required by Tasmanian Irrigation.

8.3 Absolute owner

- (a) Tasmanian Irrigation will be entitled to treat the Holders of the Rights as the absolute owners of the Rights.
- (b) Except if required by law or by order of a court, Tasmanian Irrigation must not recognise any equitable or other claim to or interest in the Rights on the part of any person unless recorded in the WEPC Register even if Tasmanian Irrigation has notice of the claim or interest.

9. Transmission of the Rights

9.1 Death of a sole Holder of the Rights

If a sole Holder of the Rights dies, Tasmanian Irrigation must recognise the legal personal representatives of the deceased Holder of the Rights as the only persons having any title to the Rights.

9.2 Death of a joint Holder of the Rights

If one of joint Holders of the Rights dies, Tasmanian Irrigation must recognise the survivors or survivor of them or the legal personal representatives of the deceased survivor of them as the only persons having any title to the Rights.

9.3 Where a Holder of the Rights is under disability

Any of the following people:

- (a) any person entitled to the Rights in consequence of the Insolvency of a Holder of the Rights;
- (b) the legal personal representatives of a deceased Holder of the Rights;
- (c) the beneficiaries of a deceased Holder of the Rights becoming entitled to the Rights under the will of the deceased Holder of the Rights or the next of kin of a deceased Holder of the Rights entitled to the Rights on an intestacy; and
- (d) any person having authority in law to manage the affairs of a Holder of the Rights who by reason of mental or physical infirmity is unable to manage his affairs,

may, on producing such evidence as to his or their status or authority as Tasmanian Irrigation requires, transfer the Rights in the same manner as the Holder of the Rights could have if the Holder of the Rights had been alive or capable of transferring the Rights.

9.4 Appointment of new trustee

Where a Holder of the Rights establishes to the satisfaction of Tasmanian Irrigation that it holds the Rights as trustee, that Holder of the Rights may transfer the Rights to any new trustee of the same trust.

9.5 Holder of portion of the Rights

This clause 9 applies to a Holder of the Rights who holds a portion of the rights on the basis that each reference to the rights is taken to be a reference to the portion of the Rights held by that Holder of the Rights.

10. Purchaser's warranty

The Purchaser warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

11. Purchaser's enquiries and reliance

11.1 No warranties

The Purchaser agrees that:

- (a) neither Tasmanian Irrigation nor any person acting on Tasmanian Irrigation's behalf gave any warranty or representation in relation to this agreement or its subject matter; and
- (b) no warranty, guarantee, description or representation is implied from anything which occurred during the negotiations between the parties or their representatives before the signing of this agreement.

11.2 Enquiries

The Purchaser:

- (a) before it entered this agreement:
 - (i) obtained all the information it required; and
 - (ii) investigated the Water Entitlements including the terms on which they will be issued and the Scheme as far as it wanted; and
- (b) enters this agreement relying solely on its own judgement and has not relied upon any warranty, guarantee, description or representation from Tasmanian Irrigation.

11.3 Purchaser acknowledgement

The Purchaser acknowledges that Tasmanian Irrigation has relied on clauses 11.1 and 11.2 in entering this agreement.

12. Termination of agreement

12.1 Making time essential

If on or after the Completion Date, Completion of this agreement has not taken place then either Tasmanian Irrigation or the Purchaser may make time of the essence for Completion by providing twenty eight (28) calendar days' notice to the other.

12.2 Right to terminate agreement for failure to perform

If at any time after time is made of the essence for Completion:

- (a) Completion has not occurred; and
- (b) a party ("the defaulting party") has failed to perform any of its obligations under this agreement by the time specified in this agreement or continues to fail to do so,

the other party may terminate this agreement by notice to the defaulting party without affecting any other right it might have.

12.3 Right to terminate for insolvency

If the Purchaser becomes Insolvent, Tasmanian Irrigation may terminate this agreement by notice to the Purchaser without affecting any other right it might have.

12.4 Consequences of Tasmanian Irrigation terminating agreement

If Tasmanian Irrigation terminates this agreement under clause 12.2 or clause 12.3, without prejudice to any other remedy Tasmanian Irrigation might have against the Purchaser:

- (a) Tasmanian Irrigation may keep the Deposit and any interest earned on it and any other money paid by the Purchaser to Tasmanian Irrigation; and
- (b) if Tasmanian Irrigation resells the Water Entitlements:
 - (i) the Purchaser must pay to Tasmanian Irrigation any deficiency arising on the resale and all expenses of the resale or any attempted sale; but
 - (ii) Tasmanian Irrigation may keep any profit on resale.

12.5 Consequences of Purchaser terminating agreement

If the Purchaser terminates this agreement because Tasmanian Irrigation has breached this agreement, without prejudice to any other remedy which the Purchaser might have against Tasmanian Irrigation, the Purchaser is absolutely entitled to a refund of the Deposit and any interest earned on it and any other money paid by the Purchaser to Tasmanian Irrigation.

12.6 Exclusive right of termination

The Purchaser may only terminate this agreement in accordance with the terms of this agreement.

13. Guarantee

13.1 Consideration

Tasmanian Irrigation enters this agreement at the request of the Guarantors.

13.2 Guarantee

In consideration for Tasmanian Irrigation entering this agreement, the Guarantors guarantee that:

- (a) the Purchaser will pay the Purchase Price and any other sum the Purchaser must pay under this agreement to Tasmanian Irrigation; and
- (b) the Purchaser will perform and observe its obligations under this agreement before, on and after Completion.

13.3 Tasmanian Irrigation's choice

If the Purchaser breaches this agreement, Tasmanian Irrigation may recover any amount claimed from the Purchaser from the Guarantors without first exhausting its remedies against the Purchaser.

13.4 Continuing guarantee

This guarantee is a continuing guarantee and binds the Guarantors despite the death, bankruptcy or liquidation of any Purchaser or any of the Guarantors.

13.5 Guarantor's liability unaffected

The Guarantor's liability under this guarantee will not be discharged or reduced just because:

- (a) Tasmanian Irrigation in relation to any liability arising under this agreement, without first telling the Guarantor or getting his consent:
 - (i) grants time or any other indulgence to the Purchaser or a Guarantor;
 - (ii) compounds, compromises or makes an arrangement with the Purchaser or a Guarantor; or
 - (iii) releases the Purchaser or a Guarantor,
- (b) Tasmanian Irrigation, without first telling the Guarantor or getting their consent:
 - (i) agrees to vary this agreement;
 - (ii) waives any breach of this agreement; or
 - (iii) fails to enforce this agreement; or
- (c) Tasmanian Irrigation is made to disgorge any payment made by the Purchaser or the Guarantor.

13.6 Application of payments to Tasmanian Irrigation

If Tasmanian Irrigation receives from any source a payment which reduces the Purchaser's liability to Tasmanian Irrigation, Tasmanian Irrigation may apply it to any amount which the Purchaser owes to Tasmanian Irrigation as it chooses.

13.7 Guarantor not to claim subrogation

The Guarantor must not claim the benefit or require the transfer of any security, guarantee or indemnity held by Tasmanian Irrigation until the Guarantor discharges all his liability to Tasmanian Irrigation under clause 13.2.

13.8 Effect of Purchaser's insolvency

The Guarantor must not prove in the Purchaser's bankruptcy, liquidation or administration unless Tasmanian Irrigation first agrees in writing.

14. Purchaser's default

14.1 Obligation to pay

If the Purchaser breaches this agreement by failing to complete the purchase of the Water Entitlements on the Completion Date, then, from the Completion Date until either Completion takes place or this agreement is effectively terminated by either party or by law, the Purchaser must pay to Tasmanian Irrigation:

- (a) interest calculated under clause 14.2;
- (b) the charges determined in the manner specified in clause 13.1 of the Irrigation Right which would have been granted on Completion in respect of the Volume and which would have applied under the Irrigation Right had it been granted; and
- (c) the charges determined in the manner specified in clause 12.1 of the Zoned Flow Delivery Right which would have been granted on Completion in respect of the Flow Rate and which would have applied under the Zoned Flow Delivery Right had it been granted.

14.2 Interest

- (a) Interest under this clause 14.2 accrues daily at the rate determined under clause 14.2(b) on all money that should have been paid by the Purchaser by the Completion Date, but that has not been either received by, or applied for the exclusive benefit of, Tasmanian Irrigation.
- (b) The interest rate for the purposes of clause 14.2 is the rate of two per cent (2%) per annum above the BBSY.

14.3 Recovery of collection costs

If an amount payable by the Purchaser under this agreement ("the Debt") remain outstanding for longer than a reasonable time, as determined by Tasmanian Irrigation in its absolute discretion, then:

- (a) Tasmanian Irrigation may lodge the Debt with a mercantile agent for recovery; and
- (b) the Purchaser must pay all legal costs and disbursements including the costs of the mercantile agent incurred by Tasmanian Irrigation in the recovery of the Debt.

14.4 Condition to Tasmanian Irrigation's obligations to complete

Payment of the amounts required to be paid under this agreement is a condition precedent to Tasmanian Irrigation's obligations on Completion.

14.5 Separate right

Tasmanian Irrigation's right to recover interest and other payments under clause 14.1 and 14.2 is intended:

- (a) to survive the termination of other contractual obligations between the parties under this agreement; and
- (b) to be without prejudice and in addition to any other rights Tasmanian Irrigation might have including any right to forfeit the Deposit.

14.6 Tasmanian Irrigation's wilful default

No amount is payable under clause 14.1 if the Purchaser's failure to complete the purchase of the Water Entitlements is due to Tasmanian Irrigation's wilful default.

- (a) each party's address is the address specified in the schedule or another address which that party notifies to each other party; and
- (b) each party's postal address is:
 - (i) the postal address specified in the schedule or another postal address or which that party notifies to each other party; or
 - (ii) that party's address if no postal address is specified in the schedule or notified to each other party.

15. Dispute resolution

15.1 Process for resolution

If any dispute or difference between the Purchaser and Tasmanian Irrigation arises out of this agreement:

- (a) either the Purchaser or Tasmanian Irrigation may notify the other of them of the dispute or difference and invoke this clause 15.1;
- (b) the Purchaser and Tasmanian Irrigation must within fourteen (14) days after the notice referred to in clause 15.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 15.1(b) or the meeting has not taken place within fourteen (14) calendar days after the notice referred to in clause 15.1(a) is given, either the Purchaser or Tasmanian Irrigation may refer the dispute or difference to a mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference cannot be resolved by mediation, the dispute may be referred to litigation.

15.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this agreement.

15.3 Right to seek interlocutory relief

Nothing in this clause 15 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

16. Notices

16.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party's residential address; or
- (b) sent by pre-paid mail to that party's postal address.

16.2 Receipt of notice

A notice given to a party under this agreement is treated as having been duly given and received:

- (a) when delivered (if left at the party's residential address); or
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party's postal address).

16.3 Addresses

For the purpose of giving notices under this agreement:

17. General

17.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement are expressed exclusive of GST.
- (b) Where Tasmanian Irrigation makes a taxable supply to the Purchaser under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) Tasmanian Irrigation must provide a tax invoice to the Purchaser in respect of the taxable supply as required by the GST Act.

17.2 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

17.3 Variation and waiver

No variation or waiver of, or any consent to any departure by a party from a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

17.4 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

17.5 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

17.6 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties,

and a warranty, representation or guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

17.7 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

17.8 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

17.9 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

Executed as an agreement

EXECUTION BY PURCHASERS WHO ARE NATURAL PERSONS

SIGNED by Purchaser 1

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 2

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 3

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 4

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

EXECUTION BY PURCHASERS WHO ARE NOT A NATURAL PERSON OR COMPANY

SIGNED for and on behalf of Entity 1 (insert Entity Name)

by:

Signature _____

Name _____

Position _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED for and on behalf of Entity 2 (insert Company/Entity Name)

by:

Signature _____

Name _____

Position _____

in the presence of:

Signature _____

Name _____

Address _____

EXECUTION BY PURCHASERS WHO ARE A COMPANY

EXECUTED by Company 1 (insert Company Name)

under section 127(1) of the Corporations Act:

Director:

Signature _____

Name _____

Director/Secretary

Signature _____

Name _____

EXECUTED by Company 2 (insert Company Name)

under section 127(1) of the Corporations Act:

Director:

Signature _____

Name _____

Director/Secretary:

Signature _____

Name _____

EXECUTION BY GUARANTORS

SIGNED by Guarantor 1

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Guarantor 2

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Guarantor 3

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Guarantor 4

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

EXECUTION BY TASMANIAN IRRIGATION PTY LTD

EXECUTED on behalf of **Tasmanian Irrigation Pty Ltd** by its duly delegated signatory:

Signature _____

Name _____

Position _____

in the presence of

Signature _____

Name _____

Position _____

Annexure 2 – Irrigation Right Don Irrigation District

The Schedule

| | |
|------------------------------------|---|
| Serial number | |
| Irrigation District | Don Irrigation District |
| The Water Entity | Tasmanian Irrigation Pty Ltd ACN 133 148 384 |
| Address of the Water Entity | Level 2 Terminal Building Launceston Airport Western Junction Tasmania |
| Postal Address of the Water Entity | PO Box 84 Evandale TAS 7212 |
| The Customer | |
| Address of the Customer | |
| Postal Address of the Customer | |
| The Annual Volume | |
| Term | The date of this agreement extending until forty (40) years after Commissioning or as extended under clause 2.2 |
| Irrigation Season | Each period commencing on 1 October and ending on the following 31 March |

Parties

1. **THE WATER ENTITY** named in the schedule
("the Water Entity")
2. **THE CUSTOMER** named in the schedule
("the Customer")

Background

1. The Water Entity is the responsible water entity under the Water Management Act 1999 and the undertaker under the Irrigation Clauses Act 1973 for the Irrigation District.
2. This agreement sets out the terms on which the Water Entity will supply water to the Customer.
3. The right conferred by this agreement is an irrigation right within the meaning of section 23 of the Irrigation Clauses Act 1973.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) "the Annual Allocation" for an Irrigation Season is the Annual Allocation determined for that Irrigation Season under clause 3.2;

- (b) "the Annual Volume" means the Annual Volume of water recorded in the Water Entitlements Register as attaching to this Irrigation Right from time to time being the volume specified in the schedule at the date of this agreement;
- (c) "the Applicable Transmission Loss" for a supply of water made under this agreement means the Transmission Loss incurred by the Water Entity in transporting water from the Delivery Point to the Connection Point at which the water is taken;
- (d) "an Approved Issue" means an issue of irrigation rights in respect of the Irrigation District or additional annual volume to attach to a Scheme Irrigation Right made by or with the written consent of Tasmanian Irrigation Pty Ltd;
- (e) "the BBSY" for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00 am on that day or, if the BBSY is not quoted on that day, at 10.00 am on the last prior day on which it was quoted;
- (f) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (g) "Channel" has the meaning given to that term by section 2(1) of the Irrigation Clauses Act 1973;

- (h) "Connection Agreement" means a connection agreement between the Water Entity and an owner of land or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (i) "the Connection Points" means points which:
- (i) are the subject of a Connection Agreement; and
 - (ii) are recorded in the Water Entitlements Register as attached to this Irrigation Right;
- (j) "the Current Reliability Assessment" at a time means the estimate of the reliability of irrigation rights in respect of the Irrigation District made as the basis for the last Approved Issue;
- (k) "the Customer" means the Customer named in the schedule;
- (l) "the Delivery Point" in respect of a supply of water means:
- (i) if the water is taken through a Connection Point to a pipe forming part of the Scheme, that Connection Point; or
 - (ii) if the water is taken through a Connection Point on a watercourse, the point at which the Water Entity delivers water into that watercourse for the purposes of the supply;
- (m) "the Expected Reliability":
- (i) means the condition that the sum of the lesser of the final Annual Allocation and the Annual Volume for any 100 consecutive Irrigation Seasons divided by the sum of the Annual Volume for the same 100 Irrigation Seasons will not be less than 0.95 assuming that the Scheme continues to operate as originally designed and that the aggregate annual volume of all Scheme Irrigation Rights does not exceed the maximum aggregate annual volume of Scheme Irrigation Rights at which the Current Reliability Assessment determines that the Expected Reliability can be maintained; and
 - (ii) is the surety of this Irrigation Right for the purposes of the Irrigation Clauses Act 1973;
- (n) "Force Majeure" means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (o) "GST" has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
- (p) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;
- (q) "the holder" of this Irrigation Right means the person registered for the time being in the Water Entitlements Register as the holder of this Irrigation Right;
- (r) "Insolvent" when used with reference to:
- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
- (iii) a corporation, means a corporation:
- A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors,
- and "Insolvency" has a corresponding meaning;
- (s) "the Irrigation District" means the Irrigation District specified in the schedule;
- (t) "this Irrigation Right" means the right conferred by this agreement on the Customer under section 23(2) of the Irrigation Clauses Act 1973 identified by the Serial Number specified in the schedule;
- (u) "an Irrigation Season" means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws or, if not specified in the Scheme By-Laws, then the Irrigation Season specified in the schedule;
- (v) "the National Water Initiative" means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (w) "notify" means serve a written notice;
- (x) "the Reliability Assessment Date" at a time means the date when the Current Reliability Assessment at that time was made;
- (y) "the Scheme" means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
- (z) "the Scheme By-Laws" means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
- (aa) "the Scheme Irrigation Rights" at any time means all irrigation rights granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District current at that time;
- (bb) "Statute" includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (cc) "the Term" means the term specified in the Schedule;
- (dd) "the Termination Fee" means:
- (i) if a fee is set by the Scheme By Laws for termination of this Irrigation Right, the lesser of that fee as at the date of termination and the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10; or
 - (ii) if no fee is set by the Scheme By Laws for termination of this Irrigation Right, the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10;
- (ee) "the Trading Rules" means the Trading Rules forming annexure 1;

- (ff) "Transmission Loss" means the transmission loss incurred by the Water Entity in transporting water via any watercourse as determined under the applicable watercourse authority held by the Water Entity under Part 6A of the Water Management Act 1999 in respect of that transport;
- (gg) "the Water Entity" means the Water Entity specified in the schedule and any successor as the responsible water entity under the Water Management Act 1999 of the Irrigation District to which the benefit of this agreement has been assigned;
- (hh) "the Water Entitlements Register" means the Water Entitlements Register maintained by the Water Entity in respect of the Irrigation District under section 23(3B) of the Irrigation Clauses Act 1973 and the Trading Rules;
- (ii) "Zone" means a part of the water delivery system of the Irrigation District identified by the Water Entity on the plan of Zones forming part of the Trading Rules as a separate zone for the purpose of granting Zoned Flow Delivery Rights; and
- (jj) "a Zoned Flow Delivery Right" means a right for a share of the water delivery capacity of the Scheme for a Zone.

1.2 General

In this agreement:

- (a) the word "include" does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure, or exhibit;
- (f) a recital, schedule, annexure or a description of the parties' forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and
- (m) a reference to anything (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. The Term

2.1 The term

This agreement commences to apply on the date of this agreement and continues until the earlier of:

- (a) the end of the Term; or
- (b) the date on which this Irrigation Right is terminated under this agreement if that occurs.

2.2 Extension of the Term

- (a) The Water Entity may at any time before the Term ends or before this Irrigation Right is terminated under this agreement extend the Term by the period it notifies to the Customer.
- (b) If, before the Term ends or before this Irrigation Right is terminated under this agreement, the Water Entity is able to obtain an extension of the term applying to the supply of water necessary for the purposes of the Irrigation District ("the extended supply term") beyond the end of the Term on terms acceptable to the Water Entity in its absolute discretion, the Water Entity must extend the Term until the end of the extended supply term.
- (c) The Water Entity must notify any such extension as early as it reasonably can.

3. This Irrigation Right

3.1 Grant of the Irrigation Right

- (a) Subject to the terms of this agreement, the Water Entity grants to the Customer a right to be supplied with the Annual Volume of water from the Scheme in each Irrigation Season.
- (b) The Customer acknowledges that the Annual Volume is a notional volume of water used for the purposes of determining the Annual Allocation and the Water Entity does not warrant that the Customer will receive the Annual Volume of water in any specific Irrigation Season.

3.2 Annual Allocation

- (a) At the start of each Irrigation Season the Water Entity must determine the Annual Allocation in respect of the Irrigation Right for that Irrigation Season expressed as a percentage of all annual volumes attached to Scheme Irrigation Rights having the same Expected Reliability and may from time to time change that Annual Allocation during the Irrigation Season.
- (b) The determinations of the Water Entity in relation to the Annual Allocation for each Irrigation Season are subject to section 25 of the Irrigation Clauses Act 1973.
- (c) Any Annual Allocation for an Irrigation Season not taken in that Irrigation Season will be lost and will not carry over to any later Irrigation Season.

4. Reliability

4.1 Expected Reliability

On the basis of conditions applying at the Reliability Assessment Date, the Expected Reliability is the reliability of this Irrigation Right as estimated by the Water Entity.

4.2 Change in Reliability of this Irrigation Right

- (a) The Customer acknowledges that the Expected Reliability of this Irrigation Right might change over time.

- (b) The Customer agrees that the Customer bears the risk of any reduction in the Expected Reliability of this Irrigation Right arising from climate change or other natural causes.

