



Incorporating Buronga, Coomealla
and Curlwaa Irrigation Areas.

ACN: 067 197 853

General Conditions

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1 Definitions and interpretation

1.1 Definitions

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

- (1) **ACCC** means the Australian Competition and Consumer Commission;
- (2) **Access Fee** means the amount payable per Delivery Entitlement in respect of each Water Year;
- (3) **Access Licence** has the meaning given to that term under the Act;
- (4) **Act** means the *Water Management Act 2000* (NSW);
- (5) **Additional Water** means a volume of water in excess of the volume of Water Allocation in the Customer's Water Allocation Account at the time when the water is ordered for delivery or taken;
- (6) **Additional Water Fee** means the amount payable per Megalitre of Additional Water which is credited to the Customer's Water Allocation Account under clause 14.2(1);
- (7) **Agreement** means the Water Entitlement Agreement or Water Delivery Agreement which requires the Customer to comply with these General Conditions and it includes these General Conditions;
- (8) **Area of Operations** has the meaning given to that term under the Act in respect of the Company;
- (9) **Asset Replacement Fund Fee** means the amount payable per Delivery Entitlement in respect of each Water Year to fund expenditure on capital works;
- (10) **Associate** means;
 - (a) in relation to a corporation:
 - (i) a related body corporate (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of the corporation;
 - (ii) a person that controls or is controlled by the corporation (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth));
 - (iii) a person that has a substantial holding (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) in the corporation or of any body corporate in which the corporation has a substantial holding;
 - (iv) a director, secretary or officer of the corporation or of any body corporate that is an Associate of the corporation;
 - (v) any trustee of a trust under which the corporation benefits or may benefit; and

- (vi) any person with whom the corporation is acting, or proposes to act, in concert and any person with whom the corporation is, or proposes to become, associated in any other way (whether formally or informally);
 - (b) in relation to a natural person:
 - (i) the person's spouse, parent, child, grandparent, or any child of any of those persons; and
 - (ii) any corporation in respect of which the person is an Associate by reason of clause 1.1(10)(a); and
 - (c) in relation to a person (whether a corporation or a natural person) who enters into this agreement as trustee of a trust, any person who benefits or may benefit under that trust;
- (11) **Availability Announcement** means any determination made from time to time by the relevant Government Agency with respect to the water available to the Company in any Water Year under the Company's Access Licences;
- (12) **Buronga Irrigation Area** means:
- (a) the area formerly constituted as the Buronga irrigation area in 1956 under the *Irrigation Act 1912* (NSW); and
 - (b) any other area which may from time to time be supplied with water from the Company's Buronga pumping station,
- but in each case only to the extent to which those areas also fall within the Area of Operations;
- (13) **Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in New South Wales;
- (14) **Carryover Water** means a volume of Water Allocation remaining in a Water Allocation Account at the end of a Water Year that is permitted to be carried over, in accordance with the Documents, to the next Water Year;
- (15) **Casual Users Access Fee** means the amount payable per Megalitre of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) to the extent that the volume of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) exceeds the volume represented by 100% of the Customer's Delivery Entitlements held at the end of the Water Year (or at the end of such other period as the Company may determine), including where the Customer does not hold any Delivery Entitlements;
- (16) **Certificate** means a certificate or statement issued by the Company to the Customer setting out the Entitlements held by the Customer;
- (17) **Charges** includes:
- (a) all fees and charges and other sums of money determined by the Company to be payable by the Customer in connection with the Documents or anything connected with their subject matter;

- (b) any other sum of money owing or payable by the Customer or an Associate of the Customer to the Company or any of its related bodies corporate;
 - (c) any other sum of money agreed between the Customer and the Company to be a Charge; and
 - (d) interest on those fees, charges and sums of money;
- (18) **Claim** includes, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent;
- (19) **Commercial and Industrial Casual Fee** means the amount payable per Landholding in respect of each Water Year if the Company determines that the Landholding is in the commercial and industrial class and the Customer has no Delivery Entitlement which has a Point of Supply associated with the Landholding;
- (20) **Commercial and Industrial Fee** means the amount payable per Landholding in respect of each Water Year if the Company determines that the Landholding is in the commercial and industrial class and the Customer has at least one Delivery Entitlement which has a Point of Supply associated with the Landholding;
- (21) **Company** means Western Murray Irrigation Limited ACN 067 197 853;
- (22) **Company's Works** means Works owned by the Company;
- (23) **Coomealla Irrigation Area** means:
- (a) the area formerly constituted as the Coomealla irrigation area in 1924 under the *Irrigation Act 1912* (NSW); and
 - (b) any other area which may from time to time be supplied with water from the Company's Coomealla pumping station,
- in each case only to the extent to which those areas also fall within the Area of Operations;
- (24) **Cost** includes:
- (a) costs, fees, expenses and outlays;
 - (b) in relation to a party, all costs actually payable by the party to their own legal representatives (whether or not under a costs agreement);
 - (c) in relation to the Customer, Charges; and
 - (d) in relation to the Company, administrative costs and the cost of the Company's Personnel's time, including time spent investigating, obtaining advice in connection with, assessing, dealing with and determining a matter;
- (25) **Curlwaa Irrigation Area** means:
- (a) the area formerly constituted as the Curlwaa irrigation area in 1890 under the *Wentworth Irrigation Act 1890* (NSW); and

- (b) any other area which may from time to time be supplied with water from the Company's Curlwaa pumping station,

in each case only to the extent to which those areas also fall within the Area of Operations;