4.3 Error in assessment of the Expected Reliability

If at any time the reliability of this Irrigation Right based on the maximum aggregate annual volume of Scheme Irrigation Rights on which the Current Reliability Assessment was based, and otherwise on the conditions applying at the Reliability Assessment Date is established, to be less than the Expected Reliability and the reduction is the direct result of the actual sustainable limit of the Irrigation District assessed on the conditions applying at the Reliability Assessment Date being less than the sustainable limit estimated by the Water Entity as at that date:

- (a) the Water Entity must calculate the proportion of the aggregate annual volume attached to all the Scheme Irrigation Rights at that time which would require cancellation so that the reliability of each Scheme Irrigation Right based on conditions applying at the Reliability Assessment Date would be restored to its expected reliability on the basis that no further Scheme Irrigation Rights are issued;
- (b) the Water Entity must by notice to the customer under each Scheme Irrigation Right, cancel the proportion determined under clause 4.3(a) of the annual volume under each Scheme Irrigation Right;
- (c) on the giving of a notice to the Customer under clause 4.3(b), the Annual Volume will reduce as required to reflect the cancellation;
- (d) within twenty (20) Business Days after the Water Entity gives a notice under clause 4.3(c), the Water Entity must pay to the Customer compensation for the cancellation of that proportion of the Annual Volume at the price for each ML at which an irrigation right and its associated Zoned Flow Delivery Right were first issued;
- (e) the Water Entity must not grant any further rights to water in the Irrigation District which would result in the total annual volume attached to all the Scheme Irrigation Rights exceeding the amount at which the reliability of each Scheme Irrigation Right based on conditions applying at the date of issue would be its expected reliability; and
- (f) subject to the Water Entity complying with its obligations under this clause 4.3, the Customer releases the Water Entity from any liability for losses and agrees that it has no claim against the Water Entity arising from or contributed to by the reliability of the Irrigation Right assessed on conditions applying at the Reliability Assessment Date being less than the Expected Reliability.

- (b) otherwise, at such time as the Water Entity is able to supply the water subject to and after taking into account:
 - (i) the Water Entity's obligation to supply water to holders of Zoned Flow Delivery Rights;
 - (ii) the capacity of the Scheme; and
 - (iii) other obligations of the Water Entity taking priority under the Irrigation Clauses Act 1973 to the rights of the Customer under this agreement.

5.2 Transmission Loss

The Customer bears the Applicable Transmission Loss (if any) by reducing the amount of water the Customer is entitled to take from the Connection Points.

5.3 The Connection Points

At the request of the Customer and subject to the relevant requirements of the Trading Rules, the Water Entity must record in the Water Entitlements Register additional or replacement Connection Points as attached to this Irrigation Right.

5.4 Waiver of right to connection

- (a) The Customer agrees that only Connection Agreements confer any right to a connection to the water delivery system of the Irrigation District.
- (b) The Customer waives and agrees not to exercise any rights it might have arising otherwise than under a Connection Agreement, including any rights which arise under section 23(5) or section 31 of the Irrigation Clauses Act 1973, to require a connection to the Scheme to be provided or water to be delivered at any point or a Channel to be constructed connecting the Scheme to any land whatsoever even if:
 - (i) water is supplied under this Irrigation Right for irrigation of the land as referred to in section 23(2)(a) of the Irrigation Clauses Act 1973; or
 - (ii) the Customer nominates the land for the purposes of section 23(2C) of the Irrigation Clauses Act 1973 as land to which water is to be supplied in accordance with this Irrigation Right.
- (c) The Customer agrees to accept supply of water under this Irrigation Right to one or more of the Connection Points as being in full satisfaction of the obligations of the Water Entity as to the place of the supply.

5.5 No claim for failure to supply water

- (a) The Customer releases the Water Entity from any liability for losses and agrees that it has no claim against the Water Entity in connection with any failure by the Water Entity to supply water to the Customer to the extent that the Customer does not hold Zoned Flow Delivery Rights for that supply.
- (b) Where the Customer has a Zoned Flow Delivery Right for the Zone in which a Connection Point is located, any liability for a failure by the Water Entity to supply water to the Customer at that Connection Point will be determined under that Zoned Flow Delivery Right.
- (c) For the avoidance of doubt, the amount of water to which the Customer is entitled under this Irrigation Right in any Irrigation Season might not be the same as the Annual Volume.

5.6 Limited right to supply of water

The Customer has no entitlement to be supplied water by the Water Entity to an extent greater than the reasonable capacity of the Connection Points to accept supply.

5. Right to supply

5.1 Agreement to supply

Subject to the other terms of this agreement, during each Irrigation Season the Water Entity agrees to supply the Customer at the Delivery Point with the amount of water calculated by multiplying the Annual Allocation for that Irrigation Season by the Annual Volume through one or more of the Connection Points:

- (a) if the Customer has a Zoned Flow Delivery Right for the Zone in which the Connection Point through which water is taken is located, in accordance with that Zoned Flow Delivery Right; or

6. Quality and use of water

6.1 No warranty by the Water Entity

- (a) The Water Entity makes no warranty to the Customer as to the condition, quality or fitness for purpose of or any contamination in any water the Customer takes from the Scheme under this agreement.
- (b) The Customer acknowledges that the Water Entity has no obligation to monitor the condition, quality, fitness for purpose of, or any contamination in, the water the Customer takes from the Scheme under this agreement and any such monitoring will not prejudice the rights of the Water Entity or relieve the Customer from its obligations and liabilities under this agreement.

6.2 Customer's risk

The Customer accepts all risk in relation to the condition, quality, fitness for purpose of or any contamination in, any water the Customer takes from the Scheme under this agreement and, to the extent permitted by law, the Customer releases the Water Entity from any loss or damage suffered by the Customer in connection with the condition, quality, fitness for purpose of or any contamination in that water.

6.3 Water taken for use without a Connection Agreement

- (a) If the Customer allows water to be taken by, or supplied to, a person who is not a party to a Connection Agreement with the Water Entity, the Customer accepts all risk in relation to that supply.
- (b) The Customer indemnifies the Water Entity to the maximum extent permitted by law against any liability for any claim, loss or damage suffered by any third party or in connection with:
 - (i) the condition, quality, fitness for purpose of, or any contamination in, water delivered by the Water Entity under this Irrigation Right; or
 - (ii) a breach of clause 6.4 or clause 6.5.

6.4 No domestic use

The Customer must not use any water the Customer takes from the Scheme under this agreement for domestic purposes.

6.5 Applicable law

The Customer must comply with all Statutes, approvals or permits applying to the use of any water the Customer takes from the Scheme under this agreement.

6.6 Excess water

- (a) The Customer must not take more water from the Scheme in any Irrigation Season than:
 - (i) the Annual Allocation the Customer is entitled to take during that Irrigation Season under this Irrigation Right reduced by the total of the Applicable Transmission Losses (if any); or
 - (ii) amounts the Customer is entitled to take under any other agreement with the Water Entity.
- (b) If the Customer does take more water from the Scheme in any Irrigation Season than:
 - (i) the Annual Allocation the Customer is entitled to take under this Irrigation Right during that Irrigation Season reduced by the total of the Applicable Transmission Losses (if any); or
 - (ii) amounts the Customer is entitled to take under any other agreement with the Water Entity,

then the Customer must pay such fee in respect of the excess water taken as the Water Entity imposes under the Scheme By Laws or, in the absence of the Scheme By Laws, as determined on demand by the Water Entity.

7. Tradability

7.1 Dealing

Subject to clause 8, the Customer may deal with the rights to the Annual Volume conferred by this Irrigation Right in any way that personal property may be dealt with.

7.2 Specific examples

As examples of the Customer's right to deal with the rights to the Annual Volume conferred by this Irrigation Right, the Customer may do any of the following in respect of those rights:

- (a) trade those rights (on a permanent or temporary basis);
- (b) give or bequeath those rights;
- (c) lease those rights;
- (d) subdivide or amalgamate those rights (subject to the Scheme By-Laws and Trading Rules); and
- (e) mortgage those rights.

7.3 No qualification to hold Irrigation Right

A person need not be an occupier of land in the Irrigation District to take a transfer of or be registered in the Water Entitlements Register as the holder of the rights to the Annual Volume conferred by this Irrigation Right.

7.4 Can be dealt with separately from a Zoned Flow Delivery Right

The Annual Volume conferred by this Irrigation Right may be dealt with separately from the rights arising under a Zoned Flow Delivery Right.

8. Transfer of Annual Volume

8.1 Permitted transfers

Subject to clause 8.2 and the Trading Rules, the Customer may:

- (a) transfer all or part of the Annual Volume to another person on a temporary or permanent basis; and
- (b) receive transfers of parts of the annual volume attached to Scheme Irrigation Rights as additions to the Annual Volume.

8.2 Conditions to transfer taking effect

A transfer permitted under clause 8.1 of all or part of the Annual Volume does not take effect unless and until:

- (a) the transferee has entered an agreement with the Water Entity on the same terms as this agreement or on other terms acceptable to the Water Entity in such manner as the Water Entity reasonably requires;
- (b) it is approved by the Water Entity in accordance with the Trading Rules and clause 8.3 or on other terms acceptable to the Water Entity; and
- (c) unless the transfer is a temporary transfer within an Irrigation Season, it is recorded on the Water Entitlements Register.

8.3 When Water Entity must approve transfer

The Water Entity must approve a transfer permitted under clause 8.1 if:

- (a) the prescribed fee and any other amounts owing to the Water Entity under this Irrigation Right have been paid to the Water Entity; and
- (b) the Water Entity is reasonably satisfied that:

- (i) the transfer is supported by any information the Trading Rules require for the transfer;
- (ii) the transfer complies with the requirements of the Trading Rules as they relate specifically to the transfer; and
- (iii) the transfer is consistent with relevant Statute, the Scheme By-Laws and any relevant water management plan under the Water Management Act 1999.

- (c) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of this Irrigation Right permitted by this agreement by registering the transferee as the Customer where the transfer is:
 - (i) notified to the Water Entity; and
 - (ii) evidenced to the extent and in the manner as required by the Trading Rules.
- (d) No person has any of the rights of the Customer under this Irrigation Right until this Irrigation Right is recorded in the Water Entitlements Register and the person is recorded in the Water Entitlements Register as the Customer.
- (e) No change in the Annual Volume takes effect until the new Annual Volume is recorded in the Water Entitlements Register.

9. Transmission of this Irrigation Right

9.1 Death of a sole Holder of this Irrigation Right

If a sole Customer dies, the Water Entity must recognise the legal personal representatives of the deceased Customer as the only persons having any title to this Irrigation Right.

9.2 Death of a joint Customer

If one of joint Customers dies, the Water Entity must recognise the survivors or survivor of them or the legal personal representatives of the deceased survivor of them as the only persons having any title to this Irrigation Right.

9.3 Where a Customer is under disability

Any of the following people:

- (a) any person entitled to this Irrigation Right in consequence of the Insolvency of a Customer;
- (b) the legal personal representatives of a deceased Customer;
- (c) the beneficiaries of a deceased Customer becoming entitled to this Irrigation Right under the will of the deceased Customer or the next of kin of a deceased Customer entitled to this Irrigation Right on an intestacy; and
- (d) any person having authority in law to manage the affairs of a Customer who by reason of mental or physical infirmity is unable to manage his affairs,

may, on producing such evidence as to his or their status or authority as the Water Entity requires, deal with the Annual Volume in the same manner as the Customer could have if the Customer had been alive or capable of dealing with the Annual Volume.

9.4 Appointment of new trustee

Where the Customer establishes to the satisfaction of the Water Entity that it holds this Irrigation Right as trustee, the Customer may transfer this Irrigation Right to any new trustee of the same trust.

10.2 Absolute owner

- (a) Subject to this agreement, the Water Entity will be entitled to treat the person who is registered in the Water Entitlements Register as the Customer as the absolute owner of this Irrigation Right.
- (b) Except if required by this agreement, by law or by order of a court, the Water Entity must not recognise any equitable or other claim to or interest in this Irrigation Right on the part of any person unless recorded in the Water Entitlements Register even if the Water Entity has notice of the claim or interest.

11. Charge over Irrigation Right

11.1 The charge

The Customer charges all its rights under this agreement with the payment of all money becoming due by the Customer to the Water Entity under this agreement.

11.2 Priority of charge

The charge is a first ranking charge.

11.3 Dealings free of the charge

When permitted to deal with the rights to the Annual Volume conferred by this Irrigation Right, the Customer may do so free of this charge.

11.4 Registration of charge

The Water Entity may register the charge over this Irrigation Right created by this agreement on the Water Entitlements Register.

10. Ownership of this Irrigation Right

10.1 The Water Entitlements Register

- (a) This Irrigation Right will be registered on the Water Entitlements Register in respect of the Annual Volume.
- (b) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of all or any part of the Annual Volume, or any security interest held over all or part of this Irrigation Right that is:
 - (i) notified to the Water Entity by the Customer or a security interest holder as the case may be; and
 - (ii) evidenced to the extent and in the manner as required by the Trading Rules.

12. Voluntary termination of Irrigation Right

12.1 Right to terminate

The Customer may terminate or surrender this Irrigation Right at any time subject to paying the Termination Fee to the Water Entity.

12.2 Liability for accrued charges

Where this Irrigation Right is terminated or surrendered any obligation to pay amounts accruing from and after the date of termination in connection with this Irrigation Right is cancelled. However, the Customer will remain liable to the Water Entity for any amounts accrued up to the date of termination.

13. Pricing and payment

13.1 Liability for charges, fees and rates

The Customer must pay to the Water Entity such charges, as are determined by the Water Entity from time to time pursuant to the Scheme By-Laws or as specified in the Irrigation Right.

13.2 Basis for pricing

Pricing will be based on:

- (a) a rate per ML of the Annual Volume; and
- (b) a rate per ML of water which is actually delivered to or drawn by the Customer in accordance with this Irrigation Right.

13.3 Determination of quantity of water

The quantity of water drawn, dates and times and other information obtained from the meters and measurements of the Water Entity will be deemed to be accurate and correct unless proved otherwise by the Customer.

13.4 Payment

The Customer must pay all amounts becoming payable by the Customer to the Water Entity under this agreement within thirty (30) calendar days of receipt of an invoice and in the manner specified by the Water Entity from time to time.

13.5 No set off

All amounts payable by the Customer under this agreement must be paid free of any set-off or counterclaim.

13.6 Interest

- (a) The Customer must pay interest to the Water Entity when the Water Entity demands:
 - (i) on any money which the Customer must pay to the Water Entity under this agreement and which the Customer does not pay by the due date;
 - (ii) at such rate as is determined by the Water Entity from time to time pursuant to the Scheme By-Laws or in the absence of any such determination at the rate two per cent (2%) per annum above the BBSY; and
 - (iii) from the due date until the Customer pays the money.
- (b) The Water Entity retains any other rights it may have against the Customer even though the Customer must pay interest.

13.7 Recovery of collection costs

If payment of the amounts payable under this Irrigation Right ("the debt") remain outstanding for a reasonable time, as determined by Tasmanian Irrigation in its absolute discretion, then:

- (a) the debt will be lodged with a mercantile agent for recovery; and
- (b) the Purchaser must pay all legal costs and disbursements incurred by Tasmanian Irrigation in the recovery of the debt.

14. Metering and Measuring

14.1 Water Entity may install a meter

The Water Entity may at any time install a meter at a Connection Point.

14.2 Must not by pass meter

If a meter is installed by the Water Entity, the Customer may only take water through that meter.

15. Change of Responsible Water Entity

Where the Water Entity is replaced as the responsible water entity within the meaning of Part 9 of the Water Management Act 1999 for the Irrigation District, the Water Entity:

- (a) may, without needing any consent from the Customer, assign or novate its rights under this agreement to the replacement responsible water entity subject to the replacement responsible water entity assuming obligations in favour of the Customer on the terms of this agreement as if it were the Water Entity named in this agreement (other than the Water Entity's obligations under clause 4); and
- (b) on such assignment or novation, will be taken to be released from all its obligations under this agreement (other than its obligations under clause 4).

16. Customer's warranty

The Customer warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

17. Insolvency of the Customer

At any time when the Customer is Insolvent, the Water Entity may suspend any or all of the rights of the Customer under this Irrigation Right without prejudice to any other rights the Water Entity may have under this agreement or otherwise.

18. Default and Termination

18.1 Customer's additional obligations

The Customer must not:

- (a) deal with this Irrigation Right in any manner contrary to the terms of this Irrigation Right;
- (b) wrongfully take, use or divert any water from the Scheme except with the prior express written consent of the Water Entity or cause (or allow to be caused) any damage to any part of the Scheme;
- (c) fail to pay to the Water Entity, as and when required under this Irrigation Right, such rates, fees and charges that are payable by the Customer;
- (d) fail to allow the Water Entity, its officers, servants, contractors and agents access to the land where the water taken under this Irrigation Right is to be used at all reasonable times for the purposes of inspection, construction or maintenance of the Scheme or any of the Water Entity's infrastructure not forming part of the Scheme, or for performing the Water Entity's role in relation to the Irrigation District; or
- (e) fail to comply at all times with the Scheme By-Laws and the provisions of this Irrigation Right.

18.2 Cure notice

If the Customer breaches any term of this Irrigation Right, then without prejudice to any other rights the Water Entity may have under this agreement or otherwise:

- (a) the Water Entity may give the Customer (and any other party with a registered interest in this Irrigation Right) a "cure notice"; and
- (b) the Customer must remedy the breach within the "cure period" stated in the cure notice.

18.3 Cure period

The cure period stated in the cure notice must be reasonable having regard to the nature of the breach and (other than in relation to non-payment) must be at least twenty eight (28) calendar days.

18.4 Failure to comply with cure notice

If the breach specified in a cure notice has not been cured by (or on behalf of) the Customer within the cure period, the Water Entity may take one or more of the following steps:

- (a) with notice to the Customer, step in and cure the Customer's breach (and recover the costs of doing so as a debt that is due and payable by the Customer);
- (b) suspend any or all of the rights of the Customer under this Irrigation Right; or
- (c) terminate this Irrigation Right and if it does so, require payment of the Termination Fee.

18.5 Water Entity's costs

The Customer must pay to the Water Entity the amount of all moneys or expenses incurred or loss or damage suffered by the Water Entity as a result of the breach specified in the cure notice including the cost of ascertaining and remedying the breach.

19. Liability

19.1 Circumstances where Water Entity is not liable

The Water Entity will not be liable to the Customer for any loss or damage in connection with a failure by the Water Entity to deliver water under this Irrigation Right in the following circumstances:

- (a) if despite using reasonable endeavours the Scheme cannot deliver water to a Connection Point;
- (b) where delivery is interrupted by routine inspection, maintenance and repairs (where a minimum of seven (7) calendar days notice is given);
- (c) as a result of any event of Force Majeure;
- (d) any situation or event dangerous to people, property, animals or the environment;
- (e) the Connection Agreement in relation to a Connection Point has been terminated; or
- (f) as a result of a failure, defect, or damage in the infrastructure of the Customer (or the holder of the land on which a Connection Point is situated) which is connected to a Connection Point.

19.2 No liability for consequential loss

The Water Entity has no liability to the Customer, nor will the Customer be entitled to claim, in respect of any indirect or consequential losses (including any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue).

19.3 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Customer in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Customer to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 19.3(a) does not apply:
 - (i) to the extent that the Water Entity is indemnified by insurance; and
 - (ii) in respect of any liability of the Water Entity arising under clause 4.

- (c) In this clause 19.3 "Claim" means any claim made by the Customer against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

20. Dispute resolution

20.1 Process for resolution

If any dispute or difference between the Customer and the Water Entity arises out of this Irrigation Right:

- (a) either the Customer or the Water Entity may notify the other party of the dispute or difference and invoke this clause 20.1;
- (b) the Customer and the Water Entity must within fourteen (14) calendar days after the notice referred to in clause 20.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 20.1(b) or the meeting has not taken place within fourteen (14) calendar days after the notice referred to in clause 20.1(a) is given, either the Customer or the Water Entity may refer the dispute or difference to an independent expert mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference cannot be resolved by mediation, the dispute may be referred to litigation by either party.

20.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this Irrigation Right.

20.3 Right to seek interlocutory relief

Nothing in this clause 20 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

21. Variation of this agreement by the Water Entity

21.1 Right to vary

The Water Entity may amend this agreement by notice in writing to the Customer where the Water Entity considers in good faith that:

- (a) an amendment will not materially change the terms and conditions of this agreement; or
- (b) an amendment to this agreement is necessary or desirable to comply with a Statute; or
- (c) an amendment to this agreement is necessary or desirable as a result of a change to, or replacement of, the National Water Initiative.

21.2 Effect of variation

The agreement will apply as varied with effect from the date the notice required under clause 21.1 is given.

22. Notices

22.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party's address; or
- (b) sent by pre-paid mail to that party's postal address.

22.2 Receipt of notice

A notice given to a party under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the party's address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party's postal address).

22.3 Addresses

For the purpose of giving notices under this agreement:

- (a) each party's address is the address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement; and
- (b) each party's postal address is the postal address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement but, if no postal address is specified in the Water Entitlements Register, is that person's address.

23. General

23.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement or the Scheme By-Laws are expressed exclusive of GST.
- (b) Where the Water Entity makes a taxable supply to the Customer under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) the Water Entity must provide a tax invoice to the Customer in respect of the taxable supply as required by the GST Act.

23.2 Government fees

The Customer must pay all fees, duties, taxes and other charges imposed by any government body in respect of this agreement or any transaction contemplated by this agreement.

23.3 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

23.4 Survival

Clauses 12.2, 13, 18.5 and 19 will survive termination of this agreement.