- (26) **Customer's Works** means Works owned by the Customer;
- (27) **Damage** includes loss or damage to property;
- (28) **Delivery Entitlement** means the right, subject to the Documents, to delivery in each Water Year:
 - (a) of one Megalitre of water, as measured by the relevant Meter (if any) or determined by the Company;
 - (b) to the following Point of Supply:
 - (i) the Company's Supply Works (if any) set out in the Delivery Entitlements Register as servicing the Landholding; or
 - (ii) if no Company's Supply Works are set out in the Delivery Entitlements Register as servicing the Landholding, the Company's Supply Works (if any) determined by the Company to be servicing the Landholding;
- (29) **Delivery Entitlements Register** means a register maintained by the Company, as varied by the Company from time to time, which records:
 - (a) the Customer's name and address;
 - (b) the number of Delivery Entitlements held by the Customer;
 - (c) details of the Customer's Landholding;
 - (d) the Company's Supply Works to which water is to be delivered; and
 - (e) any lien, mortgage or charge over the Customer's Delivery Entitlements registered with the Company under clause 38.4;
- (30) **Disconnection Fee** means the amount payable in respect of the reasonable costs incurred by the Company by reason only of removing or disabling a physical connection between the Company's irrigation network and the infrastructure of the Customer;
- (31) **Documents** means the Agreement, these General Conditions and the Policies, and any other Water Entitlement Agreement or Water Delivery Agreement between the Company and the Customer;
- (32) **Drainage** includes surface and subsurface water drainage;
- (33) **Drainage Work** has the meaning given to that term under the Act;
- (34) **Entitlement** means a Water Entitlement or Delivery Entitlement, as the case may be;
- (35) **Event of Default** means any of the events referred to in clause 21.2;

- (36) **Fixed Charge** means a Charge which is not calculated by reference to the volume of water delivered or taken;
- (37) **Fixed Government Charge** means the amount payable per Water Entitlement in respect of each Water Year;
- (38) **General Security Water Entitlement** means a Water Entitlement in the general security class;
- (39) **Government Agency** means any government and any governmental body, whether:
- (a) legislative, judicial or administrative;
 - (b) a department, commission, authority, instrumentality, corporation, tribunal, agency or entity;
 - (c) commonwealth, state, territorial or local;
- and includes any self-regulatory organisation established under any law;
- (40) **High Security Water Entitlement** means a Water Entitlement in the high security class;
- (41) **Implied Delivery Entitlement** means a Delivery Entitlement which does not have a Point of Supply associated with any Landholding;
- (42) **Infrastructure Loan Repayment Fee** means the amount payable per Delivery Entitlement in respect of each Water Year to fund expenditure on capital works in the Buronga Irrigation Area;
- (43) **Insolvency Event** means the happening of any of the following in relation to the Customer:
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Customer's property and is not satisfied, set aside or withdrawn within seven days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Customer which is not satisfied within seven days;
 - (c) the Customer suspends payment of their debts;
 - (d) where the Customer is a body corporate:
 - (i) the Customer becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth);
 - (ii) steps are taken by any person towards making the Customer an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
 - (iii) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed of any of the property of the Customer or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days);

- (iv) the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth); or
 - (v) a resolution is passed for the reduction of capital of the Customer or notice of intention to propose such a resolution is given, without the prior consent of the Company;
- (e) where the Customer is a natural person:
- (i) the Customer authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Customer enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Customer commits an act of bankruptcy; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (44) **Irrigation Area** means the Buronga Irrigation Area, the Coomealla Irrigation Area or the Curlwaa Irrigation Area, as the case may be;
- (45) **Joint Venture Repayment Fee** means the amount payable per Delivery Entitlement in respect of each Water Year to fund the rehabilitation of the Coomealla Irrigation Area;
- (46) **Land and Water Management Plan** means the land and water management plan (if any) from time to time required and approved by the relevant Government Agency for the Area of Operations;
- (47) **Landholder** means:
- (a) the registered proprietor of a Landholding; or
 - (b) the lessee of a Landholding;
- (48) **Landholding** means a property described in the schedule to a Water Delivery Agreement;
- (49) **Legal Requirement** means law; regulations; notice, order or direction received from, or given by, any Government Agency; and the Company's Licences;
- (50) **Licences** means:
- (a) any licence issued under section 122 of the Act;
 - (b) any Access Licence, Water Supply Work Approval and Water Use Approval which is issued under the Act; and
 - (c) any licence issued under the *Protection of the Environment Operations Act 1997* (NSW);

- (51) **Loss** includes any damage, loss, liability or Cost of any kind and however arising (including the result of any Claim), including penalties, fines and interest;
- (52) **Land and Water Management Plan Fee** means the amount payable per Delivery Entitlement in respect of each Water Year to fund implementation of the Land and Water Management Plan;
- (53) **Megalitre** means one million litres;
- (54) **Membership Levies Fee** means the amount payable per Water Entitlement (or however else determined by the Company) in respect of each Water Year to fund the Company's membership of industry bodies, including the NSW Irrigators' Council, the National Irrigators' Council and the National Irrigation Corporations' Water Entitlement Register;
- (55) **Meter** means a water measurement apparatus used to measure and account for water;
- (56) **Personnel** of a person means the officers, employees, contractors, professional advisers, representatives and agents of that person;
- (57) **Point of Supply** means the point at which the Company makes delivery of water to an Customer pursuant to a Water Delivery Agreement;
- (58) **Policies** mean the policies and rules of, or determinations by, the Company published on the Company's web site from time to time, and includes the Transfer Rules Policy;
- (59) **Pricing Group** means a class of Customers, Landholdings or Delivery Entitlements (such as Landholdings in particular Irrigation Areas or in the stock and garden class or in the commercial and industrial class) to which specific Charges, or specific amounts of Charges, apply;
- (60) **Privacy Policy** means the rules determined by the Company in relation to, among other things, the collection and use of personal information;
- (61) **Quarter** means a period of three months ending on 31 March, 30 June, 30 September or 31 December;
- (62) **Reconnection Fee** means the amount payable by reason of the Company re-establishing a physical connection between the Company's irrigation network and the infrastructure of the Customer which had been removed or disabled;
- (63) **Register** means the Water Entitlements Register or the Delivery Entitlements Register, as the case may be;
- (64) **Schedule of Charges** means the document containing, among other things, a list of Charges, published on the Company's web site from time to time;
- (65) **Special Conditions** mean any other conditions that apply to the Customer set out in a Certificate or a separate document;
- (66) **Specified Percentage** means, in respect of a Delivery Entitlement, the percentage specified in the Schedule of Charges in respect of the Delivery Entitlement based on the Pricing Group which the Company determines to apply to the Delivery Entitlement;

- (67) **Stock and Garden Water Entitlement** means a Water Entitlement in the stock and garden class;
- (68) **Stock and Garden Casual Fee** means the amount payable per Landholding in respect of each Water Year if the Company determines that the Landholding is in the stock and garden class and the Customer has no Stock and Garden Water Entitlements;
- (69) **Stock and Garden Fee** means the amount payable per Stock and Garden Water Entitlement in respect of each Water Year;
- (70) **Termination Fee** means the amount payable in respect of the termination or surrender of a Delivery Entitlement as specified in the Schedule of Charges for:
- (a) the Water Year in which the Termination Notice is given to the Company or the Water Year in which the Termination Notice takes effect, whichever is the later; or
 - (b) the Water Year in which notice is given by the Company to the Customer terminating the Delivery Entitlement in accordance with these General Conditions on the grounds that an act or omission by the Customer is in breach of the Customer's obligations under the Documents or the Water Year in which the notice takes effect, whichever is the later;

as the case requires;

- (71) **Termination Notice** means a complete and unambiguous notice in writing from the Customer in the form prescribed by the Company or by way of letter, e-mail or any other form of written communication including, as a minimum:
- (a) the name of the Customer;
 - (b) a statement clearly indicating an intention to terminate or surrender the Delivery Entitlement;
 - (c) identifying the Delivery Entitlement to be terminated or surrendered;
 - (d) confirmation that either:
 - (i) each person who holds a legal or equitable interest in the Delivery Entitlement being Surrendered has given approval to the termination or surrender; or
 - (ii) there are no such persons; and
 - (e) the date of the notice;
- (72) **Transfer Rules Policy** means the rules determined by the Company in relation to, among other things, the arrangements for:
- (a) the transfer of Water Allocation into or out of a Water Allocation Account;
 - (b) the transfer of, and other dealings with, Water Entitlements;
 - (c) the arrangements for reducing the share component of an Access Licence held by the Company to allow Water Entitlements to undergo Transformation, in whole or in part, into an Access Licence that is held by someone other than the Company;

- (d) the arrangements for reducing the share component of an Access Licence held by someone other than the Company or for cancelling a right conferred by a law of a state to hold or take water from a water resource in another state held by someone other than the Company, to allow share component to be permanently transferred to an Access Licence that is held by the Company or to allow an Access Licence to be issued to the Company;
 - (e) the conversion of Water Entitlements from one class to another;
 - (f) the transfer, termination and surrender of, and other dealings with Delivery Entitlements; and
 - (g) the transfer and cancellation of, and other dealings with, shares in the Company;
- (73) **Transformation** has the meaning given to “*transformation arrangements*” in the *Water Act 2007* (Cth) and includes the arrangements set out in the Transfer Rules Policy;
- (74) **Transformation Fee** means the amount payable based on the recovery of the reasonable and efficient costs incurred, or likely to be incurred, by the Company in processing an application for Transformation;
- (75) **Transmission Losses** means loss of water from the Company’s Works during distribution of water to customers including as a result of leakages, evaporation, seepage or scouring;
- (76) **Unused Water Allocation** means any Water Allocation (other than Carryover Water) remaining in a Water Allocation Account at the end of a Water Year;
- (77) **Variable Charge** means a Charge payable which is calculated by reference to the volume of water delivered or taken;
- (78) **Variable Government Charge** means the amount payable per Megalitre of water delivered to, or taken by, the Customer;
- (79) **Water Allocation** means the volume of water to which the Customer is entitled from the Company from time to time:
- (a) under the Documents;
 - (b) as a result of the Customer assigning, under section 71T of the Act, water allocation in a water allocation account under section 85 of the Act for an Access Licence held by the Customer to the water allocation account under section 85 of the Act for an Access Licence held by the Company; or
 - (c) as a result of any other transactions of any kind which affect the volume of water to which the Customer is entitled from the Company;
- as recorded in the Water Allocation Account for the Customer;
- (80) **Water Allocation Account** means an account maintained by the Company which records the crediting, acquiring, debiting and withdrawal of Water Allocation;
- (81) **Water Delivery Agreement** means a contract between the Company and a person substantially in the form of the Water Delivery Contract published on the Company’s web site from time to time;

- (82) **Water Entitlement** means the right to a notional volume of one Megalitre of water which is used to calculate the Water Allocation determined under clause 4.1 of the Water Entitlement Contract from time to time and expressed by reference to one of the following classes: General Security Water Entitlement, High Security Water Entitlement and Stock and Garden Water Entitlement;
- (83) **Water Entitlement Agreement** means a contract between the Company and a person substantially in the form of the Water Entitlement Contract published on the Company's web site from time to time;
- (84) **Water Entitlements Register** mean a register maintained by the Company, as varied by the Company from time to time, which records:
- (a) the Customer's name and address;
 - (b) the number and class of Water Entitlements held by the Customer; and
 - (c) any lien, mortgage or charge over the Customer's Water Entitlements registered with the Company under clause 38.4;
- (85) **Water Supply Work Approval** has the meaning given to that term under the Act;
- (86) **Water Use Approval** has the meaning given to that term under the Act;
- (87) **Water Year** means any period of one year ending on 30 June;
- (88) **Water Usage Above Access Fee Allowance Fee** means, where the Customer holds at least one Delivery Entitlement, the amount payable per Megalitre of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) in excess of the volume represented by the Specified Percentage, but not more than 100%, of the Customer's Delivery Entitlements held at the end of the Water Year (or at the end of such other period as the Company may determine) to the extent to which the Customer has paid, or is taken under clause 7.3 to have paid, the Access Fee for the Water Year; and
- (89) **Work** has the same meaning in the Documents as water management work has in the Act.