23.5 Variation and waiver

Other than variations made under clause 21, no variation or waiver of, or any consent to any departure by a party from, a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

23.6 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

23.7 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

23.8 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties

and a warranty, representation, guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

23.9 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

23.10 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

23.11 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

Annexure 1 – Trading Rules

Don Irrigation District

1. Interpretation

1.1 Definitions

In the Trading Rules:

- (a) “the Annual Volume” in respect of an Irrigation Right means the Annual Volume of water recorded in the Water Entitlements Register as attaching to the Irrigation Right;
- (b) “an Attached Right” means:
 - (i) an Annual Volume; or
 - (ii) a Zoned Flow Rate; anda reference to a Water Entitlement’s Attached Right, means:
 - (iii) in the case of an Irrigation Right, the Annual Volume attached to that Irrigation Right in the Water Entitlements Register; and
 - (iv) in the case of a Zoned Flow Delivery Right, a Zoned Flow Rate attached to that Zoned Flow Delivery Right in the Water Entitlements Register;
- (c) “a Business Day” means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (d) “a Connection Agreement” means a connection agreement between the Water Entity and an owner of or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (e) “a Complying Transfer” means a Transfer which is a Complying Transfer under clause 4;
- (f) “a Connection Point” means a point within the Irrigation District which is the subject of a Connection Agreement;
- (g) “the Effective Day” of a Transfer means:
 - (i) if the Transfer is a Permanent Transfer or a Limited Term Transfer, the later of:
 - A. the day on which the Transfer is recorded in the Water Entitlements Register; and
 - B. the day nominated in the Transfer as the day on which the Transfer is to take effect; and
 - (ii) if the Transfer is a Short Term Transfer, the later of:
 - A. the day on which the Water Entity notifies the transferor and the transferee under clause 3.2(a); and
 - B. the day nominated in the Transfer as the day on which the Transfer is to take effect;
- (h) “Financial Interest” has the same meaning as that term does in section 23A(4) of the Irrigation Clauses Act 1973;
- (i) “the holder” of a Water Entitlement means the person recorded in the Water Entitlements Register as the holder of the Water Entitlement;
- (j) “Insolvent” when used with reference to:

- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
- (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
- (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed; or
 - C. under administration,and “Insolvency” has a corresponding meaning;
- (k) “the Irrigation District” means the Don Irrigation District;
- (l) “an Irrigation Right” means a right to a supply of water conferred under section 23(2) of the Irrigation Clauses Act in respect of the Irrigation District;
- (m) “an Irrigation Season” means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws;
- (n) “a Limited Term Transfer” means a Transfer for a limited period taking effect:
 - (i) for at least one (1) entire Irrigation Season; or
 - (ii) within two (2) or more Irrigation Seasons;
- (o) “the National Water Initiative” means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (p) “Nominated Zone” in respect of a Zoned Flow Delivery Right means the Nominated Zone specified in that Zoned Flow Delivery Right;
- (q) “notify” means serve a written notice;
- (r) “the Permanent Holder” in respect of an Attached Right held under a Temporary Transfer means the person who will hold that Attached Right after all current Temporary Transfers of that Attached Right have expired;
- (s) “a Permanent Transfer” means a Transfer that is permanent;
- (t) “the Recipient Water Entitlement” in the context of a Transfer means the Recipient Water Entitlement determined for that Transfer under clause 2.4;

- (u) “the Scheme” means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
- (v) “the Scheme By-Laws” means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
- (w) “Security Interest” means an interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation;
- (x) “a Short Term Transfer” means a Transfer for a limited period taking effect entirely within one (1) Irrigation Season;
- (y) “the Source Water Entitlement” in the context of a Transfer means the Water Entitlement to which the Attached Right is attached before the Transfer;
- (z) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by the Trading Rules;
- (aa) “a Temporary Transfer” means a Limited Term Transfer or a Short Term Transfer;
- (bb) “the Trading Rules” means these Trading Rules;
- (cc) “a Transfer” means a transfer of all or part of an Attached Right as referred to in clause 2.1;
- (dd) “Transferred Right” in respect of a Transfer means the Attached Right or part of an Attached Right transferred by the Transfer;
- (ee) “Water Entitlements” means Irrigation Rights and Zoned Flow Delivery Rights;
- (ff) “the Water Entitlements Register” means the register of Water Entitlements required to be maintained by the Water Entity under clause 6.1;
- (gg) “the Water Entity” means the responsible water entity for the time being under the Water Management Act 1999 of the Irrigation District;
- (hh) “the Water Entity’s Security Interest” means the first ranking charge created by each Water Entitlement in favour of the Water Entity;
- (ii) “a Zoned Flow Delivery Right” means a right for a share of the water delivery capacity of the Scheme for a Zone;
- (jj) “the Zoned Flow Rate” in respect of a Zoned Flow Delivery Right means the Zoned Flow Rate recorded in the Water Entitlements Register as attaching to that Zoned Flow Delivery Right; and
- (kk) “the Zones” means the Zones of the water delivery system of the Irrigation District specified in annexure 1.
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to a document or arrangement, includes that person’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in the Trading Rules, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of the Trading Rules will be construed adversely to the Water Entity solely on the ground that the Water Entity was responsible for the preparation of the Trading Rules; and
- (m) a reference to any thing (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. Transfers – mechanism for transfer

2.1 Method of transfer

Subject to this clause 2 and clauses 3, 4 and 5, rights conferred by a Water Entitlement are transferable by transferring part or all of the Water Entitlement’s Attached Right but only if the Transfer is a Complying Transfer.

2.2 Types of Transfer

A Transfer can be a Permanent Transfer, a Limited Term Transfer or a Short Term Transfer.

2.3 How Attached Rights are transferable

A Transfer takes effect by transferring the Transferred Right from the Source Water Entitlement to a Recipient Water Entitlement.

2.4 Determining Recipient Water Entitlement

- (a) The Recipient Water Entitlement for a Transfer is determined by the transferee nominating either:
 - (i) a Water Entitlement held by the transferee as the Recipient Water Entitlement in respect of the Transfer; or
 - (ii) that a new Water Entitlement is to be the Recipient Water Entitlement in respect of the Transfer.
- (b) If the transferee nominates that a new Water Entitlement is to be the Recipient Water Entitlement in respect of the Transfer, the transferee may choose to either:
 - (i) enter a new agreement directly with the Water Entity in the same terms as the Source Water Entitlement; or
 - (ii) agree with the Water Entity in writing to be bound by the terms of the Source Water Entitlement as if the transferee and the Water Entity had entered a new agreement in the terms of the Source Water Entitlement.

1.2 General

In the Trading Rules, unless the context otherwise requires:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a clause, schedule, annexure or exhibit is to a clause, schedule, annexure, or exhibit of or to the Trading Rules and a reference to the Trading Rules includes any clause, schedule, annexure, or exhibit;
- (f) a schedule or annexure forms part of the Trading Rules;

3. Transfers – taking effect

3.1 Permanent Transfers and Limited Term Transfers

A Complying Transfer which is a Permanent Transfer or a Limited Term Transfer takes effect on the Effective Day of the Transfer by the Transfer being recorded in the Water Entitlements Register.

3.2 Short Term Transfers

A Complying Transfer which is a Short Term Transfer:

- (a) takes effect on the Effective Day of the Transfer by the Water Entity notifying the transferor and the transferee that the Transfer satisfies the requirements of these Trading Rules for recording the Transfer on the Water Entitlements Register; and
- (b) will be recorded in the Water Entitlements Register for the purposes of the Source Water Entitlement and the Recipient Water Entitlement.

3.3 Provisional recording

With the consent of the relevant transferor, the Water Entity may, but is not required to, give effect to a Transfer which is provisionally recorded in the Water Entitlements Register under clause 6.6 as if the Transfer had been finally recorded but must cease to give effect to that Transfer if the provisional record is deleted from the Water Rights Register under clause 6.6(c).

4. Transfers – Complying Transfers

4.1 What is a Complying Transfer

To be a Complying Transfer, a Transfer must comply with:

- (a) transfer conditions 1, 2, 3, 4 and 5;
- (b) if the Transfer is a Permanent Transfer, transfer condition 6;
- (c) unless the Transfer is a Temporary Transfers for a period not exceeding twelve (12) months, transfer condition 7; and
- (d) if the Transfer is a Temporary Transfer of an Attached Right which is itself held under a Temporary Transfer, transfer condition 8.

4.2 Transfer condition 1 - who may transfer

A Transfer complies with transfer condition 1, if the Transfer is made by the holder of the Source Water Entitlement or another person legally entitled to do so.

4.3 Transfer condition 2 – the Recipient Water Entitlement

A Transfer complies with transfer condition 2:

- (a) where the Source Water Entitlement is an Irrigation Right, if the Recipient Water Entitlement is also an Irrigation Right; and
- (b) where the Source Water Entitlement is a Zoned Flow Delivery Right if:
 - (i) the Recipient Water Entitlement is also a Zoned Flow Delivery Right; and
 - (ii) the Nominated Zone of the Recipient Water Entitlement is:
 - A. the same as the Nominated Zone of the Source Water Entitlement; or
 - B. another Zone approved by the Water Entity if the Water Entity considers that the water delivery constraints of the Scheme allow the Transfer.

4.4 Transfer condition 3 - no arrears

A Transfer complies with transfer condition 3 if all amounts owing to the Water Entity under the Source Water Entitlement and the Recipient Water Entitlement have been paid to the Water Entity.

4.5 Transfer condition 4 – form of transfer

A Transfer complies with transfer condition 4:

- (a) if a form is prescribed for Transfers under clause 9.5, the Transfer is in that form; and
- (b) in any event, if the Transfer states the monetary consideration in relation to the Transfer.

4.6 Transfer condition 5 – consistency

A Transfer complies with transfer condition 5 if the Transfer is consistent with relevant Statute, the Scheme By-Laws and any relevant water management plan under the Water Management Act 1999.

4.7 Transfer condition 6 - credit worthiness

- (a) Transfer condition 6 only applies where the Transfer is a Permanent Transfer.
- (b) A Transfer complies with transfer condition 6 if the Water Entity acting reasonably is satisfied as to the credit worthiness of the transferee.

4.8 Transfer condition 7 – consent from holders of Security Interests

- (a) Transfer condition 7 applies to all Transfers except Temporary Transfers for a period not exceeding twelve (12) months.
- (b) A Transfer complies with transfer condition 7 if the Water Entity is provided with evidence acceptable to the Water Entity which the Water Entity acting reasonably considers sufficient that:
 - (i) each holder of a Security Interest recorded in the Water Entitlements Register against the Source Water Entitlement in respect of the Transferred Right has been notified of the Transfer; and
 - (ii) each person with a Security Interest recorded in the Water Entitlements Register against the Transferred Right and any other Financial Interest in the Source Water Entitlement in respect of the Transferred Right has consented to the Transfer.

4.9 Transfer condition 8 – consent from Permanent Holder and term of transfer

- (a) Transfer condition 8 applies to a Transfer of an Attached Right held under a Temporary Transfer.
- (b) A Transfer complies with transfer condition 8 if:
 - (i) the Permanent Holder in respect of the Attached Right consents to the Transfer; and
 - (ii) the Transfer is for a term not longer than the remaining term for which the Attached Right is held under the Source Water Entitlement.

5. Transfers – miscellaneous provisions

5.1 Liability of transferor under Temporary Transfer

In the case of a Temporary Transfer, as a condition to the Water Entity giving effect to the Transfer, the holder of the Source Water Entitlement remains liable for all fees and charges payable under the Source Water Entitlement as if the Transferred Right remained attached to the Source Water Entitlement and supplies made by the Water Entity in respect of the Transferred Right were made to or at the direction of the holder of the Source Water Entitlement to the extent that those fees and charges are not paid by the holder of the Recipient Water Entitlement.

5.2 Connection Points

- (a) For the sake of clarity, a Transfer does not transfer any Connection Point attached to the Source Water Entitlement to the Recipient Water Entitlement.
- (b) An application under clause 6.5 is necessary to change the Connection Points attached to a Water Entitlement.

6. The Water Entitlements Register

6.1 The Register

- (a) The Water Entity must maintain a register of Water Entitlements in such form as the Minister directs under section 23(3C) of the Irrigation Clauses Act 1973.
- (b) In the absence of any direction from the Minister, the register of Water Entitlements may be in any form, including in an electronic format.

6.2 Contents of the Water Entitlements Register

The Water Entitlements Register must contain:

- (a) a record of each Water Entitlement specifying the following:
 - (i) whether the Water Entitlement is an Irrigation Right or Zoned Flow Delivery Right;
 - (ii) the serial number of the Water Entitlement;
 - (iii) the name and address of each holder of the Water Entitlement;
 - (iv) a postal address for the holders of the Water Entitlement if one is notified to the Water Entity;
 - (v) in respect of each Security Interest affecting all or part of the Water Entitlement's Attached Right:
 - A. the nature of the Security Interest;
 - B. the name and address of each holder of the Security Interest;
 - C. a postal address for the holders of the Security Interest if one is notified to the Water Entity; and
 - D. a clear identification of the part of the Attached Right to which the Security Interest applies;
 - (vi) the Connection Points attached to the Water Entitlement;
 - (vii) the amount of the Water Entitlement's Attached Right;
 - (viii) where the Water Entitlement is a Zoned Flow Delivery Right, the Nominated Zone specified in the Zoned Flow Delivery Right;
 - (ix) the date of each change to the record and the change made; and
 - (x) any other matter the Water Entity considers appropriate;

- (b) a record of the volume of Attached Rights available to be issued or re-issued following surrender;
- (c) the address and the postal address of the Water Entity; and
- (d) any additional information the Minister directs under section 23(3C) of the Irrigation Clauses Act 1973.

6.3 Recording of Transfers

The Water Entity must record a Complying Transfer on the Water Entitlements Register.

6.4 Recording of Security Interests

- (a) The Water Entity must record on the Water Entitlements Register a Security Interest affecting all or part of an Attached Right if a holder of the Water Entitlement to which the Attached Right is attached or a holder of the Security Interest:
 - (i) notifies the Water Entity of the Security Interest and the other information required to be recorded on the Water Entitlements Register under clause 6.2(a)(v) in the form (if any) prescribed by the Water Entity for that purpose; and
 - (ii) if the notification is made by a holder of the Security Interest, either provides:
 - A. the consent of the holders of the affected Water Entitlement to that recording; or
 - B. such information verifying the creation of the Security Interest as the Water Entity reasonably requires.
- (b) When the Water Entity records a Security Interest on the Water Entitlements Register against all or part of an Attached Right, the Water Entity must notify the holders of all other Security Interests recorded on the Water Entitlements Register against that part of the Attached Right.
- (c) The Water Entity may record the Water Entity's Security Interest on the Water Entitlements Register against all of a Water Entitlement's Attached Right from time to time.
- (d) If the holder of a Security Interest recorded in the Water Entitlements Register notifies the Water Entity in the form (if any) prescribed by the Water Entity for that purpose that the holder has transferred the Security Interest, the Water Entity must record the transferee as the holder of the Security Interest on the Water Entitlements Register.
- (e) If the holder of a Security Interest recorded in the Water Entitlements Register notifies the Water Entity in the form (if any) prescribed by the Water Entity for that purpose that the Security Interest has been partly or fully discharged, the Water Entity must record the discharge of the Security Interest on the Water Entitlements Register.
- (f) When the Water Entity records the discharge of a Security Interest recorded on the Water Entitlements Register against part or all of an Attached Right, the Water Entity must notify the holders of all other Security Interests recorded on the Water Entitlements Register against that Attached Right or part of it as the case may be.

6.5 Recording of Connection Points

- (a) The Water Entity must record on the Water Entitlements Register that a Connection Point is attached to a Water Entitlement if:

- (i) a holder of the Water Entitlement requests that Connection Point to be so recorded in the form (if any) prescribed by the Water Entity for that purpose;
 - (ii) the parties to the Connection Agreement of which the Connection Point is the subject, other than the Water Entity, consent to that recording; and
 - (iii) where the Water Entitlement is a Zoned Flow Delivery Right, the Connection Point is located in the Nominated Zone specified in that Zoned Flow Delivery Right.
- (b) The Water Entity must delete a record on the Water Entitlements Register that a Connection Point is attached to a Water Entitlement if:
- (i) the deletion is requested in the form (if any) prescribed by the Water Entity for that purpose by:
 - A. the parties to the Connection Agreement of which the Connection Point is the subject other than the Water Entity; or
 - B. the holders of the Water Entitlement; or
 - (ii) the Connection Agreement of which the Connection Point is the subject is cancelled.

6.6 Provisional recording

- (a) Where the Water Entity receives a request to record a Limited Term Transfer, a Permanent Transfer or a Security Interest on the Water Entitlements Register and the requirements of these Trading Rules in relation to that recording have not been fully met in a way which the Water Entity considers the applicant can rectify, the Water Entity may provisionally record the Transfer or the Security Interest on the Water Entitlements Register subject to the defect being rectified in such period as the Water Entity allows.
- (b) If the defect is rectified within the period allowed by the Water Entity, the record ceases to be provisional.
- (c) If the defect is not rectified within the period allowed by the Water Entity, the Water Entity must delete the provisional record from the Water Entitlements Register.

6.7 Voluntary termination of Water Entitlement

Where a Water Entitlement is terminated or surrendered under the terms of the Water Entitlement, the Water Entity must record the termination on the Water Entitlements Register and allocate the Water Entitlement's Attached Right (if any) to the Attached Rights available for reissue under clause 6.2(b).

6.8 Recording of legal personal representatives

On the death of a person recorded in the Water Entitlements Register as:

- (a) a holder of a Water Entitlement; or
- (b) a holder of a Security Interest recorded on the Water Entitlements Register,

the Water Entity must, unless the deceased holder was one of joint holders in which case clause 6.9 applies, recognise the legal personal representatives of the deceased holder as the persons entitled to deal with the interest of the deceased person in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the death of the deceased holder and the authority of the personal representatives to deal with the deceased holder's interest.

6.9 Recording of survivor of joint holder

On the death of a person recorded in the Water Entitlements Register with any other person as:

- (a) joint holders of a Water Entitlement; or
- (b) joint holders of a Security Interest,

the Water Entity must record the transmission to the survivor of the deceased person's holding in the Water Entitlements Register at the request of the survivor and on being satisfied as to proof of the death of the joint holder.

6.10 Where a holder is under disability

Where a person has authority in law to manage the affairs of a holder of a Water Entitlement or a Security Interest recorded in the Water Entitlements Register who by reason of mental or physical infirmity is unable to manage his affairs, the Water Entity must recognise that person as the person entitled to deal with the interest of the holder in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the authority to deal with the holder's interest.

6.11 Where a holder is insolvent

Where a person has authority to deal with a Water Entitlement or a Security Interest recorded in the Water Entitlements Register by reason of the insolvency of the holder, the Water Entity must recognise that person as the person entitled to deal with the interest of the holder in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the insolvency of the holder and the authority to deal with the holder's interest.

6.12 Exercise of rights under Security Interest

Where the holders of a Security Interest over all or part of a Water Entitlement's Attached Right establish to the satisfaction of the Water Entity that those holders are entitled to deal with that part of the Attached Right pursuant to the Security Interest, the Water Entity must recognise those holders as being entitled to deal with the interest of the holder in that part of the Attached Right.

6.13 Appointment of new trustee

Where a holder of a Water Entitlement or a Security Interest establishes to the satisfaction of the Water Entity that:

- (a) it holds the Water Entitlement or Security Interest as trustee;
- (b) the trustee or trustees of the trust have changed; and
- (c) if it is a Water Entitlement that is held as trustee, the new trustee or trustees assume liability under the contract constituting the Water Entitlement in such form as the Water Entity requires,

the Water Entity must record the new trustee or trustees as the holders of the Water Entitlement or Security Interest.

6.14 Status of the Water Entitlements Register

- (a) The Water Entity may treat the person who is recorded in the Water Entitlements Register as the holder of a Water Entitlement or Security Interest as the absolute owner of that Water Entitlement or Security Interest.
- (b) Except as required by law or by order of a court, the Water Entity must not recognise any equitable or other claim to or interest in a Water Entitlement or Security Interest on the part of any person unless recorded in the Water Entitlements Register even if the Water Entity has notice of the claim or interest.

6.15 Inspection

- (a) The Water Entity must make the Water Entitlements Register available for public inspection during normal business hours.
- (b) The Water Entity may provide a copy of a record in the Water Entitlements Register on application.

6.16 Correction and amendment of the Water Entitlements Register

- (a) The Water Entity, if satisfied that it is necessary to do so to ensure that the Water Entitlements Register is an accurate record, may correct or amend the Water Entitlements Register including by:
 - (i) adding, cancelling or deleting a record; or
 - (ii) adding, altering or deleting particulars or details contained in a record; or
 - (iii) recording details of any change in the name or address of any person in respect of whom the matter recorded in the Water Entitlements Register relates.
- (b) The Water Entity may correct the Water Entitlements Register:
 - (i) on its own initiative; or
 - (ii) on the application of a person in the form (if any) prescribed by the Water Entity.
- (c) If the Water Entity corrects a part the Water Entitlements Register under this clause 6.16 in relation to an error substantially affecting a person's rights, the Water Entity must notify each person who is recorded in the Water Entitlements Register as having an interest in the matter in respect of which the correction has been made.