1.2 Interpretation

In the Documents, unless the contrary intention appears:

- (1) reference to:
- (a) one gender includes the other genders;
 - (b) the singular includes the plural and the plural include the singular;
 - (c) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to the Document and references to the Document include any recital, schedule or annexure;
 - (d) any contract (including an Agreement), schedule, Policies, other instrument or determination includes any variation or replacement of it from time to time;

- (e) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) a person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
 - (g) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (h) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (i) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged, and a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body;
 - (j) time is a reference to Australian Eastern Standard Time;
 - (k) a day or a month means a calendar day or calendar month;
 - (l) money (including “\$”, “AUD” or “dollars”) is to Australian currency;
 - (m) any thing (including any amount or any provision of the Documents) is a reference to the whole and each part of it; and
 - (n) Delivery Entitlements includes Implied Delivery Entitlements;
- (2) an obligation, representation or warranty on the part of or in favour of more than one person binds or is for the benefit of each of them separately and all of them jointly;
 - (3) a party which is a trustee is bound both personally and in their capacity as a trustee;
 - (4) the meaning of any general language is not restricted by any accompanying example, and the words “includes”, “including”, “such as”, “for example” or similar words are not words of limitation;
 - (5) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - (6) headings and the table of contents are for convenience only and do not form part of the Documents or affect their interpretation;
 - (7) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day; and
 - (8) a provision of a Document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Document or the inclusion of the provision in the Document.

2 Customer must obtain own advice

- 2.1 The Company does not give advice to the Customer about the Documents or anything connected with the subject matter of the Documents.

- 2.2 The Customer should seek their own professional advice about the Documents and anything connected with the subject matter of the Documents, including legal, taxation, accounting and financial advice.

3 Water allocation account

- 3.1 The Company must maintain a Water Allocation Account for the Customer.
- 3.2 The Company may:
- (1) permit the Customer's Water Allocation Account to have a balance of less than zero; or
 - (2) refuse to do anything or allow anything to occur that would cause the Customer's Water Allocation Account to have a balance of less than zero;
- at the Company's discretion.
- 3.3 If the Customer's Water Allocation Account has a balance of less than zero, the Company may set off the negative balance against any later credits or acquisitions to the Customer's Water Allocation Account.
- 3.4 The Company may increase the Customer's Water Allocation, and credit the Customer's Water Allocation Account accordingly, on one or more occasions in any Water Year, at the Company's discretion, for any reason and this may be applied retrospectively. The Company may, at its discretion, decrease or cancel any increase under this clause.
- 3.5 The Company may decrease the Customer's Water Allocation, and debit the Customer's Water Allocation Account accordingly, on one or more occasions in any Water Year:
- (1) following a decrease in any relevant Availability Announcement;
 - (2) if, in the reasonable opinion of the Company, Transmission Losses or restricted actual or anticipated availability justify the decrease; or
 - (3) if, in the reasonable opinion of the Company, compliance with the Company's obligations under a Legal Requirement justifies the decrease.
- 3.6 The Company must publish any increase or decrease under clauses 3.4 or 3.5, in percentage terms, on the Company's web site.
- 3.7 Water Allocation may be reduced, withdrawn or suspended by the Company to the extent that any water allocation of the Company is reduced, withdrawn or suspended under the Act. The Company must notify the Customer of a reduction, withdrawal or suspension of Water Allocation under this clause 3.7 as soon as practicable. In addition to any other method of service provided by law, the Notice may be given by the Company, in the case of a notice under this clause 3.7, by publishing the notice on the Company's web site.

4 Unused water allocation

- 4.1 Unused Water Allocation cannot be carried over to the next Water Year and will be cancelled without notice or compensation at the end of the Water Year.
- 4.2 The Company may, at its sole discretion, sell all or part of any water allocation (as defined in the Act) held in a water allocation account (as defined in the Act) for an Access Licence of the Company, including any such water allocation corresponding to Water Allocation which, in the opinion of the Company, will be, or is reasonably likely to be, cancelled under

clause 4.1 or can no longer be used for the purposes of an assignment dealing (as defined in the Act) from an Access Licence held by the Company within the remaining part of the Water Year. The Company may, at its discretion, retain all or some of the sale proceeds, or distribute all or some of the sale proceeds to all or some of its customers, or do a combination of both. Any decision made by the Company under this clause 4.2 is final and binding on the Customer.

5 Implied delivery entitlements

- 5.1 The Customer may apply to the Company (in a form approved by the Company) to nominate in respect of an Implied Delivery Entitlement, a Point of Supply associated with a Landholding. If the Company approves such an application, the Implied Delivery Entitlement is converted into a Delivery Entitlement.
- 5.2 The Company may determine in respect of an Implied Delivery Entitlement, that it has a Point of Supply associated with a Landholding. If the Company makes such a determination, the Implied Delivery Entitlement is converted into a Delivery Entitlement.
- 5.3 Fixed Charges and Termination Fees are payable in respect of Implied Delivery Entitlements. Variable Charges are not payable in respect of Implied Delivery Entitlements.
- 5.4 Despite anything to the contrary in the Documents, an Implied Delivery Entitlement does not entitle the Customer to delivery of, or to take, any water.

6 Charges

- 6.1 The Company may, from time to time, determine the Charges, including:
- (1) the Access Fee;
 - (2) the Asset Replacement Fund Fee;
 - (3) the Casual Users Access Fee;
 - (4) the Commercial and Industrial Casual Fee;
 - (5) the Commercial and Industrial Fee;
 - (6) the Disconnection Fee;
 - (7) the Fixed Government Charge;
 - (8) the Infrastructure Loan Repayment Fee;
 - (9) the Joint Venture Repayment Fee;
 - (10) the Land and Water Management Plan Fee;
 - (11) the Membership Levies Fee;
 - (12) the Reconnection Fee;
 - (13) the Stock and Garden Fee Casual Fee;
 - (14) the Stock and Garden Fee;

- (15) the Additional Water Fee;
 - (16) the Termination Fee;
 - (17) the Transformation Fee;
 - (18) the Variable Government Charge; and
 - (19) the Water Usage Above Access Fee Allowance Fee.
- 6.2 The Company may, from time to time, determine:
- (1) one or more Pricing Groups;
 - (2) the Charges, and the amount of each Charge, applying to each Pricing Group;
 - (3) the criteria for inclusion of a customer, Landholding or Delivery Entitlement in a Pricing Group; and
 - (4) the Pricing Group that applies to the Customer, Landholding or Delivery Entitlement.
- 6.3 The Company may, at any time, vary, amend, supplement or replace a determination made under clause 6.1 or clause 6.2 and this may be applied retrospectively. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).
- 6.4 Charges in respect of one class of an Entitlement may be different from Charges in respect of any other class of the Entitlement. Charges in respect of one Irrigation Area may be different from Charges in respect of any other Irrigation Area, including Charges in respect of the same class of service. Charges in respect of one Pricing Group (such as Landholdings in the stock and garden class) may be different from Charges in respect of any other Pricing Group (such as Landholdings in the commercial and industrial class), including Charges in respect of the same class of service.
- 6.5 The Company must publish a Schedule of Charges on its web site. To the maximum extent permitted by law, the omission of a Charge from the Schedule of Charges does not reduce, limit or otherwise affect the Customer's obligation to pay the Charge.
- 6.6 The Customer must pay the Charges to the Company. The Charges must be paid in full, irrespective of whether any Water Allocation is credited or any Water Allocation is available or the Company delivers, or the Customer takes, any water in any Water Year.

7 Fixed charges

- 7.1 Subject to clause 9.6, Fixed Charges in respect of a Quarter (or such other period as the Company may determine) are payable in respect of each Entitlement or Landholding held by the Customer at 11.59 pm on the last day of the Quarter (or such other time and date as the Company may determine).
- 7.2 Any arrangement made between a transferor and a transferee (as between themselves) for apportioning Fixed Charges for an Entitlement or Landholding being transferred does not affect the transferee's liability (as against the Company) under rule 7.1.
- 7.3 If a Delivery Entitlement is transferred after the transferor has paid, or is taken under this clause to have paid, part or all of the Access Fee in respect of the Delivery Entitlement for the Water Year in which the transfer takes effect (**Prior Payments**), the transferor may, by notice to the Company given when applying for the transfer, request that the Delivery

Entitlement be transferred with the benefit of some or all of the Prior Payments. To the extent that the Company accepts such a request, the Prior Payments will be taken to have been paid by the transferee for the purpose of determining the Water Usage Above Access Fee Allowance Fee payable by the transferor and the transferee in respect of the Water Year in which the transfer takes effect. Such an arrangement may have the effect of either or both of the following:

- (1) increasing the Water Usage Above Access Fee Allowance Fee that would otherwise be payable by the transferor; and
- (2) decreasing the Water Usage Above Access Fee Allowance Fee that would otherwise be payable by the transferee.

7.4 If either:

- (1) the transferor does not give notice under clause 7.3; or
- (2) the transferor gives notice under clause 7.3 requesting that the Delivery Entitlement be transferred without the benefit of any of the Prior Payments;

none of the Prior Payments will be taken to have been paid by the transferee for the purpose of determining the Water Usage Above Access Fee Allowance Fee payable by the transferor and the transferee in respect of the Water Year in which the transfer takes effect.

8 Variable charges

- 8.1 A Delivery Entitlement may be exercised once per Water Year to have delivered, or to take, one Megalitre of water in accordance with the Documents.
- 8.2 Where the Customer holds at least one Delivery Entitlement, no Water Usage Above Access Fee Allowance Fee is payable per Megalitre of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) if the volume of water is less than or equal to the volume represented by the Specified Percentage of the Customer's Delivery Entitlements held at the end of the Water Year (or at the end of such other period as the Company may determine) to the extent to which the Customer has paid, or is taken under clause 7.3 to have paid, the Access Fee for the Water Year.
- 8.3 Subject to clause 8.4, where the Customer holds at least one Delivery Entitlement, the Water Usage Above Access Fee Allowance Fee is payable per Megalitre of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) in excess of the volume represented by the Specified Percentage, but not more than 100%, of the Customer's Delivery Entitlements held at the end of the Water Year (or at the end of such other period as the Company may determine) to the extent to which the Customer has paid, or is taken under clause 7.3 to have paid, the Access Fee for the Water Year.
- 8.4 The Water Usage Above Access Fee Allowance Fee is not payable in respect of a number of Megalitres of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) which is equal to the number of Stock and Garden Water Entitlements held by the Customer at the end of the Water Year (or at the end of such other period as the Company may determine).
- 8.5 The Casual Users Access Fee is payable per Megalitre of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) to the extent that the volume of water delivered to, or taken by, the Customer in a Water Year (or in such other period as the Company may determine) exceeds the volume represented by 100% of the Customer's Delivery Entitlements held at the end of the Water Year (or at

the end of such other period as the Company may determine), including where the Customer does not hold any Delivery Entitlements.