7. Dispute resolution

7.1 Process for resolution

If any dispute or difference between the holder of a Water Entitlement and the Water Entity arises out of a Water Entitlement in relation to the Water Entitlements Register:

- (a) either the holder or the Water Entity may notify the other person of the dispute or difference and invoke this clause 7;
- (b) the holder and the Water Entity must within thirty (30) calendar days after the notice referred to in clause 7.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 7.1(b) or the meeting has not taken place within thirty (30) calendar days after the notice referred to in clause 7.1(a) is given, either the holder or the Water Entity may refer the dispute or difference to a mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference can not be resolved by mediation, the dispute may be referred to litigation.

7.2 Right to seek interlocutory relief

Nothing in this clause 7 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

8. Variation of the Trading Rules by the Water Entity

8.1 Right to vary

The Water Entity may amend the Trading Rules by notice in writing to the holders of all Water Entitlements and the holders of all Security Interests recorded in the Water Entitlements Register where the Water Entity considers in good faith that an amendment to the Trading Rules is necessary or desirable:

- (a) to comply with a Statute;
- (b) as a result of a change to, or replacement of, the National Water Initiative; or
- (c) to enhance the efficient operation of the Irrigation District and the change is not materially detrimental to any holder of a Water Entitlement or a Security Interest recorded on the Water Entitlements Register.

8.2 Electronic register and notices

The kinds of amendments allowed by clause 8.1(c) include but are not limited to amendments to implement a system of electronic lodgement and notification.

8.3 Effect of variation

The Trading Rules will apply as varied with effect from the date the notice required under clause 8.1 is given.

9. General provisions

9.1 Precedence of this clause

The Water Entity's obligations to make recordings on the Water Entitlements Register are subject to this clause 9.

9.2 Power to require statutory declarations

The Water Entity may require that information be given by statutory declaration.

9.3 Water Entity may require proof of identity

- (a) The Water Entity may require a person who requests the recording of any matter in the Water Entitlements Register or the approval of any matter for recording in the Water Entitlements Register to provide any proof of identity that the Water Entity, acting reasonably, considers sufficient to establish that person's identity.
- (b) The Water Entity is not required to make a recording in the Water Entitlements Register or approve any matter for recording in the Water Entitlements Register if the Water Entity is not satisfied as to the identity of any person by or on behalf of whom any document relating to that matter was executed.
- (c) The Water Entity may require or permit the identity of a person to be verified by a person or class of persons approved as a verifier for the purposes of this clause 9.3(c).

9.4 Water Entity may require production of documents

- (a) Before making a recording in the Water Entitlements Register, the Water Entity may require a person to submit any documents related to a recording or give any information related to a recording for the purposes of enabling any matter to be recorded in the Water Entitlements Register.
- (b) If any information or document required by the Water Entity under this clause 9.4 is not provided, the Water Entity:
 - (i) may refuse to make the recording until the relevant information or document is produced; or

- (ii) if the relevant information or document is not produced and the recording is not made, may:
 - A. return any documents or information that have been submitted to the person requesting the recording; and
 - B. retain any fee that has been paid by the person requesting the recording.
- (c) The Water Entity, at the Water Entity's discretion, may dispense with the submission or production of any document or information.

9.5 Approved forms

- (a) The Water Entity may approve forms for the purposes of the Trading Rules and the Water Entitlements Register.
- (b) The Water Entity must ensure that approved forms are available:
 - (i) at the office of the Water Entity; or
 - (ii) on the Internet.

10. Fees

10.1 Prescribing fees

Subject to any approval required from the Minister under section 23A(1) of the Irrigation Clauses Act 1973, the Water Entity may prescribe fees in respect of any of its functions under these Trading Rules from time to time.

10.2 Functions conditional on payment of fees

Where the Water Entity prescribes a fee under clause 10.1 in respect of any of its functions under these Trading Rules, the Water Entity may make payment of that fee a condition to the Water Entity being required to carry out that function.

10.3 Precedence of clause 10.2

The Water Entity's obligations to carry out its functions under these Trading Rules are subject to clause 10.2.

11. Notices

11.1 How given

A notice required or permitted to be given under the Trading Rules must be in writing and is treated as being duly given if:

- (a) left at that person's address; or
- (b) sent by pre-paid mail to that person's postal address.

11.2 Receipt of notice

A notice given to a person under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the person's address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the person's address).

11.3 Addresses

For the purpose of giving notices under the Trading Rules:

- (a) the address of a person other than the Water Entity is the address of that person specified in the Water Entitlements Register;
- (b) the postal address of a person is the postal address of that person specified in the Water Entitlements Register but, if no postal address is specified, is the address determined under clause 11.3(a); and
- (c) the address and the postal address of the Water Entity is the address and postal address respectively specified on the Water Entitlements Register from time to time

Annexure 3 – Zoned Flow Delivery Right Don Irrigation District

The Schedule

| | |
|------------------------------------|---|
| Serial number | |
| Irrigation District | Don Irrigation District |
| The Water Entity | Tasmanian Irrigation Pty Ltd ACN 133 148 384 |
| Address of the Water Entity | Level 2 Terminal Building Launceston Airport Western Junction Tasmania |
| Postal Address of the Water Entity | PO Box 84 Evandale TAS 7212 |
| The Customer | |
| Address of the Customer | |
| Postal Address of the Customer | |
| The Zoned Flow Rate | |
| The Nominated Zone | |
| Term | From the date of this agreement extending until forty (40) years after Commissioning as extended under clause 2.2 |
| Irrigation Season | Each period commencing on 1 October and ending on the following 31 March |

Parties

1. **THE WATER ENTITY** named in the schedule (“the Water Entity”)
2. **THE CUSTOMER** named in the schedule (“the Customer”)

Background

1. The Water Entity is the responsible water entity under the Water Management Act 1999 and the undertaker under the Irrigation Clauses Act 1973 for the Irrigation District.
2. This agreement sets out the terms on which the Customer will be entitled to convey water that the Customer is otherwise entitled to through the Scheme to the Connection Points.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) “Additional Delivery Period” means a period in an Irrigation Season that may be declared by the Water Entity pursuant to clause 8.1(b);
- (b) “the Annual Allocation” for an Irrigation Season means the Annual Allocation determined for that Irrigation Season by the Water Entity under an Irrigation Right;
- (c) “the Applicable Transmission Loss” for a delivery of water made under this agreement means the Transmission Loss incurred by the Water Entity in transporting water from the Delivery Point to the Connection Point at which the water is taken;
- (d) “the BBSY” for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00 am on that day or, if the BBSY is not quoted on that day, at 10.00 am on the last prior day on which it was quoted;
- (e) “a Business Day” means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;

- (f) “Connection Agreement” means a connection agreement between the Water Entity and an owner of land or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (g) “the Connection Points” means points which:
- (i) are the subject of a Connection Agreement;
 - (ii) are in the Nominated Zone; and
 - (iii) are recorded in the Water Entitlements Register as attached to this Zoned Flow Delivery Right;
- (h) “the Customer” means the Customer named in the schedule;
- (i) “the Delivery Point” in respect of a supply of water means:
- (i) if the water is taken through a Connection Point on a pipe forming part of the Scheme, that Connection Point; or
 - (ii) if the water is taken through a Connection Point on a watercourse, the point at which the Water Entity delivers water into that watercourse for the purposes of the supply;
- (j) “Force Majeure” means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (k) “GST” has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
- (l) “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;
- (m) “the holder” of this Zoned Flow Delivery Right means the person registered for the time being in the Water Entitlements Register as the holder of this Zoned Flow Delivery Right;
- (n) “Insolvent” when used with reference to:
- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
 - (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors;
- and “Insolvency” has a corresponding meaning;
- (o) “the Irrigation District” means the Irrigation District specified in the schedule;
- (p) “an Irrigation Right” means an irrigation right granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District;
- (q) “an Irrigation Season” means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws or, if not specified in the Scheme By-Laws, then the Irrigation Season specified in the schedule;
- (r) “the Minimum Pressure” means if the Connection Point is on a pipeline forming part of the Scheme, 5 metres head, otherwise not applicable;
- (s) “the National Water Initiative” means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (t) “the Nominated Zone” means the Zone specified as the Nominated Zone in the schedule;
- (u) “notify” means serve a written notice;
- (v) “the Scheme” means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
- (w) “the Scheme By-Laws” means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
- (x) “the Scheme Zoned Flow Delivery Rights” means all rights to convey water through the Scheme granted by the Water Entity in respect of the Irrigation Scheme;
- (y) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (z) “the Summer Delivery Period” of an Irrigation Season means the period in that Irrigation Season starting on 1 October and ending on the following 31 March;
- (aa) “the Term” means the term specified in the schedule;
- (bb) “the Termination Fee” means:
- (i) if a fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the lesser of that fee as at the date of termination and the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10; or
 - (ii) if no fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10;
- (cc) “the Trading Rules” means the Trading Rules forming annexure 1;
- (dd) “Transmission Loss” means the transmission loss incurred by the Water Entity in transporting water via any watercourse as determined under the applicable watercourse authority held by the Water Entity under Part 6A of the Water Management Act 1999 in respect of that transport;
- (ee) “the Water Entity” means the Water Entity specified in the schedule and any successor as the responsible water entity under the Water Management Act 1999 of the Irrigation District to which the benefit of this agreement has been assigned;

- (ff) “the Water Entitlements Register” means the Water Entitlements Register maintained by the Water Entity in respect of the Irrigation District under section 23(3B) of the Irrigation Clauses Act 1973 and the Trading Rules; “Zone” means a part of the water delivery system of the Irrigation District identified by the Water Entity on the plan of Zones forming part of the Trading Rules as a separate zone for the purpose of granting Zoned Flow Delivery Rights;
- (gg) “this Zoned Flow Delivery Right” means this agreement and the right to convey water through the Scheme conferred on the Customer by this agreement identified by the Serial Number specified in the schedule; and
- (hh) “the Zoned Flow Rate” means the Zoned Flow Rate recorded in the Water Entitlements Register as attaching to this Zoned Flow Delivery Right from time to time being the rate specified in the schedule at the date of this agreement.

1.2 General

In this agreement:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure, or exhibit;
- (f) a recital, schedule, annexure or a description of the parties’ forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and
- (m) a reference to anything (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. The Term

2.1 The term

This agreement commences to apply on the date of this agreement and continues until the earlier of:

- (a) the end of the Term; or

- (b) the date on which this Zoned Flow Delivery Right is terminated under this agreement if that occurs.

2.2 Extension of the Term

- (a) The Water Entity may at any time before the Term ends and before this Zoned Flow Delivery Right is terminated under this agreement extend the Term by the period it notifies to the Customer.
- (b) If, before the Term ends and before this Zoned Flow Delivery Right is terminated under this agreement, the Water Entity is able to obtain an extension of the term applying to the supply of water necessary for the purposes of the Irrigation District (“the extended supply term”) beyond the end of the Term on terms acceptable to the Water Entity in its absolute discretion, the Water Entity must extend the Term until the end of the extended supply term.
- (c) The Water Entity must notify any such extension as early as it reasonably can.

3. This Zoned Flow Delivery Right

3.1 Grant of the Zoned Flow Delivery Right

Subject to the terms of this agreement, the Water Entity grants to the Customer a right for a share of the water delivery capacity of the Scheme to convey water to the Connection Points.

3.2 No right to supply of water

The Customer has no entitlement to be supplied water by the Water Entity unless:

- (a) the Customer holds an Irrigation Right and has an Annual Allocation entitling the supply of the water; and
- (b) the owner of or another person entitled to use the land on which the Connection Point through which water is taken is located or which that Connection Point supplies is a party to a Connection Agreement in respect of the Connection Point.

3.3 Limited right to supply of water

The Customer has no entitlement to be supplied water by the Water Entity at any time at a rate greater than the reasonable capacity of the Connection Points through which the Customer is taking water at that time.

4. Zoned Flow Rate

4.1 Delivery at the Zoned Flow Rate

During the Summer Delivery Period of each Irrigation Season the Water Entity will use reasonable endeavours to procure the delivery of sufficient water to the Delivery Point so that the Customer may take from the Connection Points a daily aggregate quantity of water calculated at the Zoned Flow Rate reduced to allow for the Applicable Transmission Loss (if any) in respect of each taking of water and, if a Minimum Pressure is applicable, at a pressure not less than the Minimum Pressure.

4.2 The Connection Points

At the request of the Customer and subject to the relevant requirements of the Trading Rules, the Water Entity must record in the Water Entitlements Register additional or replacement Connection Points as attached to this Zoned Flow Delivery Right.

4.3 The Customer must not exceed entitlements

The Customer must not take from the Scheme:

- (a) more water in any Irrigation Season than the Customer is entitled to take under an Irrigation Right or any other water right or other agreement with the Water Entity in that Irrigation Season; or
- (b) water at an aggregate flow rate greater than the Zoned Flow Rate reduced to allow the Applicable Transmission Losses (if any) for the delivery of water to the Connection Point at which the water is taken or as allowed under any other agreement with the Water Entity.

5. Quality and use of water

5.1 No warranty by the Water Entity

- (a) The Water Entity makes no warranty to the Customer as to the condition, quality or fitness for purpose of, or any contamination in, any water the Customer takes from the Scheme under this agreement.
- (b) The Customer acknowledges that the Water Entity has no obligation to monitor the condition, quality, fitness for purpose of or any contamination in, the water the Customer takes from the Scheme under this agreement and any such monitoring will not prejudice the rights of the Water Entity or relieve the Customer from its obligations and liabilities under this agreement.

5.2 Customer's risk

The Customer accepts all risk in relation to the condition, quality, fitness for purpose of or any contamination in, any water the Customer takes from the Scheme under this agreement and, to the extent permitted by law, the Customer releases the Water Entity from any loss or damage suffered by the Customer in connection with the condition, quality, fitness for purpose of or any contamination in that water.

5.3 Water taken for use without a Connection Agreement

- (a) If the Customer allows water to be taken by, or supplied to, a person who is not a party to a Connection Agreement with the Water Entity, the Customer accepts all risk in relation to that supply.
- (b) The Customer indemnifies the Water Entity to the maximum extent permitted by law against any liability for any claim, loss or damage suffered by any third party or in connection with:
 - (i) the condition, quality, fitness for purpose of, or any contamination in, water delivered by the Water Entity under this Zoned Flow Delivery Right; or
 - (ii) a breach of clause 5.4 or clause 5.5.

5.4 No domestic use

The Customer must not use any water the Customer takes from the Scheme under this agreement for domestic purposes.

5.5 Applicable law

The Customer must comply with all Statutes, approvals and/or permits applying to the use of any water the Customer takes from the Scheme under this agreement.

6. Tradability

6.1 Dealing

Subject to clause 7, the Customer may deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right in any way that personal property may be dealt with.

6.2 Specific examples

As examples of the Customer's right to deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right, the Customer may do any of the following in respect of those rights:

- (a) trade those rights (on a permanent or temporary basis);
- (b) give or bequeath those rights;
- (c) lease those rights;
- (d) subdivide or amalgamate those rights (subject to the Scheme By-Laws and Trading Rules); and
- (e) mortgage those rights.

6.3 No qualification to hold Zoned Flow Delivery Right

A person need not be an occupier of land in the Irrigation District to take a transfer of or be registered in the Water Entitlements Register as the holder of the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right.

6.4 Can be dealt with separately from an Irrigation Right

The Zoned Flow Rate conferred by this Zoned Flow Delivery Right may be dealt with separately from the rights arising under an Irrigation Right.

7. Transfer of Zoned Flow Rate

7.1 Permitted transfers

Subject to clause 7.2 and the Trading Rules, the Customer may:

- (a) transfer all or part of the Zoned Flow Rate to another person on a temporary or permanent basis; and
- (b) receive transfers of parts of the zoned flow rate attached to Scheme Zoned Flow Delivery Rights as additions to the Zoned Flow Rate.

7.2 Conditions to transfer taking effect

A transfer permitted under clause 7.1 of all or part of the Zoned Flow Rate does not take effect unless and until:

- (a) the transferee has entered an agreement with the Water Entity on the same terms as this agreement or on other terms acceptable to the Water Entity in such manner as the Water Entity reasonably requires;
- (b) it is approved by the Water Entity in accordance with the Trading Rules and clause 7.3 or on other terms acceptable to the Water Entity; and
- (c) unless the transfer is a temporary transfer within an Irrigation Season, it is recorded on the Water Entitlements Register.

7.3 When Water Entity must approve transfer

The Water Entity must approve a transfer permitted under clause 7.1 if:

- (a) the prescribed fee and any other amounts owing to the Water Entity under this Zoned Flow Delivery Right have been paid to the Water Entity; and
- (b) the Water Entity is reasonably satisfied that:
 - (i) the transfer is supported by any information the Trading Rules require for the transfer;
 - (ii) the transfer complies with the requirements of the Trading Rules as they relate specifically to the transfer; and
 - (iii) the transfer is consistent with relevant Statute, the Scheme By-Laws and any relevant water management plan under the Water Management Act 1999.

8. Extension of Delivery Periods

8.1 Ability to extend

The Water Entity may, in its absolute discretion:

- (a) extend the Summer Delivery Period during an Irrigation Season by bringing forward the date on which the Summer Delivery Period is to commence; or
- (b) declare an Additional Delivery Period during an Irrigation Season,

for the purpose of the Irrigation District, on terms acceptable to the Water Entity in its absolute discretion.

8.2 Zoned Flow Delivery Rights

- (a) If the Water Entity extends a Summer Delivery Period during any given Irrigation Season pursuant to clause 8.1(a) then such extension will form part of the Summer Delivery Period and the terms and conditions contained in this Zoned Flow Delivery Right apply;
- (b) In the event that the Water Entity declares an Additional Delivery Period during an Irrigation Season pursuant to clause 8.1(b) then:
 - (i) this Zoned Flow Delivery Right does not apply; and
 - (ii) the Customer must apply to the Water Entity for a right for a share of the water delivery capacity of the Scheme to convey water to the Connection Points for the Additional Delivery Period.

8.3 Extension applies only to the Irrigation Season

If in any given Irrigation Season the Water Entity is able to extend the Summer Delivery Period or declare an Additional Delivery Period then such extension or declaration applies only to that Irrigation Season and does not carry over to any other Irrigation Season unless advised otherwise by the Water Entity in its absolute discretion.

9. Transmission of this Zoned Flow Delivery Right

9.1 Death of a sole Holder of this Zoned Flow Delivery Right

If a sole Customer dies, the Water Entity must recognise the legal personal representatives of the deceased Customer as the only persons having any title to this Zoned Flow Delivery Right.

9.2 Death of a joint Customer

If one of joint Customers dies, the Water Entity must recognise the survivors or survivor of them or the legal personal representatives of the deceased survivor of them as the only persons having any title to this Zoned Flow Delivery Right.

9.3 Where a Customer is under disability

Any of the following people:

- (a) any person entitled to this Zoned Flow Delivery Right in consequence of the Insolvency of a Customer;
- (b) the legal personal representatives of a deceased Customer;
- (c) the beneficiaries of a deceased Customer becoming entitled to this Zoned Flow Delivery Right under the will of the deceased Customer or the next of kin of a deceased Customer entitled to this Zoned Flow Delivery Right on an intestacy; and
- (d) any person having authority in law to manage the affairs of a Customer who by reason of mental or physical infirmity is unable to manage his affairs,

may, on producing such evidence as to his or their status or authority as the Water Entity requires, deal with the Zoned Flow Rate in the same manner as the Customer could have if the Customer had been alive or capable of dealing with the Zoned Flow Rate.

9.4 Appointment of new trustee

Where the Customer establishes to the satisfaction of the Water Entity that it holds this Zoned Flow Delivery Right as trustee, the Customer may transfer this Zoned Flow Delivery Right to any new trustee of the same trust.

10. Ownership of this Zoned Flow Delivery Right

10.1 The Water Entitlements Register

- (a) This Zoned Flow Delivery Right will be registered on the Water Entitlements Register in respect of the Zoned Flow Rate from time to time.
- (b) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of all or any part of the Zoned Flow Rate, or any security interest held in this Zoned Flow Delivery Right that is:
 - (i) notified to the Water Entity by the Customer or a security interest holder as the case may be; and
 - (ii) evidenced to the extent and in the manner as required by the Trading Rules.
- (c) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of this Zoned Flow Delivery Right permitted by this agreement by registering the transferee as the Customer where the transfer is:
 - (i) notified to the Water Entity; and
 - (ii) evidenced to the extent and in the manner as required by the Water Entity.
- (d) No person has any of the rights of the Customer under this Zoned Flow Delivery Right until this Zoned Flow Delivery Right is recorded in the Water Entitlements Register and the person is recorded in the Water Entitlements Register as the Customer.
- (e) No change in the Zoned Flow Rate takes effect until the new Zoned Flow Rate is recorded in the Water Entitlements Register.

10.2 Absolute owner

- (a) Subject to this agreement, the Water Entity will be entitled to treat the person who is registered in the Water Entitlements Register as the Customer as the absolute owner of this Zoned Flow Delivery Right.
- (b) Except if required by this agreement, by law or by order of a court, the Water Entity must not recognise any equitable or other claim to or interest in this Zoned Flow Delivery Right on the part of any person unless recorded in the Water Entitlements Register even if the Water Entity has notice of the claim or interest.

11. Charge over Zoned Flow Delivery Right

11.1 The charge

The Customer charges all its rights under this agreement with the payment of all money becoming due by the Customer to the Water Entity under this agreement.