9 Termination fees

- 9.1 The Customer may terminate or surrender a Delivery Entitlement by giving to the Company a Termination Notice. The Company's preferred form of notice is available on the Company's web site. The termination or surrender of a Delivery Entitlement under this clause 9.1 takes effect on the date on which the Termination Notice is given to the Company.
- 9.2 The Company may, by notice to the Customer, terminate a Delivery Entitlement held by the Customer in accordance with these General Conditions on the grounds that an act or omission by the Customer is in breach of the Customer's obligations under the Documents. The termination of a Delivery Entitlement under this clause 9.2 takes effect on the date on which the notice is given to the Customer or any later date specified in the notice.
- 9.3 If a Delivery Entitlement is terminated or surrendered:
- (1) the Customer must immediately pay:
 - (a) the Termination Fee in respect of the Delivery Entitlement;
 - (b) any additional fee payable in accordance with rule 8 of the *Water Charge (Termination Fees) Rules 2009* (Cth); and
 - (c) if the Company removes or disables a physical connection between the Company's irrigation network and the infrastructure of the Customer, the Disconnection Fee; and
 - (2) the Customer is not released from any accrued obligation or liability to pay Charges including:
 - (a) Charges in respect of the Delivery Entitlement payable in respect of the Quarter (or such other period as the Company may determine) in which the Delivery Entitlement is terminated or surrendered, including those which accrue under clause 9.6; or
 - (b) other outstanding Charges.
- 9.4 The Company must invoice at the same time:
- (1) the amounts payable under clause 9.3(1); and
 - (2) all Charges in respect of the Delivery Entitlement payable in respect of the Quarter (or such other period as the Company may determine) in which the Delivery Entitlement is terminated or surrendered, including those which accrue under clause 9.6.
- 9.5 If a Delivery Entitlement is terminated or surrendered:
- (1) no Charges accrue in respect of the Delivery Entitlement after the end of the Quarter (or such other period as the Company may determine) in which the Delivery Entitlement is terminated or surrendered; and
 - (2) on and from the date on which the termination or surrender of the Delivery Entitlement takes effect, the Delivery Entitlement ceases to entitle the Customer to the delivery of water.

- 9.6 If a Customer gives a Termination Notice to the Company, the Fixed Charges in respect of the current Quarter (or such other period as the Company may determine) accrue, in respect of each Delivery Entitlement which the Customer terminates or surrenders, when the Termination Notice is given to the Company. If the Company, by notice to the Customer, terminates a Delivery Entitlement held by the Customer in accordance with these General Conditions on the grounds that an act or omission by the Customer is in breach of the Customer's obligations under the Documents, the Fixed Charges in respect of the current Quarter (or such other period as the Company may determine) accrue, in respect of each Delivery Entitlement which the Company terminates, when the notice is given to the Customer.
- 9.7 A Termination Fee is not payable merely because a Delivery Entitlement is transferred under the Transfer Rules Policy.

10 Disconnection fees

- 10.1 The Customer must pay a Disconnection Fee to the Company if the Company removes or disables a physical connection between the Company's Works and the Customer's Works.
- 10.2 Without limiting clause 10.1, if all of the Customer's Delivery Entitlements which have a Point of Supply associated with a Landholding are terminated or surrendered (whether by the Customer or the Company), the Company may remove or disable the physical connections between the Company's Works and the Customer's Works in respect of that Landholding.

11 Invoices

- 11.1 The Company must notify the Customer Quarterly (or at such other intervals as the Company may determine) of Charges which have become payable. The Company must notify the Customer of the date by which Charges are due for payment. The Customer must pay the Charges by the date specified in the notice (or a later date determined by the Company) and by one of the methods specified in the notice. Unless otherwise specified in the notice or determined by the Company, the date for payment is the date which is 28 days after the date of the notice.
- 11.2 The Company may, at any time, vary, amend, supplement or replace a notice given under clause 11.1 by giving notice to the Customer. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).
- 11.3 The Customer's obligation to pay any Charges is not affected:
- (1) by a failure to receive a notice;
 - (2) by virtue of the fact that a notice is addressed to the wrong person for any reason; or
 - (3) by virtue of the fact that a notice is not addressed to the Customer,
- unless it is established to the reasonable satisfaction of the Company that such failure is due to the neglect or default of the Company, in which case:
- (4) payment of the Charges is not due until the Customer receives a notice from the Company setting out the date by which those Charges are due for payment; and
 - (5) the Company may not charge interest under clause 12.1 on the Charges to be paid by the Customer until the expiry of the due date for payment under clause 11.3(4).

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

12 Interest

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

13 Deemed delivery of water

- 13.1 The Customer acknowledges that destroying, damaging, interfering with, or depositing anything in any of the Company's Works or taking water from the Company's Works without the authority of the Company is an offence under Part 3 of Chapter 7 of the Act.
- 13.2 The Customer must not take water from the Company's Works except by ordering it for delivery from the Company in accordance with the Documents.
- 13.3 Where:
- (1) there is no Meter or other instrument measuring delivery of water which has been approved by the Company for the purposes of assessing relevant Charges payable by the Customer;
 - (2) in the opinion of the Company, the Meter is measuring incorrectly, not operating properly or not operating;
 - (3) in the opinion of the Company, water has been delivered to, or taken by, the Customer without having been ordered for delivery under the Documents; or
 - (4) in the opinion of the Company, more water has been delivered to, or taken by, the Customer than the Customer has ordered under the Documents,

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

- 13.4 For the purposes of clause 13.3(1), unless the Company determines otherwise in a particular case, where the Customer has a Point of Supply and there is no Meter or other instrument measuring delivery of water which has been approved by the Company for the purposes of assessing relevant Charges payable by the Customer, the Customer will be deemed to have had delivered, or taken, in the relevant Water Year, a volume of water equivalent to the volume of Water Allocation credited to the Customer's Water Allocation Account in respect of the Customer's Water Entitlements in respect of the relevant Water Year.
- 13.5 The Company's determination of the volume of Unmetered Water will be taken to the actual volume of Unmetered Water.
- 13.6 If the Company makes a determination under clause 13.3, then, without limiting the Company's rights under clause 21 and the Documents:
- (1) the Company may debit a volume of Water Allocation from the Customer's Water Allocation Account equal to the volume of Unmetered Water;

- (2) if the volume of Unmetered Water exceeds the volume of Water Allocation in the Customer's Water Allocation Account, clause 14 applies in respect of the excess; and
- (3) the Customer must pay to the Company an amount determined by the Company for the Cost of delivery of the Unmetered Water.

14 Additional water

- 14.1 A Customer may agree to receive a volume of Additional Water by ordering it for delivery or by taking it.
- 14.2 If the Customer agrees to receive a volume of Additional Water under clause 14.1:
 - (1) the Company must credit the volume of Additional Water to the Customer's Water Allocation Account; and
 - (2) the Customer must pay the Additional Water Fee to the Company.
- 14.3 The Company may determine the volume of Additional Water received by the Customer using any reasonable means the Company considers fit. The Company's determination of the volume of Additional Water will be taken to the actual volume of Additional Water.

15 Policies and other conditions

- 15.1 The Company must publish the Policies on the Company's web site.
- 15.2 The parties must comply with:
 - (1) the Policies; and
 - (2) any Special Conditions.
- 15.3 To the extent that there is any inconsistency between a provision in any of the documents specified in clause 15.3(2) and another provision in any of them or between a provision in any of those documents and a provision in another of those documents:
 - (1) a specific provision takes precedence over a general provision; and
 - (2) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
 - (a) any Special Conditions;
 - (b) the Agreement; and
 - (c) the Policies.
- 15.4 If the Customer enters into a transaction with respect to the Customer's Water Allocation, Water Entitlements or Delivery Entitlements, the Customer must, if requested by the Company, execute a new Water Entitlement Agreement (if the Customer is entitled to any Water Entitlements) and a new Water Delivery Agreement (if the Customer has a Landholding).

16 Entitlement certificates

- 16.1 Subject to clause 17, the Customer whose name is entered as a holder of Entitlements in the Register is entitled to a Certificate for the Entitlements registered in the Customer's name.
- 16.2 Where Entitlements are held jointly by several persons, the Company is not bound to issue more than one Certificate.
- 16.3 Delivery of a Certificate may be effected by delivering it personally to the holder or by posting it in an envelope addressed to the holder or by delivering or posting the Certificate in accordance with the instructions of the Customer. Delivery of a Certificate to one of several joint holders is sufficient delivery to them all.
- 16.4 A Certificate must state:
- (1) the name of the Company;
 - (2) the name of the Customer; and
 - (3) the number and class (if relevant) of Entitlements for which the Certificate is issued;
- and the Certificate may include Special Conditions.
- 16.5 The Company may cancel or revoke any Certificates if any Entitlement for which the Certificate was issued is transferred, terminated, surrendered or the subject of Transformation or another dealing.
- 16.6 The Company may, at any time, vary, amend, supplement or replace a Certificate, including any Special Conditions, by giving notice to the Customer. The Company may, at any time, vary, amend, supplement or replace any separate document setting out Special Conditions, by giving notice to the Customer. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).

17 Replacement of certificates

- 17.1 If any Certificate issued under clause 16 is out-of-date, worn out or defaced, the Company may, upon production to them of the Certificate, order it to be cancelled and issue, after receipt of the out-of-date, worn out or defaced Certificate, a new Certificate in its place.
- 17.2 If:
- (1) satisfactory evidence is received by the Company that any Certificate issued under clause 16 has been stolen, lost or destroyed and has not been pledged, sold or otherwise disposed of;
 - (2) an indemnity and undertaking which the Company thinks adequate is given; and
 - (3) any other steps (including advertising) which the Company thinks necessary are taken;
- a new Certificate must be issued to the Customer entitled to the stolen, lost or destroyed Certificate within five Business Days after those conditions are satisfied.
- 17.3 The Company may charge a fee for each new Certificate issued under this clause 17.

18 Goods and services tax

18.1 In this clause 18:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

18.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of the Documents for any supply made under or in connection with the Documents does not include GST.

18.3 To the extent that any supply made under or in connection with the Documents is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

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

19 No contravention of the company's obligations

19.1 The Customer must not do or omit to do anything that may cause a contravention of the Documents, any Licence, including the Company's Licences or any Licence under which the Customer is entitled to receive water, any approval which the Company has been granted under the Act or any relevant Legal Requirement, and the Customer must comply with any reasonable direction of the Company for this purpose.

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

19.3 Without limiting clauses 19.1 or 19.2:

- (1) the Customer must comply with any reasonable direction of the Company for the purpose of reducing the impact of chemicals and nutrients on receiving waters;

- (2) the Customer must grant the Company reasonable access to the Customer's Landholding and provide the Company with all reasonable assistance for the purposes of the Company determining whether the Customer is complying with clause 19.3(1); and
- (3) if the Customer fails to comply with the requirements set out in clauses 19.3(1) and 19.3(2), the Company may refuse to supply water to the Customer.

20 Customer to provide information

20.1 The Customer must comply with all notices given by the Company requesting that the Customer provide the Company with information required by the Company to:

- (1) comply with a Legal Requirement;
- (2) administer and manage water and its delivery; or
- (3) give full and proper effect to the terms of the Documents,

including information concerning crop types, the use of water and volumes used.