11.2 Priority of charge

The charge is a first ranking charge.

11.3 Dealings free of the charge

When permitted to deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right, the Customer may do so free of this charge.

11.4 Registration of charge

The Water Entity may register the charge over this Zoned Flow Delivery Right created by this agreement on the Water Entitlements Register.

12. Voluntary termination of Zoned Flow Delivery Right

12.1 Right to terminate

The Customer may terminate or surrender this Zoned Flow Delivery Right at any time subject to paying the Termination Fee to the Water Entity.

12.2 Liability for accrued charges

Where this Zoned Flow Delivery Right is terminated or surrendered any obligation to pay amounts accruing from and after the date of termination in connection with this Zoned Flow Delivery Right is cancelled. However, the Customer will remain liable to the Water Entity for any amounts accrued up to the date of termination.

13. Pricing and payment

13.1 Liability for charges, fees and rates

The Customer must pay to the Water Entity such charges as are determined by the Water Entity from time to time pursuant to the Scheme By-Laws or as specified in the Zoned Flow Delivery Right.

13.2 Basis for pricing

Pricing will be based on:

- (a) a rate per ML per day of the Zoned Flow Rate; and
- (b) a rate per ML of water which is actually delivered to or drawn by the Customer in accordance with this Zoned Flow Delivery Right.

13.3 Determination of quantity of water

The quantity of water drawn, dates and times and other information obtained from the meters and measurements of the Water Entity will be deemed to be accurate and correct unless proved otherwise by the Customer.

13.4 Payment

The Customer must pay all amounts becoming payable by the Customer to the Water Entity under this agreement within thirty (30) calendar days of receipt of an invoice and in the manner specified by the Water Entity from time to time.

13.5 No set off

All amounts payable by the Customer under this agreement must be paid free of any set-off or counterclaim.

13.6 Interest

- (a) The Customer must pay interest to the Water Entity when the Water Entity demands:
 - (i) on any money which the Customer must pay to the Water Entity under this agreement and which the Customer does not pay by the due date;
 - (ii) at such rate as is determined by the Water Entity from time to time pursuant to the Scheme By-Laws or in the absence of any such determination at the rate two per cent (2%) per annum above the BBSY; and
 - (iii) from the due date until the Customer pays the money.

- (b) The Water Entity retains any other rights it may have against the Customer even though the Customer must pay interest.

13.7 Recovery of collection costs

If payment of the amounts payable under this Zoned Flow Delivery Right ("the debt") remain outstanding for a reasonable time, as determined by Tasmanian Irrigation in its absolute discretion, then:

- (a) Tasmanian Irrigation may lodge the debt with a mercantile agent for recovery; and
- (b) the Purchaser must pay all legal costs and disbursements incurred by Tasmanian Irrigation in the recovery of the debt.

13.8 Failure of delivery

If the Water Entity is unable to deliver water to the Connection Points for a continuous period of ninety (90) days as a result of any event of Force Majeure or the failure of Water Entity to hold the necessary permits, the charge imposed under clause 13.2(a) will be rebated for the period in which water can not be delivered.

14. Metering and Measuring

14.1 Water Entity may install a meter

The Water Entity may at any time install a meter at a Connection Point.

14.2 Must not by pass meter

If a meter is installed by the Water Entity, the Customer may only take water through that meter.

15. Delivery interruptions

15.1 Right to stop or reduce delivery

The Water Entity may stop or reduce the water made available under this Zoned Flow Delivery Right or the pressure at which the water is made available for the following reasons:

- (a) where water is delivered partly or wholly by pipeline, the design and/or construction of the pipeline (including any communication pipeline) causing a reduction in the expected flow rate or pressure of the pipeline;
- (b) the Customer requests a reduced delivery;
- (c) if the Water Entity is aware that the water is, or may reasonably be considered to be, contaminated and is likely to have an adverse effect on any of the environment, the land on which the water is used or its produce, humans, animals or any other property;
- (d) any event of Force Majeure;
- (e) maintenance, inspection, cleaning, repairs or other works in relation to the pipeline or other means of delivery; or
- (f) the Water Entity does not have the necessary licences, permits, approvals or renewals in order to take, transport or deliver water to the Customer as contemplated by this Zoned Flow Delivery Right.

15.2 Overcoming Force Majeure

Where the Water Entity stops or reduces the water made available under this Zoned Flow Delivery Right because of Force Majeure, the Water Entity must do everything it reasonably can to overcome or remove the Force Majeure as quickly as possible, however, the Water Entity need not:

- (a) settle any strike or other labour dispute on terms contrary to its wishes; or

- (b) contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.

16. Change of Responsible Water Entity

Where the Water Entity is replaced as the responsible water entity within the meaning of Part 9 of the Water Management Act 1999 for the Irrigation District, the Water Entity:

- (a) may, without needing any consent from the Customer, assign or novate its rights under this agreement to the replacement responsible water entity subject to the replacement responsible water entity assuming obligations in favour of the Customer on the terms of this agreement as if it were the Water Entity named in this agreement; and
- (b) on such assignment or novation, will be taken to be released from all its obligations under this agreement.

17. Customer's warranty

The Customer warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

18. Insolvency of the Customer

At any time when the Customer is Insolvent, the Water Entity may suspend any or all of the rights of the Customer under this Zoned Flow Delivery Right without prejudice to any other rights the Water Entity may have under this agreement or otherwise.

19. Default and Termination

19.1 Customer's additional obligations

The Customer must not:

- (a) deal with this Zoned Flow Delivery Right in any manner contrary to the terms of this Zoned Flow Delivery Right;
- (b) wrongfully take, use or divert any water from the Scheme except with the prior express written consent of the Water Entity or cause (or allow to be caused) any damage to any part of the Scheme;
- (c) fail to pay to the Water Entity, as and when required under this Zoned Flow Delivery Right, such rates, fees and charges that are payable by the Customer;
- (d) fail to allow the Water Entity, its officers, servants, contractors and agents access to the land where the water taken under this Zoned Flow Delivery Right is to be used at all reasonable times for the purposes of inspection, construction or maintenance of the Scheme or any of the Water Entity's infrastructure not forming part of the Scheme, or for performing the Water Entity's role in relation to the Irrigation District; or
- (e) fail to comply at all times with the Scheme By-Laws and the provisions of this Zoned Flow Delivery Right.

19.2 Cure notice

If the Customer breaches any term of this Zoned Flow Delivery Right, then without prejudice to any other rights the Water Entity may have under this agreement or otherwise:

- (a) the Water Entity may give the Customer (and any other party with a registered interest in this Zoned Flow Delivery Right) a "cure notice"; and
- (b) the Customer must remedy the breach within the "cure period" stated in the cure notice.

19.3 Cure period

The cure period stated in the cure notice must be reasonable having regard to the nature of the breach and (other than in relation to non-payment) must be at least twenty eight (28) calendar days.

19.4 Failure to comply with cure notice

If the breach specified in a cure notice has not been cured by (or on behalf of) the Customer within the cure period, the Water Entity may take one or more of the following steps:

- (a) with notice to the Customer, step in and cure the Customer's breach (and recover the costs of doing so as a debt that is due and payable by the Customer);
- (b) suspend any or all of the rights of the Customer under this Zoned Flow Delivery Right; and
- (c) terminate this Zoned Flow Delivery Right and if it does so require payment of the Termination Fee.

19.5 Water Entity's costs

The Customer must pay to the Water Entity the amount of all moneys or expenses incurred or loss or damage suffered by the Water Entity as a result of the breach specified in the cure notice including the cost of ascertaining and remedying the breach.

20. Liability

20.1 Circumstances where Water Entity is not liable

The Water Entity will not be liable to the Customer for any loss or damage in connection with a failure by the Water Entity to deliver water under this Zoned Flow Delivery Right in the following circumstances:

- (a) to the extent that the Customer does not have the right to a supply of the water under an Irrigation Right;
- (b) if despite using reasonable endeavours the Scheme cannot deliver water to a Connection Point at the Zoned Flow Rate or the Minimum Pressure;
- (c) where delivery is interrupted by routine inspection, maintenance and repairs (where a minimum of seven (7) calendar days notice is given);
- (d) as a result of any event of Force Majeure;
- (e) any situation or event dangerous to people, property, animals or the environment;
- (f) the Connection Agreement in relation to a Connection Point has been terminated; or
- (g) as a result of a failure, defect, or damage in the infrastructure of the Customer (or the holder of the land on which a Connection Point is situated) which is connected to a Connection Point.

20.2 No liability for consequential loss

The Water Entity has no liability to the Customer, nor will the Customer be entitled to claim, in respect of any indirect or consequential losses (including any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue).

20.3 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Customer in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Customer to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 20.3(a) does not apply to the extent that the Water Entity is indemnified by insurance.

- (c) In this clause 20.3 “Claim” means any claim made by the Customer against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

21. Dispute resolution

21.1 Process for resolution

If any dispute or difference between the Customer and the Water Entity arises out of this Zoned Flow Delivery Right:

- (a) either the Customer or the Water Entity may notify the other party of the dispute or difference and invoke this clause 21.1;
- (b) the Customer and the Water Entity must within fourteen (14) calendar days after the notice referred to in clause 21.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 21.1(b) or the meeting has not taken place within fourteen (14) calendar days after the notice referred to in clause 21.1(a) is given, either the Customer or the Water Entity may refer the dispute or difference to an independent expert mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference can not be resolved by mediation, the dispute may be referred to litigation by either party.

21.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this Zoned Flow Delivery Right.

21.3 Right to seek interlocutory relief

Nothing in this clause 21 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

22. Variation of this agreement by the Water Entity

22.1 Right to vary

The Water Entity may amend this agreement by notice in writing to the Customer where the Water Entity considers in good faith that:

- (a) an amendment will not materially change the terms and conditions of this agreement;
- (b) to comply with a Statute; or
- (c) as a result of a change to, or replacement of, the National Water Initiative.

22.2 Effect of variation

The agreement will apply as varied with effect from the date the notice required under clause 22.1 is given.

23. Notices

23.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party’s address; or
- (b) sent by pre-paid mail to that party’s postal address.

23.2 Receipt of notice

A notice given to a party under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the party’s address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party’s postal address).

23.3 Addresses

For the purpose of giving notices under this agreement:

- (a) each party’s address is the address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement; and
- (b) each party’s postal address is the postal address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement but, if no postal address is specified in the Water Entitlements Register, is that person’s address.

24. General

24.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement or the Scheme By-Laws are expressed exclusive of GST.
- (b) Where the Water Entity makes a taxable supply to the Customer under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) the Water Entity must provide a tax invoice to the Customer in respect of the taxable supply as required by the GST Act.

24.2 Government fees

The Customer must pay all fees, duties, taxes and other charges imposed by any government body in respect of this agreement or any transaction contemplated by this agreement.

24.3 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

24.4 Survival

Clauses 12.2, 13, 19.5 and 20 will survive termination of this agreement.

24.5 Variation and waiver

Other than variations made under clause 22, no variation or waiver of, or any consent to any departure by a party from, a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

24.6 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

24.7 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

24.8 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties

and a warranty, representation, guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

24.9 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

24.10 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

24.11 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

Annexure 3 – Zoned Flow Delivery Right Don Irrigation District

The Schedule

| | |
|------------------------------------|---|
| Serial number | |
| Irrigation District | Don Irrigation District |
| The Water Entity | Tasmanian Irrigation Pty Ltd ACN 133 148 384 |
| Address of the Water Entity | Level 2 Terminal Building Launceston Airport Western Junction Tasmania |
| Postal Address of the Water Entity | PO Box 84 Evandale TAS 7212 |
| The Customer | |
| Address of the Customer | |
| Postal Address of the Customer | |
| The Zoned Flow Rate | |
| The Nominated Zone | |
| Term | From the date of this agreement extending until forty (40) years after Commissioning as extended under clause 2.2 |
| Irrigation Season | Each period commencing on 1 October and ending on the following 31 March |

Parties

1. **THE WATER ENTITY** named in the schedule (“the Water Entity”)
2. **THE CUSTOMER** named in the schedule (“the Customer”)

Background

1. The Water Entity is the responsible water entity under the Water Management Act 1999 and the undertaker under the Irrigation Clauses Act 1973 for the Irrigation District.
2. This agreement sets out the terms on which the Customer will be entitled to convey water that the Customer is otherwise entitled to through the Scheme to the Connection Points.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) “Additional Delivery Period” means a period in an Irrigation Season that may be declared by the Water Entity pursuant to clause 8.1(b);
- (b) “the Annual Allocation” for an Irrigation Season means the Annual Allocation determined for that Irrigation Season by the Water Entity under an Irrigation Right;
- (c) “the Applicable Transmission Loss” for a delivery of water made under this agreement means the Transmission Loss incurred by the Water Entity in transporting water from the Delivery Point to the Connection Point at which the water is taken;
- (d) “the BBSY” for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00 am on that day or, if the BBSY is not quoted on that day, at 10.00 am on the last prior day on which it was quoted;
- (e) “a Business Day” means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;

- (f) “Connection Agreement” means a connection agreement between the Water Entity and an owner of land or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (g) “the Connection Points” means points which:
- (i) are the subject of a Connection Agreement;
 - (ii) are in the Nominated Zone; and
 - (iii) are recorded in the Water Entitlements Register as attached to this Zoned Flow Delivery Right;
- (h) “the Customer” means the Customer named in the schedule;
- (i) “the Delivery Point” in respect of a supply of water means:
- (i) if the water is taken through a Connection Point on a pipe forming part of the Scheme, that Connection Point; or
 - (ii) if the water is taken through a Connection Point on a watercourse, the point at which the Water Entity delivers water into that watercourse for the purposes of the supply;
- (j) “Force Majeure” means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (k) “GST” has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
- (l) “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;
- (m) “the holder” of this Zoned Flow Delivery Right means the person registered for the time being in the Water Entitlements Register as the holder of this Zoned Flow Delivery Right;
- (n) “Insolvent” when used with reference to:
- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
 - (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors;
- and “Insolvency” has a corresponding meaning;
- (o) “the Irrigation District” means the Irrigation District specified in the schedule;
- (p) “an Irrigation Right” means an irrigation right granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District;
- (q) “an Irrigation Season” means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws or, if not specified in the Scheme By-Laws, then the Irrigation Season specified in the schedule;
- (r) “the Minimum Pressure” means if the Connection Point is on a pipeline forming part of the Scheme, 5 metres head, otherwise not applicable;
- (s) “the National Water Initiative” means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (t) “the Nominated Zone” means the Zone specified as the Nominated Zone in the schedule;
- (u) “notify” means serve a written notice;
- (v) “the Scheme” means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
- (w) “the Scheme By-Laws” means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
- (x) “the Scheme Zoned Flow Delivery Rights” means all rights to convey water through the Scheme granted by the Water Entity in respect of the Irrigation Scheme;
- (y) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (z) “the Summer Delivery Period” of an Irrigation Season means the period in that Irrigation Season starting on 1 October and ending on the following 31 March;
- (aa) “the Term” means the term specified in the schedule;
- (bb) “the Termination Fee” means:
- (i) if a fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the lesser of that fee as at the date of termination and the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10; or
 - (ii) if no fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10;
- (cc) “the Trading Rules” means the Trading Rules forming annexure 1;
- (dd) “Transmission Loss” means the transmission loss incurred by the Water Entity in transporting water via any watercourse as determined under the applicable watercourse authority held by the Water Entity under Part 6A of the Water Management Act 1999 in respect of that transport;
- (ee) “the Water Entity” means the Water Entity specified in the schedule and any successor as the responsible water entity under the Water Management Act 1999 of the Irrigation District to which the benefit of this agreement has been assigned;

- (ff) “the Water Entitlements Register” means the Water Entitlements Register maintained by the Water Entity in respect of the Irrigation District under section 23(3B) of the Irrigation Clauses Act 1973 and the Trading Rules; “Zone” means a part of the water delivery system of the Irrigation District identified by the Water Entity on the plan of Zones forming part of the Trading Rules as a separate zone for the purpose of granting Zoned Flow Delivery Rights;
- (gg) “this Zoned Flow Delivery Right” means this agreement and the right to convey water through the Scheme conferred on the Customer by this agreement identified by the Serial Number specified in the schedule; and
- (hh) “the Zoned Flow Rate” means the Zoned Flow Rate recorded in the Water Entitlements Register as attaching to this Zoned Flow Delivery Right from time to time being the rate specified in the schedule at the date of this agreement.

1.2 General

In this agreement:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure, or exhibit;
- (f) a recital, schedule, annexure or a description of the parties’ forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and
- (m) a reference to anything (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. The Term

2.1 The term

This agreement commences to apply on the date of this agreement and continues until the earlier of:

- (a) the end of the Term; or

- (b) the date on which this Zoned Flow Delivery Right is terminated under this agreement if that occurs.

2.2 Extension of the Term

- (a) The Water Entity may at any time before the Term ends and before this Zoned Flow Delivery Right is terminated under this agreement extend the Term by the period it notifies to the Customer.
- (b) If, before the Term ends and before this Zoned Flow Delivery Right is terminated under this agreement, the Water Entity is able to obtain an extension of the term applying to the supply of water necessary for the purposes of the Irrigation District (“the extended supply term”) beyond the end of the Term on terms acceptable to the Water Entity in its absolute discretion, the Water Entity must extend the Term until the end of the extended supply term.
- (c) The Water Entity must notify any such extension as early as it reasonably can.

3. This Zoned Flow Delivery Right

3.1 Grant of the Zoned Flow Delivery Right

Subject to the terms of this agreement, the Water Entity grants to the Customer a right for a share of the water delivery capacity of the Scheme to convey water to the Connection Points.

3.2 No right to supply of water

The Customer has no entitlement to be supplied water by the Water Entity unless:

- (a) the Customer holds an Irrigation Right and has an Annual Allocation entitling the supply of the water; and
- (b) the owner of or another person entitled to use the land on which the Connection Point through which water is taken is located or which that Connection Point supplies is a party to a Connection Agreement in respect of the Connection Point.

3.3 Limited right to supply of water

The Customer has no entitlement to be supplied water by the Water Entity at any time at a rate greater than the reasonable capacity of the Connection Points through which the Customer is taking water at that time.

4. Zoned Flow Rate

4.1 Delivery at the Zoned Flow Rate

During the Summer Delivery Period of each Irrigation Season the Water Entity will use reasonable endeavours to procure the delivery of sufficient water to the Delivery Point so that the Customer may take from the Connection Points a daily aggregate quantity of water calculated at the Zoned Flow Rate reduced to allow for the Applicable Transmission Loss (if any) in respect of each taking of water and, if a Minimum Pressure is applicable, at a pressure not less than the Minimum Pressure.

4.2 The Connection Points

At the request of the Customer and subject to the relevant requirements of the Trading Rules, the Water Entity must record in the Water Entitlements Register additional or replacement Connection Points as attached to this Zoned Flow Delivery Right.

4.3 The Customer must not exceed entitlements

The Customer must not take from the Scheme:

- (a) more water in any Irrigation Season than the Customer is entitled to take under an Irrigation Right or any other water right or other agreement with the Water Entity in that Irrigation Season; or
- (b) water at an aggregate flow rate greater than the Zoned Flow Rate reduced to allow the Applicable Transmission Losses (if any) for the delivery of water to the Connection Point at which the water is taken or as allowed under any other agreement with the Water Entity.

5. Quality and use of water

5.1 No warranty by the Water Entity

- (a) The Water Entity makes no warranty to the Customer as to the condition, quality or fitness for purpose of, or any contamination in, any water the Customer takes from the Scheme under this agreement.
- (b) The Customer acknowledges that the Water Entity has no obligation to monitor the condition, quality, fitness for purpose of or any contamination in, the water the Customer takes from the Scheme under this agreement and any such monitoring will not prejudice the rights of the Water Entity or relieve the Customer from its obligations and liabilities under this agreement.

5.2 Customer's risk

The Customer accepts all risk in relation to the condition, quality, fitness for purpose of or any contamination in, any water the Customer takes from the Scheme under this agreement and, to the extent permitted by law, the Customer releases the Water Entity from any loss or damage suffered by the Customer in connection with the condition, quality, fitness for purpose of or any contamination in that water.

5.3 Water taken for use without a Connection Agreement

- (a) If the Customer allows water to be taken by, or supplied to, a person who is not a party to a Connection Agreement with the Water Entity, the Customer accepts all risk in relation to that supply.
- (b) The Customer indemnifies the Water Entity to the maximum extent permitted by law against any liability for any claim, loss or damage suffered by any third party or in connection with:
 - (i) the condition, quality, fitness for purpose of, or any contamination in, water delivered by the Water Entity under this Zoned Flow Delivery Right; or
 - (ii) a breach of clause 5.4 or clause 5.5.

5.4 No domestic use

The Customer must not use any water the Customer takes from the Scheme under this agreement for domestic purposes.

5.5 Applicable law

The Customer must comply with all Statutes, approvals and/or permits applying to the use of any water the Customer takes from the Scheme under this agreement.

6. Tradability

6.1 Dealing

Subject to clause 7, the Customer may deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right in any way that personal property may be dealt with.

6.2 Specific examples

As examples of the Customer's right to deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right, the Customer may do any of the following in respect of those rights:

- (a) trade those rights (on a permanent or temporary basis);
- (b) give or bequeath those rights;
- (c) lease those rights;
- (d) subdivide or amalgamate those rights (subject to the Scheme By-Laws and Trading Rules); and
- (e) mortgage those rights.

6.3 No qualification to hold Zoned Flow Delivery Right

A person need not be an occupier of land in the Irrigation District to take a transfer of or be registered in the Water Entitlements Register as the holder of the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right.

6.4 Can be dealt with separately from an Irrigation Right

The Zoned Flow Rate conferred by this Zoned Flow Delivery Right may be dealt with separately from the rights arising under an Irrigation Right.

7. Transfer of Zoned Flow Rate

7.1 Permitted transfers

Subject to clause 7.2 and the Trading Rules, the Customer may:

- (a) transfer all or part of the Zoned Flow Rate to another person on a temporary or permanent basis; and
- (b) receive transfers of parts of the zoned flow rate attached to Scheme Zoned Flow Delivery Rights as additions to the Zoned Flow Rate.

7.2 Conditions to transfer taking effect

A transfer permitted under clause 7.1 of all or part of the Zoned Flow Rate does not take effect unless and until:

- (a) the transferee has entered an agreement with the Water Entity on the same terms as this agreement or on other terms acceptable to the Water Entity in such manner as the Water Entity reasonably requires;
- (b) it is approved by the Water Entity in accordance with the Trading Rules and clause 7.3 or on other terms acceptable to the Water Entity; and
- (c) unless the transfer is a temporary transfer within an Irrigation Season, it is recorded on the Water Entitlements Register.

7.3 When Water Entity must approve transfer

The Water Entity must approve a transfer permitted under clause 7.1 if:

- (a) the prescribed fee and any other amounts owing to the Water Entity under this Zoned Flow Delivery Right have been paid to the Water Entity; and
- (b) the Water Entity is reasonably satisfied that:
 - (i) the transfer is supported by any information the Trading Rules require for the transfer;
 - (ii) the transfer complies with the requirements of the Trading Rules as they relate specifically to the transfer; and
 - (iii) the transfer is consistent with relevant Statute, the Scheme By-Laws and any relevant water management plan under the Water Management Act 1999.

8. Extension of Delivery Periods

8.1 Ability to extend

The Water Entity may, in its absolute discretion:

- (a) extend the Summer Delivery Period during an Irrigation Season by bringing forward the date on which the Summer Delivery Period is to commence; or
- (b) declare an Additional Delivery Period during an Irrigation Season,

for the purpose of the Irrigation District, on terms acceptable to the Water Entity in its absolute discretion.

8.2 Zoned Flow Delivery Rights

- (a) If the Water Entity extends a Summer Delivery Period during any given Irrigation Season pursuant to clause 8.1(a) then such extension will form part of the Summer Delivery Period and the terms and conditions contained in this Zoned Flow Delivery Right apply;
- (b) In the event that the Water Entity declares an Additional Delivery Period during an Irrigation Season pursuant to clause 8.1(b) then:
 - (i) this Zoned Flow Delivery Right does not apply; and
 - (ii) the Customer must apply to the Water Entity for a right for a share of the water delivery capacity of the Scheme to convey water to the Connection Points for the Additional Delivery Period.

8.3 Extension applies only to the Irrigation Season

If in any given Irrigation Season the Water Entity is able to extend the Summer Delivery Period or declare an Additional Delivery Period then such extension or declaration applies only to that Irrigation Season and does not carry over to any other Irrigation Season unless advised otherwise by the Water Entity in its absolute discretion.

9. Transmission of this Zoned Flow Delivery Right

9.1 Death of a sole Holder of this Zoned Flow Delivery Right

If a sole Customer dies, the Water Entity must recognise the legal personal representatives of the deceased Customer as the only persons having any title to this Zoned Flow Delivery Right.

9.2 Death of a joint Customer

If one of joint Customers dies, the Water Entity must recognise the survivors or survivor of them or the legal personal representatives of the deceased survivor of them as the only persons having any title to this Zoned Flow Delivery Right.

9.3 Where a Customer is under disability

Any of the following people:

- (a) any person entitled to this Zoned Flow Delivery Right in consequence of the Insolvency of a Customer;
- (b) the legal personal representatives of a deceased Customer;
- (c) the beneficiaries of a deceased Customer becoming entitled to this Zoned Flow Delivery Right under the will of the deceased Customer or the next of kin of a deceased Customer entitled to this Zoned Flow Delivery Right on an intestacy; and
- (d) any person having authority in law to manage the affairs of a Customer who by reason of mental or physical infirmity is unable to manage his affairs,

may, on producing such evidence as to his or their status or authority as the Water Entity requires, deal with the Zoned Flow Rate in the same manner as the Customer could have if the Customer had been alive or capable of dealing with the Zoned Flow Rate.

9.4 Appointment of new trustee

Where the Customer establishes to the satisfaction of the Water Entity that it holds this Zoned Flow Delivery Right as trustee, the Customer may transfer this Zoned Flow Delivery Right to any new trustee of the same trust.

10. Ownership of this Zoned Flow Delivery Right

10.1 The Water Entitlements Register

- (a) This Zoned Flow Delivery Right will be registered on the Water Entitlements Register in respect of the Zoned Flow Rate from time to time.
- (b) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of all or any part of the Zoned Flow Rate, or any security interest held in this Zoned Flow Delivery Right that is:
 - (i) notified to the Water Entity by the Customer or a security interest holder as the case may be; and
 - (ii) evidenced to the extent and in the manner as required by the Trading Rules.
- (c) Subject to compliance with the Trading Rules, the Water Entity will register on the Water Entitlements Register any transfer of this Zoned Flow Delivery Right permitted by this agreement by registering the transferee as the Customer where the transfer is:
 - (i) notified to the Water Entity; and
 - (ii) evidenced to the extent and in the manner as required by the Water Entity.
- (d) No person has any of the rights of the Customer under this Zoned Flow Delivery Right until this Zoned Flow Delivery Right is recorded in the Water Entitlements Register and the person is recorded in the Water Entitlements Register as the Customer.
- (e) No change in the Zoned Flow Rate takes effect until the new Zoned Flow Rate is recorded in the Water Entitlements Register.

10.2 Absolute owner

- (a) Subject to this agreement, the Water Entity will be entitled to treat the person who is registered in the Water Entitlements Register as the Customer as the absolute owner of this Zoned Flow Delivery Right.
- (b) Except if required by this agreement, by law or by order of a court, the Water Entity must not recognise any equitable or other claim to or interest in this Zoned Flow Delivery Right on the part of any person unless recorded in the Water Entitlements Register even if the Water Entity has notice of the claim or interest.

11. Charge over Zoned Flow Delivery Right

11.1 The charge

The Customer charges all its rights under this agreement with the payment of all money becoming due by the Customer to the Water Entity under this agreement.

11.2 Priority of charge

The charge is a first ranking charge.

11.3 Dealings free of the charge

When permitted to deal with the rights to the Zoned Flow Rate conferred by this Zoned Flow Delivery Right, the Customer may do so free of this charge.

11.4 Registration of charge

The Water Entity may register the charge over this Zoned Flow Delivery Right created by this agreement on the Water Entitlements Register.

12. Voluntary termination of Zoned Flow Delivery Right

12.1 Right to terminate

The Customer may terminate or surrender this Zoned Flow Delivery Right at any time subject to paying the Termination Fee to the Water Entity.

12.2 Liability for accrued charges

Where this Zoned Flow Delivery Right is terminated or surrendered any obligation to pay amounts accruing from and after the date of termination in connection with this Zoned Flow Delivery Right is cancelled. However, the Customer will remain liable to the Water Entity for any amounts accrued up to the date of termination.

13. Pricing and payment

13.1 Liability for charges, fees and rates

The Customer must pay to the Water Entity such charges as are determined by the Water Entity from time to time pursuant to the Scheme By-Laws or as specified in the Zoned Flow Delivery Right.

13.2 Basis for pricing

Pricing will be based on:

- (a) a rate per ML per day of the Zoned Flow Rate; and
- (b) a rate per ML of water which is actually delivered to or drawn by the Customer in accordance with this Zoned Flow Delivery Right.

13.3 Determination of quantity of water

The quantity of water drawn, dates and times and other information obtained from the meters and measurements of the Water Entity will be deemed to be accurate and correct unless proved otherwise by the Customer.

13.4 Payment

The Customer must pay all amounts becoming payable by the Customer to the Water Entity under this agreement within thirty (30) calendar days of receipt of an invoice and in the manner specified by the Water Entity from time to time.

13.5 No set off

All amounts payable by the Customer under this agreement must be paid free of any set-off or counterclaim.

13.6 Interest

- (a) The Customer must pay interest to the Water Entity when the Water Entity demands:
 - (i) on any money which the Customer must pay to the Water Entity under this agreement and which the Customer does not pay by the due date;
 - (ii) at such rate as is determined by the Water Entity from time to time pursuant to the Scheme By-Laws or in the absence of any such determination at the rate two per cent (2%) per annum above the BBSY; and
 - (iii) from the due date until the Customer pays the money.

- (b) The Water Entity retains any other rights it may have against the Customer even though the Customer must pay interest.

13.7 Recovery of collection costs

If payment of the amounts payable under this Zoned Flow Delivery Right ("the debt") remain outstanding for a reasonable time, as determined by Tasmanian Irrigation in its absolute discretion, then:

- (a) Tasmanian Irrigation may lodge the debt with a mercantile agent for recovery; and
- (b) the Purchaser must pay all legal costs and disbursements incurred by Tasmanian Irrigation in the recovery of the debt.

13.8 Failure of delivery

If the Water Entity is unable to deliver water to the Connection Points for a continuous period of ninety (90) days as a result of any event of Force Majeure or the failure of Water Entity to hold the necessary permits, the charge imposed under clause 13.2(a) will be rebated for the period in which water can not be delivered.

14. Metering and Measuring

14.1 Water Entity may install a meter

The Water Entity may at any time install a meter at a Connection Point.

14.2 Must not by pass meter

If a meter is installed by the Water Entity, the Customer may only take water through that meter.

15. Delivery interruptions

15.1 Right to stop or reduce delivery

The Water Entity may stop or reduce the water made available under this Zoned Flow Delivery Right or the pressure at which the water is made available for the following reasons:

- (a) where water is delivered partly or wholly by pipeline, the design and/or construction of the pipeline (including any communication pipeline) causing a reduction in the expected flow rate or pressure of the pipeline;
- (b) the Customer requests a reduced delivery;
- (c) if the Water Entity is aware that the water is, or may reasonably be considered to be, contaminated and is likely to have an adverse effect on any of the environment, the land on which the water is used or its produce, humans, animals or any other property;
- (d) any event of Force Majeure;
- (e) maintenance, inspection, cleaning, repairs or other works in relation to the pipeline or other means of delivery; or
- (f) the Water Entity does not have the necessary licences, permits, approvals or renewals in order to take, transport or deliver water to the Customer as contemplated by this Zoned Flow Delivery Right.

15.2 Overcoming Force Majeure

Where the Water Entity stops or reduces the water made available under this Zoned Flow Delivery Right because of Force Majeure, the Water Entity must do everything it reasonably can to overcome or remove the Force Majeure as quickly as possible, however, the Water Entity need not:

- (a) settle any strike or other labour dispute on terms contrary to its wishes; or

- (b) contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.

16. Change of Responsible Water Entity

Where the Water Entity is replaced as the responsible water entity within the meaning of Part 9 of the Water Management Act 1999 for the Irrigation District, the Water Entity:

- (a) may, without needing any consent from the Customer, assign or novate its rights under this agreement to the replacement responsible water entity subject to the replacement responsible water entity assuming obligations in favour of the Customer on the terms of this agreement as if it were the Water Entity named in this agreement; and
- (b) on such assignment or novation, will be taken to be released from all its obligations under this agreement.

17. Customer's warranty

The Customer warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

18. Insolvency of the Customer

At any time when the Customer is Insolvent, the Water Entity may suspend any or all of the rights of the Customer under this Zoned Flow Delivery Right without prejudice to any other rights the Water Entity may have under this agreement or otherwise.

19. Default and Termination

19.1 Customer's additional obligations

The Customer must not:

- (a) deal with this Zoned Flow Delivery Right in any manner contrary to the terms of this Zoned Flow Delivery Right;
- (b) wrongfully take, use or divert any water from the Scheme except with the prior express written consent of the Water Entity or cause (or allow to be caused) any damage to any part of the Scheme;
- (c) fail to pay to the Water Entity, as and when required under this Zoned Flow Delivery Right, such rates, fees and charges that are payable by the Customer;
- (d) fail to allow the Water Entity, its officers, servants, contractors and agents access to the land where the water taken under this Zoned Flow Delivery Right is to be used at all reasonable times for the purposes of inspection, construction or maintenance of the Scheme or any of the Water Entity's infrastructure not forming part of the Scheme, or for performing the Water Entity's role in relation to the Irrigation District; or
- (e) fail to comply at all times with the Scheme By-Laws and the provisions of this Zoned Flow Delivery Right.

19.2 Cure notice

If the Customer breaches any term of this Zoned Flow Delivery Right, then without prejudice to any other rights the Water Entity may have under this agreement or otherwise:

- (a) the Water Entity may give the Customer (and any other party with a registered interest in this Zoned Flow Delivery Right) a "cure notice"; and
- (b) the Customer must remedy the breach within the "cure period" stated in the cure notice.

19.3 Cure period

The cure period stated in the cure notice must be reasonable having regard to the nature of the breach and (other than in relation to non-payment) must be at least twenty eight (28) calendar days.

19.4 Failure to comply with cure notice

If the breach specified in a cure notice has not been cured by (or on behalf of) the Customer within the cure period, the Water Entity may take one or more of the following steps:

- (a) with notice to the Customer, step in and cure the Customer's breach (and recover the costs of doing so as a debt that is due and payable by the Customer);
- (b) suspend any or all of the rights of the Customer under this Zoned Flow Delivery Right; and
- (c) terminate this Zoned Flow Delivery Right and if it does so require payment of the Termination Fee.

19.5 Water Entity's costs

The Customer must pay to the Water Entity the amount of all moneys or expenses incurred or loss or damage suffered by the Water Entity as a result of the breach specified in the cure notice including the cost of ascertaining and remedying the breach.

20. Liability

20.1 Circumstances where Water Entity is not liable

The Water Entity will not be liable to the Customer for any loss or damage in connection with a failure by the Water Entity to deliver water under this Zoned Flow Delivery Right in the following circumstances:

- (a) to the extent that the Customer does not have the right to a supply of the water under an Irrigation Right;
- (b) if despite using reasonable endeavours the Scheme cannot deliver water to a Connection Point at the Zoned Flow Rate or the Minimum Pressure;
- (c) where delivery is interrupted by routine inspection, maintenance and repairs (where a minimum of seven (7) calendar days notice is given);
- (d) as a result of any event of Force Majeure;
- (e) any situation or event dangerous to people, property, animals or the environment;
- (f) the Connection Agreement in relation to a Connection Point has been terminated; or
- (g) as a result of a failure, defect, or damage in the infrastructure of the Customer (or the holder of the land on which a Connection Point is situated) which is connected to a Connection Point.

20.2 No liability for consequential loss

The Water Entity has no liability to the Customer, nor will the Customer be entitled to claim, in respect of any indirect or consequential losses (including any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue).

20.3 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Customer in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Customer to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 20.3(a) does not apply to the extent that the Water Entity is indemnified by insurance.

- (c) In this clause 20.3 “Claim” means any claim made by the Customer against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

21. Dispute resolution

21.1 Process for resolution

If any dispute or difference between the Customer and the Water Entity arises out of this Zoned Flow Delivery Right:

- (a) either the Customer or the Water Entity may notify the other party of the dispute or difference and invoke this clause 21.1;
- (b) the Customer and the Water Entity must within fourteen (14) calendar days after the notice referred to in clause 21.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 21.1(b) or the meeting has not taken place within fourteen (14) calendar days after the notice referred to in clause 21.1(a) is given, either the Customer or the Water Entity may refer the dispute or difference to an independent expert mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference can not be resolved by mediation, the dispute may be referred to litigation by either party.

21.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this Zoned Flow Delivery Right.

21.3 Right to seek interlocutory relief

Nothing in this clause 21 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

22. Variation of this agreement by the Water Entity

22.1 Right to vary

The Water Entity may amend this agreement by notice in writing to the Customer where the Water Entity considers in good faith that:

- (a) an amendment will not materially change the terms and conditions of this agreement;
- (b) to comply with a Statute; or
- (c) as a result of a change to, or replacement of, the National Water Initiative.

22.2 Effect of variation

The agreement will apply as varied with effect from the date the notice required under clause 22.1 is given.

23. Notices

23.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party’s address; or
- (b) sent by pre-paid mail to that party’s postal address.

23.2 Receipt of notice

A notice given to a party under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the party’s address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party’s postal address).

23.3 Addresses

For the purpose of giving notices under this agreement:

- (a) each party’s address is the address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement; and
- (b) each party’s postal address is the postal address of that person specified in the Water Entitlements Register being the address of that person specified in the schedule at the date of this agreement but, if no postal address is specified in the Water Entitlements Register, is that person’s address.

24. General

24.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement or the Scheme By-Laws are expressed exclusive of GST.
- (b) Where the Water Entity makes a taxable supply to the Customer under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) the Water Entity must provide a tax invoice to the Customer in respect of the taxable supply as required by the GST Act.

24.2 Government fees

The Customer must pay all fees, duties, taxes and other charges imposed by any government body in respect of this agreement or any transaction contemplated by this agreement.

24.3 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

24.4 Survival

Clauses 12.2, 13, 19.5 and 20 will survive termination of this agreement.

24.5 Variation and waiver

Other than variations made under clause 22, no variation or waiver of, or any consent to any departure by a party from, a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

24.6 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

24.7 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

24.8 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties

and a warranty, representation, guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

24.9 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

24.10 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

24.11 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

Annexure 1 – Trading Rules

Don Irrigation District

1. Interpretation

1.1 Definitions

In the Trading Rules:

- (a) “the Annual Volume” in respect of an Irrigation Right means the Annual Volume of water recorded in the Water Entitlements Register as attaching to the Irrigation Right;
- (b) “an Attached Right” means:
 - (i) an Annual Volume; or
 - (ii) a Zoned Flow Rate; anda reference to a Water Entitlement’s Attached Right, means:
 - (iii) in the case of an Irrigation Right, the Annual Volume attached to that Irrigation Right in the Water Entitlements Register; and
 - (iv) in the case of a Zoned Flow Delivery Right, a Zoned Flow Rate attached to that Zoned Flow Delivery Right in the Water Entitlements Register;
- (c) “a Business Day” means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (d) “a Connection Agreement” means a connection agreement between the Water Entity and an owner of or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (e) “a Complying Transfer” means a Transfer which is a Complying Transfer under clause 4;
- (f) “a Connection Point” means a point within the Irrigation District which is the subject of a Connection Agreement;
- (g) “the Effective Day” of a Transfer means:
 - (i) if the Transfer is a Permanent Transfer or a Limited Term Transfer, the later of:
 - A. the day on which the Transfer is recorded in the Water Entitlements Register; and
 - B. the day nominated in the Transfer as the day on which the Transfer is to take effect; and
 - (ii) if the Transfer is a Short Term Transfer, the later of:
 - A. the day on which the Water Entity notifies the transferor and the transferee under clause 3.2(a); and
 - B. the day nominated in the Transfer as the day on which the Transfer is to take effect;
- (h) “Financial Interest” has the same meaning as that term does in section 23A(4) of the Irrigation Clauses Act 1973;
- (i) “the holder” of a Water Entitlement means the person recorded in the Water Entitlements Register as the holder of the Water Entitlement;
- (j) “Insolvent” when used with reference to:

- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
- (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
- (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed; or
 - C. under administration,and “Insolvency” has a corresponding meaning;
- (k) “the Irrigation District” means the Don Irrigation District;
- (l) “an Irrigation Right” means a right to a supply of water conferred under section 23(2) of the Irrigation Clauses Act in respect of the Irrigation District;
- (m) “an Irrigation Season” means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws;
- (n) “a Limited Term Transfer” means a Transfer for a limited period taking effect:
 - (i) for at least one (1) entire Irrigation Season; or
 - (ii) within two (2) or more Irrigation Seasons;
- (o) “the National Water Initiative” means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (p) “Nominated Zone” in respect of a Zoned Flow Delivery Right means the Nominated Zone specified in that Zoned Flow Delivery Right;
- (q) “notify” means serve a written notice;
- (r) “the Permanent Holder” in respect of an Attached Right held under a Temporary Transfer means the person who will hold that Attached Right after all current Temporary Transfers of that Attached Right have expired;
- (s) “a Permanent Transfer” means a Transfer that is permanent;
- (t) “the Recipient Water Entitlement” in the context of a Transfer means the Recipient Water Entitlement determined for that Transfer under clause 2.4;

- (u) “the Scheme” means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
- (v) “the Scheme By-Laws” means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
- (w) “Security Interest” means an interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation;
- (x) “a Short Term Transfer” means a Transfer for a limited period taking effect entirely within one (1) Irrigation Season;
- (y) “the Source Water Entitlement” in the context of a Transfer means the Water Entitlement to which the Attached Right is attached before the Transfer;
- (z) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by the Trading Rules;
- (aa) “a Temporary Transfer” means a Limited Term Transfer or a Short Term Transfer;
- (bb) “the Trading Rules” means these Trading Rules;
- (cc) “a Transfer” means a transfer of all or part of an Attached Right as referred to in clause 2.1;
- (dd) “Transferred Right” in respect of a Transfer means the Attached Right or part of an Attached Right transferred by the Transfer;
- (ee) “Water Entitlements” means Irrigation Rights and Zoned Flow Delivery Rights;
- (ff) “the Water Entitlements Register” means the register of Water Entitlements required to be maintained by the Water Entity under clause 6.1;
- (gg) “the Water Entity” means the responsible water entity for the time being under the Water Management Act 1999 of the Irrigation District;
- (hh) “the Water Entity’s Security Interest” means the first ranking charge created by each Water Entitlement in favour of the Water Entity;
- (ii) “a Zoned Flow Delivery Right” means a right for a share of the water delivery capacity of the Scheme for a Zone;
- (jj) “the Zoned Flow Rate” in respect of a Zoned Flow Delivery Right means the Zoned Flow Rate recorded in the Water Entitlements Register as attaching to that Zoned Flow Delivery Right; and
- (kk) “the Zones” means the Zones of the water delivery system of the Irrigation District specified in annexure 1.
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to a document or arrangement, includes that person’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in the Trading Rules, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of the Trading Rules will be construed adversely to the Water Entity solely on the ground that the Water Entity was responsible for the preparation of the Trading Rules; and
- (m) a reference to any thing (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. Transfers – mechanism for transfer

2.1 Method of transfer

Subject to this clause 2 and clauses 3, 4 and 5, rights conferred by a Water Entitlement are transferable by transferring part or all of the Water Entitlement’s Attached Right but only if the Transfer is a Complying Transfer.

2.2 Types of Transfer

A Transfer can be a Permanent Transfer, a Limited Term Transfer or a Short Term Transfer.

2.3 How Attached Rights are transferable

A Transfer takes effect by transferring the Transferred Right from the Source Water Entitlement to a Recipient Water Entitlement.

2.4 Determining Recipient Water Entitlement

- (a) The Recipient Water Entitlement for a Transfer is determined by the transferee nominating either:
 - (i) a Water Entitlement held by the transferee as the Recipient Water Entitlement in respect of the Transfer; or
 - (ii) that a new Water Entitlement is to be the Recipient Water Entitlement in respect of the Transfer.
- (b) If the transferee nominates that a new Water Entitlement is to be the Recipient Water Entitlement in respect of the Transfer, the transferee may choose to either:
 - (i) enter a new agreement directly with the Water Entity in the same terms as the Source Water Entitlement; or
 - (ii) agree with the Water Entity in writing to be bound by the terms of the Source Water Entitlement as if the transferee and the Water Entity had entered a new agreement in the terms of the Source Water Entitlement.

1.2 General

In the Trading Rules, unless the context otherwise requires:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a clause, schedule, annexure or exhibit is to a clause, schedule, annexure, or exhibit of or to the Trading Rules and a reference to the Trading Rules includes any clause, schedule, annexure, or exhibit;
- (f) a schedule or annexure forms part of the Trading Rules;

3. Transfers – taking effect

3.1 Permanent Transfers and Limited Term Transfers

A Complying Transfer which is a Permanent Transfer or a Limited Term Transfer takes effect on the Effective Day of the Transfer by the Transfer being recorded in the Water Entitlements Register.

3.2 Short Term Transfers

A Complying Transfer which is a Short Term Transfer:

- (a) takes effect on the Effective Day of the Transfer by the Water Entity notifying the transferor and the transferee that the Transfer satisfies the requirements of these Trading Rules for recording the Transfer on the Water Entitlements Register; and
- (b) will be recorded in the Water Entitlements Register for the purposes of the Source Water Entitlement and the Recipient Water Entitlement.

3.3 Provisional recording

With the consent of the relevant transferor, the Water Entity may, but is not required to, give effect to a Transfer which is provisionally recorded in the Water Entitlements Register under clause 6.6 as if the Transfer had been finally recorded but must cease to give effect to that Transfer if the provisional record is deleted from the Water Rights Register under clause 6.6(c).

4. Transfers – Complying Transfers

4.1 What is a Complying Transfer

To be a Complying Transfer, a Transfer must comply with:

- (a) transfer conditions 1, 2, 3, 4 and 5;
- (b) if the Transfer is a Permanent Transfer, transfer condition 6;
- (c) unless the Transfer is a Temporary Transfers for a period not exceeding twelve (12) months, transfer condition 7; and
- (d) if the Transfer is a Temporary Transfer of an Attached Right which is itself held under a Temporary Transfer, transfer condition 8.

4.2 Transfer condition 1 - who may transfer

A Transfer complies with transfer condition 1, if the Transfer is made by the holder of the Source Water Entitlement or another person legally entitled to do so.

4.3 Transfer condition 2 – the Recipient Water Entitlement

A Transfer complies with transfer condition 2:

- (a) where the Source Water Entitlement is an Irrigation Right, if the Recipient Water Entitlement is also an Irrigation Right; and
- (b) where the Source Water Entitlement is a Zoned Flow Delivery Right if:
 - (i) the Recipient Water Entitlement is also a Zoned Flow Delivery Right; and
 - (ii) the Nominated Zone of the Recipient Water Entitlement is:
 - A. the same as the Nominated Zone of the Source Water Entitlement; or
 - B. another Zone approved by the Water Entity if the Water Entity considers that the water delivery constraints of the Scheme allow the Transfer.

4.4 Transfer condition 3 - no arrears

A Transfer complies with transfer condition 3 if all amounts owing to the Water Entity under the Source Water Entitlement and the Recipient Water Entitlement have been paid to the Water Entity.

4.5 Transfer condition 4 – form of transfer

A Transfer complies with transfer condition 4:

- (a) if a form is prescribed for Transfers under clause 9.5, the Transfer is in that form; and
- (b) in any event, if the Transfer states the monetary consideration in relation to the Transfer.

4.6 Transfer condition 5 – consistency

A Transfer complies with transfer condition 5 if the Transfer is consistent with relevant Statute, the Scheme By-Laws and any relevant water management plan under the Water Management Act 1999.

4.7 Transfer condition 6 - credit worthiness

- (a) Transfer condition 6 only applies where the Transfer is a Permanent Transfer.
- (b) A Transfer complies with transfer condition 6 if the Water Entity acting reasonably is satisfied as to the credit worthiness of the transferee.

4.8 Transfer condition 7 – consent from holders of Security Interests

- (a) Transfer condition 7 applies to all Transfers except Temporary Transfers for a period not exceeding twelve (12) months.
- (b) A Transfer complies with transfer condition 7 if the Water Entity is provided with evidence acceptable to the Water Entity which the Water Entity acting reasonably considers sufficient that:
 - (i) each holder of a Security Interest recorded in the Water Entitlements Register against the Source Water Entitlement in respect of the Transferred Right has been notified of the Transfer; and
 - (ii) each person with a Security Interest recorded in the Water Entitlements Register against the Transferred Right and any other Financial Interest in the Source Water Entitlement in respect of the Transferred Right has consented to the Transfer.

4.9 Transfer condition 8 – consent from Permanent Holder and term of transfer

- (a) Transfer condition 8 applies to a Transfer of an Attached Right held under a Temporary Transfer.
- (b) A Transfer complies with transfer condition 8 if:
 - (i) the Permanent Holder in respect of the Attached Right consents to the Transfer; and
 - (ii) the Transfer is for a term not longer than the remaining term for which the Attached Right is held under the Source Water Entitlement.

5. Transfers – miscellaneous provisions

5.1 Liability of transferor under Temporary Transfer

In the case of a Temporary Transfer, as a condition to the Water Entity giving effect to the Transfer, the holder of the Source Water Entitlement remains liable for all fees and charges payable under the Source Water Entitlement as if the Transferred Right remained attached to the Source Water Entitlement and supplies made by the Water Entity in respect of the Transferred Right were made to or at the direction of the holder of the Source Water Entitlement to the extent that those fees and charges are not paid by the holder of the Recipient Water Entitlement.

5.2 Connection Points

- (a) For the sake of clarity, a Transfer does not transfer any Connection Point attached to the Source Water Entitlement to the Recipient Water Entitlement.
- (b) An application under clause 6.5 is necessary to change the Connection Points attached to a Water Entitlement.

6. The Water Entitlements Register

6.1 The Register

- (a) The Water Entity must maintain a register of Water Entitlements in such form as the Minister directs under section 23(3C) of the Irrigation Clauses Act 1973.
- (b) In the absence of any direction from the Minister, the register of Water Entitlements may be in any form, including in an electronic format.

6.2 Contents of the Water Entitlements Register

The Water Entitlements Register must contain:

- (a) a record of each Water Entitlement specifying the following:
 - (i) whether the Water Entitlement is an Irrigation Right or Zoned Flow Delivery Right;
 - (ii) the serial number of the Water Entitlement;
 - (iii) the name and address of each holder of the Water Entitlement;
 - (iv) a postal address for the holders of the Water Entitlement if one is notified to the Water Entity;
 - (v) in respect of each Security Interest affecting all or part of the Water Entitlement's Attached Right:
 - A. the nature of the Security Interest;
 - B. the name and address of each holder of the Security Interest;
 - C. a postal address for the holders of the Security Interest if one is notified to the Water Entity; and
 - D. a clear identification of the part of the Attached Right to which the Security Interest applies;
 - (vi) the Connection Points attached to the Water Entitlement;
 - (vii) the amount of the Water Entitlement's Attached Right;
 - (viii) where the Water Entitlement is a Zoned Flow Delivery Right, the Nominated Zone specified in the Zoned Flow Delivery Right;
 - (ix) the date of each change to the record and the change made; and
 - (x) any other matter the Water Entity considers appropriate;

- (b) a record of the volume of Attached Rights available to be issued or re-issued following surrender;
- (c) the address and the postal address of the Water Entity; and
- (d) any additional information the Minister directs under section 23(3C) of the Irrigation Clauses Act 1973.

6.3 Recording of Transfers

The Water Entity must record a Complying Transfer on the Water Entitlements Register.

6.4 Recording of Security Interests

- (a) The Water Entity must record on the Water Entitlements Register a Security Interest affecting all or part of an Attached Right if a holder of the Water Entitlement to which the Attached Right is attached or a holder of the Security Interest:
 - (i) notifies the Water Entity of the Security Interest and the other information required to be recorded on the Water Entitlements Register under clause 6.2(a)(v) in the form (if any) prescribed by the Water Entity for that purpose; and
 - (ii) if the notification is made by a holder of the Security Interest, either provides:
 - A. the consent of the holders of the affected Water Entitlement to that recording; or
 - B. such information verifying the creation of the Security Interest as the Water Entity reasonably requires.
- (b) When the Water Entity records a Security Interest on the Water Entitlements Register against all or part of an Attached Right, the Water Entity must notify the holders of all other Security Interests recorded on the Water Entitlements Register against that part of the Attached Right.
- (c) The Water Entity may record the Water Entity's Security Interest on the Water Entitlements Register against all of a Water Entitlement's Attached Right from time to time.
- (d) If the holder of a Security Interest recorded in the Water Entitlements Register notifies the Water Entity in the form (if any) prescribed by the Water Entity for that purpose that the holder has transferred the Security Interest, the Water Entity must record the transferee as the holder of the Security Interest on the Water Entitlements Register.
- (e) If the holder of a Security Interest recorded in the Water Entitlements Register notifies the Water Entity in the form (if any) prescribed by the Water Entity for that purpose that the Security Interest has been partly or fully discharged, the Water Entity must record the discharge of the Security Interest on the Water Entitlements Register.
- (f) When the Water Entity records the discharge of a Security Interest recorded on the Water Entitlements Register against part or all of an Attached Right, the Water Entity must notify the holders of all other Security Interests recorded on the Water Entitlements Register against that Attached Right or part of it as the case may be.

6.5 Recording of Connection Points

- (a) The Water Entity must record on the Water Entitlements Register that a Connection Point is attached to a Water Entitlement if:

- (i) a holder of the Water Entitlement requests that Connection Point to be so recorded in the form (if any) prescribed by the Water Entity for that purpose;
 - (ii) the parties to the Connection Agreement of which the Connection Point is the subject, other than the Water Entity, consent to that recording; and
 - (iii) where the Water Entitlement is a Zoned Flow Delivery Right, the Connection Point is located in the Nominated Zone specified in that Zoned Flow Delivery Right.
- (b) The Water Entity must delete a record on the Water Entitlements Register that a Connection Point is attached to a Water Entitlement if:
- (i) the deletion is requested in the form (if any) prescribed by the Water Entity for that purpose by:
 - A. the parties to the Connection Agreement of which the Connection Point is the subject other than the Water Entity; or
 - B. the holders of the Water Entitlement; or
 - (ii) the Connection Agreement of which the Connection Point is the subject is cancelled.

6.6 Provisional recording

- (a) Where the Water Entity receives a request to record a Limited Term Transfer, a Permanent Transfer or a Security Interest on the Water Entitlements Register and the requirements of these Trading Rules in relation to that recording have not been fully met in a way which the Water Entity considers the applicant can rectify, the Water Entity may provisionally record the Transfer or the Security Interest on the Water Entitlements Register subject to the defect being rectified in such period as the Water Entity allows.
- (b) If the defect is rectified within the period allowed by the Water Entity, the record ceases to be provisional.
- (c) If the defect is not rectified within the period allowed by the Water Entity, the Water Entity must delete the provisional record from the Water Entitlements Register.

6.7 Voluntary termination of Water Entitlement

Where a Water Entitlement is terminated or surrendered under the terms of the Water Entitlement, the Water Entity must record the termination on the Water Entitlements Register and allocate the Water Entitlement's Attached Right (if any) to the Attached Rights available for reissue under clause 6.2(b).

6.8 Recording of legal personal representatives

On the death of a person recorded in the Water Entitlements Register as:

- (a) a holder of a Water Entitlement; or
- (b) a holder of a Security Interest recorded on the Water Entitlements Register,

the Water Entity must, unless the deceased holder was one of joint holders in which case clause 6.9 applies, recognise the legal personal representatives of the deceased holder as the persons entitled to deal with the interest of the deceased person in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the death of the deceased holder and the authority of the personal representatives to deal with the deceased holder's interest.

6.9 Recording of survivor of joint holder

On the death of a person recorded in the Water Entitlements Register with any other person as:

- (a) joint holders of a Water Entitlement; or
- (b) joint holders of a Security Interest,

the Water Entity must record the transmission to the survivor of the deceased person's holding in the Water Entitlements Register at the request of the survivor and on being satisfied as to proof of the death of the joint holder.

6.10 Where a holder is under disability

Where a person has authority in law to manage the affairs of a holder of a Water Entitlement or a Security Interest recorded in the Water Entitlements Register who by reason of mental or physical infirmity is unable to manage his affairs, the Water Entity must recognise that person as the person entitled to deal with the interest of the holder in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the authority to deal with the holder's interest.

6.11 Where a holder is insolvent

Where a person has authority to deal with a Water Entitlement or a Security Interest recorded in the Water Entitlements Register by reason of the insolvency of the holder, the Water Entity must recognise that person as the person entitled to deal with the interest of the holder in the Water Entitlement's Attached Right or the Security Interest as the case may be on being satisfied as to proof of the insolvency of the holder and the authority to deal with the holder's interest.

6.12 Exercise of rights under Security Interest

Where the holders of a Security Interest over all or part of a Water Entitlement's Attached Right establish to the satisfaction of the Water Entity that those holders are entitled to deal with that part of the Attached Right pursuant to the Security Interest, the Water Entity must recognise those holders as being entitled to deal with the interest of the holder in that part of the Attached Right.

6.13 Appointment of new trustee

Where a holder of a Water Entitlement or a Security Interest establishes to the satisfaction of the Water Entity that:

- (a) it holds the Water Entitlement or Security Interest as trustee;
- (b) the trustee or trustees of the trust have changed; and
- (c) if it is a Water Entitlement that is held as trustee, the new trustee or trustees assume liability under the contract constituting the Water Entitlement in such form as the Water Entity requires,

the Water Entity must record the new trustee or trustees as the holders of the Water Entitlement or Security Interest.

6.14 Status of the Water Entitlements Register

- (a) The Water Entity may treat the person who is recorded in the Water Entitlements Register as the holder of a Water Entitlement or Security Interest as the absolute owner of that Water Entitlement or Security Interest.
- (b) Except as required by law or by order of a court, the Water Entity must not recognise any equitable or other claim to or interest in a Water Entitlement or Security Interest on the part of any person unless recorded in the Water Entitlements Register even if the Water Entity has notice of the claim or interest.

6.15 Inspection

- (a) The Water Entity must make the Water Entitlements Register available for public inspection during normal business hours.
- (b) The Water Entity may provide a copy of a record in the Water Entitlements Register on application.

6.16 Correction and amendment of the Water Entitlements Register

- (a) The Water Entity, if satisfied that it is necessary to do so to ensure that the Water Entitlements Register is an accurate record, may correct or amend the Water Entitlements Register including by:
 - (i) adding, cancelling or deleting a record; or
 - (ii) adding, altering or deleting particulars or details contained in a record; or
 - (iii) recording details of any change in the name or address of any person in respect of whom the matter recorded in the Water Entitlements Register relates.
- (b) The Water Entity may correct the Water Entitlements Register:
 - (i) on its own initiative; or
 - (ii) on the application of a person in the form (if any) prescribed by the Water Entity.
- (c) If the Water Entity corrects a part the Water Entitlements Register under this clause 6.16 in relation to an error substantially affecting a person's rights, the Water Entity must notify each person who is recorded in the Water Entitlements Register as having an interest in the matter in respect of which the correction has been made.

7. Dispute resolution

7.1 Process for resolution

If any dispute or difference between the holder of a Water Entitlement and the Water Entity arises out of a Water Entitlement in relation to the Water Entitlements Register:

- (a) either the holder or the Water Entity may notify the other person of the dispute or difference and invoke this clause 7;
- (b) the holder and the Water Entity must within thirty (30) calendar days after the notice referred to in clause 7.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 7.1(b) or the meeting has not taken place within thirty (30) calendar days after the notice referred to in clause 7.1(a) is given, either the holder or the Water Entity may refer the dispute or difference to a mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference can not be resolved by mediation, the dispute may be referred to litigation.

7.2 Right to seek interlocutory relief

Nothing in this clause 7 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

8. Variation of the Trading Rules by the Water Entity

8.1 Right to vary

The Water Entity may amend the Trading Rules by notice in writing to the holders of all Water Entitlements and the holders of all Security Interests recorded in the Water Entitlements Register where the Water Entity considers in good faith that an amendment to the Trading Rules is necessary or desirable:

- (a) to comply with a Statute;
- (b) as a result of a change to, or replacement of, the National Water Initiative; or
- (c) to enhance the efficient operation of the Irrigation District and the change is not materially detrimental to any holder of a Water Entitlement or a Security Interest recorded on the Water Entitlements Register.

8.2 Electronic register and notices

The kinds of amendments allowed by clause 8.1(c) include but are not limited to amendments to implement a system of electronic lodgement and notification.

8.3 Effect of variation

The Trading Rules will apply as varied with effect from the date the notice required under clause 8.1 is given.

9. General provisions

9.1 Precedence of this clause

The Water Entity's obligations to make recordings on the Water Entitlements Register are subject to this clause 9.

9.2 Power to require statutory declarations

The Water Entity may require that information be given by statutory declaration.

9.3 Water Entity may require proof of identity

- (a) The Water Entity may require a person who requests the recording of any matter in the Water Entitlements Register or the approval of any matter for recording in the Water Entitlements Register to provide any proof of identity that the Water Entity, acting reasonably, considers sufficient to establish that person's identity.
- (b) The Water Entity is not required to make a recording in the Water Entitlements Register or approve any matter for recording in the Water Entitlements Register if the Water Entity is not satisfied as to the identity of any person by or on behalf of whom any document relating to that matter was executed.
- (c) The Water Entity may require or permit the identity of a person to be verified by a person or class of persons approved as a verifier for the purposes of this clause 9.3(c).

9.4 Water Entity may require production of documents

- (a) Before making a recording in the Water Entitlements Register, the Water Entity may require a person to submit any documents related to a recording or give any information related to a recording for the purposes of enabling any matter to be recorded in the Water Entitlements Register.
- (b) If any information or document required by the Water Entity under this clause 9.4 is not provided, the Water Entity:
 - (i) may refuse to make the recording until the relevant information or document is produced; or

- (ii) if the relevant information or document is not produced and the recording is not made, may:
 - A. return any documents or information that have been submitted to the person requesting the recording; and
 - B. retain any fee that has been paid by the person requesting the recording.
- (c) The Water Entity, at the Water Entity's discretion, may dispense with the submission or production of any document or information.

9.5 Approved forms

- (a) The Water Entity may approve forms for the purposes of the Trading Rules and the Water Entitlements Register.
- (b) The Water Entity must ensure that approved forms are available:
 - (i) at the office of the Water Entity; or
 - (ii) on the Internet.

10. Fees

10.1 Prescribing fees

Subject to any approval required from the Minister under section 23A(1) of the Irrigation Clauses Act 1973, the Water Entity may prescribe fees in respect of any of its functions under these Trading Rules from time to time.

10.2 Functions conditional on payment of fees

Where the Water Entity prescribes a fee under clause 10.1 in respect of any of its functions under these Trading Rules, the Water Entity may make payment of that fee a condition to the Water Entity being required to carry out that function.

10.3 Precedence of clause 10.2

The Water Entity's obligations to carry out its functions under these Trading Rules are subject to clause 10.2.

11. Notices

11.1 How given

A notice required or permitted to be given under the Trading Rules must be in writing and is treated as being duly given if:

- (a) left at that person's address; or
- (b) sent by pre-paid mail to that person's postal address.

11.2 Receipt of notice

A notice given to a person under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the person's address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the person's address).

11.3 Addresses

For the purpose of giving notices under the Trading Rules:

- (a) the address of a person other than the Water Entity is the address of that person specified in the Water Entitlements Register;
- (b) the postal address of a person is the postal address of that person specified in the Water Entitlements Register but, if no postal address is specified, is the address determined under clause 11.3(a); and
- (c) the address and the postal address of the Water Entity is the address and postal address respectively specified on the Water Entitlements Register from time to time

| | | | |
|---------------|----------------------------|----------------|-------------------------|
| Connection #3 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |
| Connection #4 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |
| Connection #5 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |
| Connection #6 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |
| Connection #7 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |
| Connection #8 | Connection Point ID: | | |
| | Located at: | mE | mN MGA (GDA 94) Zone 55 |
| | Located on: | (Property ID) | |
| | Connection Infrastructure: | | |

Parties

1. **THE WATER ENTITY** named in the schedule (“the Water Entity”)
2. **THE LAND HOLDER** named in the schedule (“the Land Holder”)

Background

1. The Water Entity is the responsible water entity under the Water Management Act 1999 and the undertaker under the Irrigation Clauses Act 1973 for the Irrigation District.
2. The Land Holder owns or is otherwise entitled to use land in the Irrigation District and each Connection Point is located:
 - (a) on the land;
 - (b) on a boundary of the land; or
 - (c) outside the land but the Land Holder has a right to transport water from the Connection Point to the land.
3. This agreement sets out the basis on which the Water Entity will agree to the Land Holder connecting to the Scheme at the Connection Points for the purpose of taking Scheme Water.
4. This agreement does not give the Land Holder any right to take water.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) “the Approved Water Meter” for a Connection Point means:
 - (i) if a water meter is part of the Connection Infrastructure, that water meter; or
 - (ii) a water meter approved from time to time by the Water Entity for the purpose of taking Scheme Water from a Connection Point under clause 4.2;
- (b) “the BBSY” for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00 am on that day or, if the BBSY is not quoted on that day, at 10.00 am on the last prior day on which it was quoted;
- (c) “a Business Day” means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (d) “Commissioning” means commissioning of the Scheme after completion of construction as determined by the Water Entity by notice to the Land Holder;
- (e) “the Connection Infrastructure” means that part of the Scheme installed by the Water Entity for the specific purpose of allowing a connection to the Scheme for taking Scheme Water at a Connection Point and including:
 - (i) the Connection Infrastructure specified in respect of a Connection Point in the schedule; and

- (ii) any other components installed at a Connection Point and determined by the Water Entity from time to time by notice to the Land Holder to be Connection Infrastructure;
- (f) “the Connection Points” means the Connection Points specified in the schedule;
- (g) “a Farm Water Access Plan” for any land means a plan:
 - (i) approving and stating conditions for the use of water on that land;
 - (ii) completed by a pre-qualified consultant who has been approved by the Minister administering the Water Management Act 1999 and the Water Entity using property management planning modules for soil, water and biodiversity endorsed by the Minister administering the Water Management Act 1999; and
 - (iii) approved by the Water Entity;
- (h) “FWAP Water” means:
 - (i) all Scheme Water taken by the Land Holder at a Connection Point;
 - (ii) all Scheme Water taken by any person other than the Land Holder at a Connection Point; and
 - (iii) all Scheme Water taken by the Land Holder at a point where the Land Holder has no entitlement under another agreement with the Water Entity to take Scheme Water;
- (i) “GST” has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
- (j) “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;
- (k) “Infrastructure” means pipes, channels, connections, equipment or storage facilities to receive, store, transport and use water;
- (l) “Insolvent” when used with reference to:
 - (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
 - (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors,and “Insolvency” has a corresponding meaning;
- (m) “the Installation Date” means the Installation Date specified in the schedule;

- (n) “the Irrigation District” means the Irrigation District specified in the schedule;
 - (o) “an Irrigation Right” means an irrigation right granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District;
 - (p) “the Land Holder” means the Land Holder specified in the schedule;
 - (q) “the Land Holder Contribution” means the Land Holder Contribution specified in the schedule;
 - (r) “the Land Holder’s Infrastructure” means Infrastructure installed by the Land Holder connecting to the Water Entity’s Infrastructure under clause 4.1;
 - (s) “the National Water Initiative” means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
 - (t) “notify” means serve a written notice;
 - (u) “the Payment Date” means the Payment Date specified in the schedule;
 - (v) “the Scheme” means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver Scheme Water;
 - (w) “the Scheme By-Laws” means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
 - (x) “Scheme Water” means water supplied by the Water Entity as responsible water entity under the Water Management Act 1999 of the Irrigation District;
 - (y) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
 - (z) “the Term” means the Term specified in the Schedule;
 - (aa) “the Water Entity” means the Water Entity specified in the schedule and any successor as the responsible water entity under the Water Management Act 1999 of the Irrigation District to which the benefit of this agreement has been assigned; and
 - (bb) “a Zoned Flow Delivery Right” means a right for a share of the water delivery capacity of the Scheme.
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (h) a reference to any party to this agreement, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
 - (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
 - (k) headings are for convenience of reference only and do not affect interpretation;
 - (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and
 - (m) a reference to anything (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

1.2 General

In this agreement:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure or exhibit;
- (f) a recital, schedule, annexure or a description of the parties forms part of this agreement;

2. The Term

2.1 The Term

This agreement continues until the earlier of:

- (a) the end of the Term; or
- (b) the date on which this Connection Agreement is terminated under this agreement if that occurs.

2.2 Extension of the Term

- (a) The Water Entity may at any time before the Term ends and before this Connection Agreement is terminated extend the Term by the period it notifies to the Land Holder.
- (b) If, before the Term ends and before this Connection Agreement is terminated under this agreement, the Water Entity is able to obtain an extension of the term applying to the supply of water necessary for the purposes of the Irrigation District (“the extended supply term”) beyond the end of the Term on terms acceptable to the Water Entity in its absolute discretion, the Water Entity must extend the Term until the end of the extended supply term.
- (c) The Water Entity must notify any such extension as early as it reasonably can.

3. The Connection Infrastructure

3.1 Provision of Connection Infrastructure

Subject to clause 3.2, the Water Entity agrees to provide and install the Connection Infrastructure to enable connection to the Scheme at the Connection Points by the Installation Date.

3.2 The Land Holder Contribution

The Water Entity’s obligation to provide and install the Connection Infrastructure under clause 3.1 is subject to the Land Holder paying the Land Holder’s Contribution to the Water Entity not later than the Payment Date in exchange for the Water Entity entering this agreement.

3.3 Relocation or upgrade

If at the request of the Land Holder the Water Entity agrees to:

- (a) amend this agreement to change the location of a Connection Point and to relocate any of the Connection Infrastructure; or
- (b) to upgrade or remove any of the Connection Infrastructure,

the Water Entity will do so at the cost of the Land Holder payable in advance of the relocation, upgrade or removal works commencing.

3.4 Ownership of Connection Infrastructure

For the sake of clarity, the Connection Infrastructure is the property of the Water Entity.

3.5 Repairs to the Scheme

- (a) The Water Entity may at the expense of the Land Holder repair any Infrastructure forming part of the Scheme or any of the Connection Infrastructure which is not otherwise part of the Scheme or replace it if it is not repairable to the extent that the same is damaged as a result of any misuse or negligent act or omission by the Land Holder, its employees, agents, contractors or invitees.
- (b) The Land Holder must pay to the Water Entity any costs of repair or replacement that the Water Entity incurs under clause 3.5(a).

3.6 Notification of deterioration or damage

The Land Holder must notify the Water Entity if the Land Holder becomes aware, or ought to have become aware, of any deterioration or damage, or possible deterioration or damage to the Connection Infrastructure.

3.7 No Alterations, Tampering or Modifications

The Land Holder must not (and must not procure others to) alter, modify, manipulate, interfere or tamper with any Infrastructure forming part of the Scheme or any Connection Infrastructure which is not otherwise part of the Scheme for any reasons, even if on a temporary basis, unless the Water Entity has provided its prior written consent, which may be withheld at the Water Entity's sole discretion.

4. The Land Holder's connection right and related obligations

4.1 Land Holder's right to connect

- (a) Subject to clause 4.1(b), the Land Holder may after the Connection Infrastructure for a Connection Point has been installed or at an earlier time agreed by the Water Entity:
 - (i) connect to that Connection Infrastructure for the purpose of taking Scheme Water; and
 - (ii) install Infrastructure for that purpose.
- (b) The Land Holder must not connect to any Connection Infrastructure unless:
 - (i) the Land Holder informs the Water Entity of the proposed connection before it is made; and
 - (ii) the connection is made in a manner approved by the Water Entity under clause 4.1(c).
- (c) In dealing with a request for approval under clause 4.1(b), the Water Entity need:
 - (i) only be concerned to ensure that the Connection Infrastructure is not adversely affected by the proposed connection; and

- (ii) not consider whether the connection proposed by the Land Holder will be fit for the Land Holder's purpose or the purpose of any other person.

- (d) An approval under clause 4.1(b):
 - (i) will not constitute a representation or warranty of any kind; and
 - (ii) can be withdrawn by the Water Entity at any time at its absolute discretion.

4.2 Approved Water Meter

The Water Entity may approve a water meter for the purpose of taking Scheme Water from a Connection Point even though that meter is not owned by the Water Entity and may withdraw that approval at its absolute discretion.

4.3 Water meter

The Land Holder must;

- (a) not take any water whether or not it is Scheme Water from a Connection Point unless the water passes through the Approved Water Meter for that Connection Point;
- (b) not tamper with or manipulate that Approved Water Meter; and
- (c) ensure that the Water Entity has such access to land as is necessary to allow the reading, inspection and testing of that Approved Water Meter.

4.4 Farm Water Access Plan

The Land Holder must:

- (a) ensure that a Farm Water Access Plan is in place for each area of land on which FWAP Water is used;
- (b) for the sake of clarity, not use or allow others to use FWAP Water on any land for which a Farm Water Access Plan is not in place;
- (c) ensure that they and any other person who use FWAP Water use that water in compliance with a Farm Water Access Plan in place for the land on which the water is used; and
- (d) for the purpose of enabling the Water Entity to audit compliance with any Farm Water Access Plan for land on which FWAP Water is used, provide to the Water Entity such information and ensure that the Water Entity has such access to that land as the Water Entity reasonably requires.

4.5 No right to take water

- (a) This Connection Agreement does not confer any entitlement to take water at a Connection Point.
- (b) Scheme Water may only be taken at a Connection Point in accordance with an Irrigation Right, a Zoned Flow Delivery Right or any other agreement with the Water Entity.

4.6 Responsibility for Land Holder's Infrastructure

The Land Holder is responsible for constructing, installing, maintaining, repairing and replacing the Land Holder's Infrastructure at its own expense.

4.7 No Contamination

The Land Holder must not use toxic materials or chemicals or do or use anything which may result in any solid, liquid or gaseous material being introduced into the water contained in any Infrastructure forming part of the Scheme.

4.8 No other connection

The Land Holder must not:

- (a) connect or maintain (and must not procure or permit others to connect or maintain on its behalf) a connection to any part of the Infrastructure of the Scheme; or
- (b) take Scheme Water from any part of the Scheme, except as permitted by this agreement or another agreement with the Water Entity.

5. Quality and use of water

5.1 No warranty by the Water Entity

- (a) The Water Entity makes no warranty to the Land Holder as to the condition, quality, fitness for purpose of or any contamination in any Scheme Water.
- (b) The Land Holder acknowledges that the Water Entity has no obligation to monitor the condition, quality or fitness for purpose of or any contamination in, the Scheme Water and any such monitoring will not prejudice the rights of the Water Entity or relieve the Land Holder from its obligations and liabilities under this agreement.

5.2 Land Holder's risk

The Land Holder accepts all risk in relation to the condition, quality or fitness for purpose of or any contamination in, any Scheme Water and, to the extent permitted by law, the Land Holder releases the Water Entity from any loss or damage suffered by the Land Holder in connection with the condition, quality, fitness for purpose of or any contamination in Scheme Water.

5.3 Scheme Water taken for use without a Connection Agreement

If the Land Holder allows Scheme Water to be taken by, or supplied to, a person who is not a party to a Connection Agreement with the Water Entity, the Land Holder accepts all risk in relation to that supply.

6. Payment

6.1 Liability

The Land Holder must pay all amounts becoming payable by the Land Holder to the Water Entity under this agreement in the manner specified by the Water Entity from time to time and when specified:

- (a) by this agreement; but
- (b) if this agreement does not specify the time for payment, when specified by the Water Entity but in any event not earlier than thirty (30) calendar days after receipt of an invoice.

6.2 No set off

All amounts payable by the Land Holder under this agreement must be paid free of any set-off or counterclaim.

6.3 Interest

- (a) The Land Holder must pay interest to the Water Entity when the Water Entity demands:
 - (i) on any money which the Land Holder must pay to the Water Entity under this agreement and which the Land Holder does not pay by the due date;
 - (ii) at such rate as is determined by the Water Entity from time to time pursuant to the Scheme By-Laws and in the absence of any such determination at the rate two per cent (2%) per annum above the BBSY from time to time; and
 - (iii) from the due date until the Land Holder pays the money.

- (b) The Water Entity retains any other rights it may have against the Land Holder even though the Land Holder must pay interest.

7. Assignment and novation

The Land Holder may with the consent of the Water Entity (not to be unreasonably withheld) novate or assign the Land Holder's rights and obligations under this Connection Agreement to an owner of or another person which the Water Entity acting reasonably considers is otherwise entitled to use land within the Irrigation District if in respect of each Connection Point:

- (a) the Connection Point is located on that land or on a boundary of that land; or
- (b) the Land Holder has a right to transport water from the Connection Point to that land.

8. Change of Responsible Water Entity

Where the Water Entity is replaced as the responsible water entity within the meaning of Part 9 of the Water Management Act 1999 for the Irrigation District, the Water Entity:

- (a) may, without needing any consent from the Land Holder, assign or novate its rights under this agreement to the replacement responsible water entity subject to the replacement responsible water entity assuming obligations in favour of the Land Holder on the terms of this agreement as if it were the Water Entity named in this agreement; and
- (b) on such assignment or novation, will be taken to be released from all its obligations under this agreement.

9. Land Holder's warranty

The Land Holder warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

10. Insolvency of the Land Holder

At any time when the Land Holder is Insolvent, the Water Entity may suspend any or all of the rights of the Land Holder under this agreement without prejudice to any other rights the Water Entity may have under this agreement or otherwise.

11. Default and Termination

11.1 Cure notice

If the Land Holder breaches any term of this Connection Agreement, then without prejudice to any other rights the Water Entity may have under this agreement or otherwise:

- (a) the Water Entity may give the Land Holder a "cure notice"; and
- (b) the Land Holder must remedy the breach within the "cure period" stated in the cure notice.

11.2 Cure period

The cure period stated in the cure notice must be reasonable having regard to the nature of the breach and the urgency of rectifying the breach but need not be longer than twenty eight (28) calendar days.

11.3 Failure to comply with cure notice

If the breach specified in a cure notice has not been cured by (or on behalf of) the Land Holder within the cure period, the Water Entity may take one or more of the following steps:

- (a) with notice to the Land Holder, step in and cure the Land Holder's breach (and recover the costs of doing so as a debt that is due and payable by the Land Holder);
- (b) suspend any of the rights the Land Holder has to be supplied water at any Connection Point under an Irrigation Right, a Zoned Flow Delivery Right or any other agreement with the Water Entity held by the Land Holder;
- (c) suspend any of the rights of the Land Holder under this Connection Agreement; and
- (d) terminate this Connection Agreement.

11.4 Deletion of Connection Point

If at any time in respect of a Connection Point, the Land Holder does not own or is not otherwise entitled to use land in the Irrigation District such that:

- (a) the Connection Point is located on the land;
- (b) the Connection Point is located on a boundary of the land; or
- (c) the Land Holder has a right to transport water from the Connection Point to the land,

this agreement will be taken to amended at that time such that that Connection Point and the Connection Infrastructure specified in respect of that Connection Point are deleted from the schedule.

11.5 Additional rights to terminate

In addition to the right to terminate this agreement conferred by clause 11.3(d), the Water Entity may terminate this Connection Agreement if the Land Holder:

- (a) ceases to own or be otherwise entitled to use land in the Irrigation District satisfying one of the following:
 - (i) a Connection Point is located on the land;
 - (ii) a Connection Point is located on a boundary of the land; or
 - (iii) a Land Holder has a right to transport water from the Connection Point to the land; or
- (b) seriously or persistently breaches this agreement even though the Water Entity has not given a cure notice in respect of any breach in respect of which it acts.

11.6 Water Entity's costs

The Land Holder must pay to the Water Entity the amount of all moneys or expenses incurred or loss or damage suffered by the Water Entity as a result of a breach specified in a cure notice including the cost of ascertaining and remedying the breach.

11.7 Removal of Connection Infrastructure

- (a) If this Connection Agreement is terminated, the Water Entity may, at the cost of the Land Holder, disconnect and remove any Connection Infrastructure and perform any works necessary or desirable to prevent the taking of water at the Connection Points.
- (b) If a Connection Point is taken to be deleted from the schedule under clause 11.4 then the Water Entity may, at the cost of the Land Holder, disconnect and remove any Connection Infrastructure for that Connection Point and perform any works necessary or desirable to prevent the taking of water at that Connection Point.

- (c) In addition to any other power the Water Entity might have to enter land, the Land Holder must not hinder or prevent the Water Entity from entering on to land owned or occupied by the Land Holder for the purpose of clause 11.7(a).
- (d) This clause 11.7 survives termination of this Connection Agreement.

12. Liability

12.1 Limit to Water Entity's liability

The Water Entity will not be liable for any inability to take Scheme Water at a Connection Point.

12.2 Indemnity

The Land Holder must indemnify the Water Entity against all loss the Water Entity suffers as a result of or in connection with loss of life, personal injury or damage to property including the Scheme that is caused or contributed to by:

- (a) the Land Holder, any person claiming through or under the Land Holder or any person acting with the Land Holder's authority or permission;
- (b) the Land Holder's Infrastructure, its use or misuse; or
- (c) the taking or use of any water taken at a Connection Point.

12.3 No liability for consequential loss

The Water Entity has no liability to the Land Holder, nor will the Land Holder be entitled to claim, in respect of any indirect or consequential losses (including any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue).

12.4 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Land Holder in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Land Holder to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 12.4(a) does not apply to the extent that the Water Entity is indemnified by insurance.
- (c) In this clause 12.4 "Claim" means any claim made by the Land Holder against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

13. Dispute resolution

13.1 Process for resolution

If any dispute or difference between the Land Holder and the Water Entity arises out of this Connection Agreement:

- (a) either the Land Holder or the Water Entity may notify the other of them of the dispute or difference and invoke this clause 13.1;
- (b) the Land Holder and the Water Entity must within thirty (30) calendar days after the notice referred to in clause 13.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;

- (c) if the dispute or difference is not resolved at a meeting held as required by clause 13.1(b) or the meeting has not taken place within thirty (30) calendar days after the notice referred to in clause 13.1(a) is given, either the Land Holder or the Water Entity may refer the dispute or difference to an independent expert mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference can not be resolved by mediation, the dispute may be referred to litigation by either party.

13.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this Connection Agreement.

13.3 Right to seek interlocutory relief

Nothing in this clause 13 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

14. Variation of this agreement by the Water Entity

14.1 Right to vary

The Water Entity may amend this agreement by notice in writing to the Land Holder where the Water Entity considers in good faith that:

- (a) an amendment will not materially change the terms and conditions of this agreement;
- (b) to comply with a Statute; or
- (c) as a result of a change to, or replacement of, the National Water Initiative.

14.2 Effect of variation

The agreement will apply as varied with effect from the date the notice required under clause 14.1 is given.

15. Notices

15.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party's address; or
- (b) sent by pre-paid mail to that party's postal address.

15.2 Receipt of notice

A notice given to a party under this clause is treated as having been duly given and received:

- (a) when delivered (if left at the party's address); and
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party's postal address).

15.3 Addresses

For the purpose of giving notices under this agreement:

- (a) each party's address is the address specified in the schedule or another address which that party notifies to each other party; and
- (b) each party's postal address is:
 - (i) the postal address specified in the schedule or another postal address which that party notifies to each other party; or

- (ii) that party's address if no postal address is specified in the schedule or notified to each other party.

16. General

16.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement are expressed exclusive of GST.
- (b) Where the Water Entity makes a taxable supply to the Land Holder under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) the Water Entity must provide a tax invoice to the Land Holder in respect of the taxable supply as required by the GST Act.

16.2 Exercise of Water Entity's rights

Any right conferred by the Water Entity under this Connection Agreement may be exercised by any authorised officer, servant, contractor or agent of the Water Entity.

16.3 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

16.4 Variation and waiver

Other than variations made under clause 14, no variation or waiver of, or any consent to any departure by a party from, a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

16.5 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

16.6 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

16.7 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties

and a warranty, representation, guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

16.8 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

16.9 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

16.10 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law