21 Default

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

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

21.2 An Event of Default occurs if:

- (1) any money payable by the Customer or an Associate of the Customer to the Company or any of its related bodies corporate, including money payable under any of the Documents or otherwise, remains unpaid for three months after the due date for payment, whether or not any formal or legal demand has been made;
- (2) the Customer or an Associate of the Customer breaches any of the Documents other than in the manner contemplated by clause 21.1;
- (3) the Customer or an Associate of the Customer repudiates any of the Documents;

- (4) an event of default (as defined in the relevant contract) occurs under any other Water Entitlement Agreement or any other Water Delivery Agreement between the Company and the Customer or between the Company and an Associate of the Customer;
- (5) the Customer or an Associate of the Customer becomes subject to an Insolvency Event;
- (6) the Customer is a party to a Water Entitlement Agreement and does not hold, or no longer holds, any Water Entitlements or Water Allocation; or
- (7) the Customer is a party to a Water Delivery Agreement and one or more of the following applies:
 - (a) the Customer is not, or ceases to be, the Landholder in respect of the Landholding, unless the documents necessary for the Customer to be the Landholder in respect of the Landholding have been lodged with the relevant Government Agency and the Customer has not yet been registered as the Landholder;
 - (b) the Customer does not hold, or no longer holds, any Delivery Entitlements; or
 - (c) the Customer's existing manner of use of the Landholding (including, if relevant, the application of water), in the reasonable opinion of the Company, breaches, or is likely to breach, any Licences held by the Company, the Customer or third parties.

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

21.4 If an Event of Default occurs, then, to the maximum extent permitted by law, the Company may do any, some or all of the following:

- (1) immediately by giving notice to the Customer, suspend any determination of, or increase in, or crediting of, Water Allocation, until the Event of Default is remedied, without any obligation to make up any delay or shortfall once the Event of Default is remedied;
- (2) immediately by giving notice to the Customer, suspend delivery of water, until the Event of Default is remedied, without any obligation to make up any delay or shortfall in delivery once the Event of Default is remedied;
- (3) immediately by giving notice to the Customer, require the Customer to suspend the discharge of Drainage into the Company's Drainage Works, until the Event of Default is remedied, without any liability for the consequences, including flooding;
- (4) immediately by giving notice to the Customer, suspend the Customer's right to use, transfer, terminate, surrender or otherwise deal with, the Customer's Entitlements and Water Allocation until the Event of Default is remedied;
- (5) after giving 14 days' notice to the Customer, do one or more of the following:
 - (a) transfer some or all of the Customer's Entitlements or Water Allocation and apply the proceeds towards the satisfaction of any money due for payment by the Customer under any of the Documents or otherwise;
 - (b) cancel some or all of the Customer's Water Entitlements or Water Allocation and apply a reasonable estimate of the value of the cancelled

Water Entitlements or Water Allocation to the money due for payment by the Customer under any of the Documents or otherwise; or

- (c) if the Customer's Water Allocation Account has a balance of zero, record a negative balance in the Customer's Water Allocation Account and apply a reasonable estimate of the value of the Water Allocation that would be required to return the negative balance to zero to the money due for payment by the Customer under any of the Documents or otherwise;

and the Company must pay any surplus to the person entitled to it;

- (6) after giving 14 days' notice to the Customer, terminate some or all of the Customer's Delivery Entitlements (in which case the Termination Fee will be payable) and apply a reasonable estimate of the value of the cancelled Delivery Entitlements to the money due for payment by the Customer under any of the Documents or otherwise; or
- (7) terminate the Agreement by giving two months' notice to the Customer, in which case:
 - (a) the Customer's Entitlements and Water Allocation will be terminated unless they are transferred or, in the case of Water Allocation, used, within two months after the date of the notice;
 - (b) the Company must apply a reasonable estimate of the value of the terminated Entitlements and Water Allocation to the money due for payment by the Customer under any of the Documents or otherwise and pay any surplus to the person entitled to it;
 - (c) the Company may remove or disable any physical connection between the Company's Works and the Customer's Works;
 - (d) the Customer may be required to pay Termination Fees and Disconnection Fees in accordance with these General Conditions;
 - (e) subject to the Agreement, upon termination, each party is released from their obligation to further perform the Agreement; and
 - (f) each party retains the rights, remedies and powers they have in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

- 21.5 The rights of the Company under clause 21.4 are available whether or not the Event of Default is capable of being remedied.
- 21.6 If the Company exercises a power of sale with respect to the Landholding under the *Conveyancing Act 1919* (NSW) or clause 23 or 38, the Customer must deliver possession of the Landholding to the Company within three months after the Company gives notice of its intention to exercise its power of sale.
- 21.7 Without notice to the Customer, any Costs incurred by the Company directly or indirectly as a result of or in connection with an Event of Default, including remedying an Event of Default, will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

22 Termination by the customer

22.1 At any time on the giving of 30 days' notice to the Company, the Customer may terminate the Agreement, in which case:

- (1) subject to the Agreement, upon termination, each party is released from their obligation to further perform the Agreement; and
- (2) each party retains the rights, remedies and powers they have in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

22.2 A notice of termination under clause 22.1 is ineffective unless:

- (1) all of the Customer's Water Entitlements and Water Allocation have been transferred or terminated in accordance with the Agreement;
- (2) all of the Customer's Delivery Entitlements have been transferred, terminated or surrendered in accordance with the Agreement;
- (3) the Customer has paid all Charges; and
- (4) the Customer's Water Allocation Account does not have a negative balance.

22.3 If the Agreement is terminated under clause 22.1:

- (1) subject to the Agreement, upon termination, each party is released from their obligation to further perform the Agreement; and
- (2) each party retains the rights, remedies and powers they have in connection with any past breach or any Claim or obligation (including an obligation to pay money) that has arisen before termination.

23 Power of attorney

23.1 The Customer irrevocably appoints the Company to be the Customer's attorney, for valuable consideration (including in consideration for the Company entering into the Agreement), until the Agreement is terminated.

23.2 The Company may do in the name of the Customer, and on their behalf, everything necessary or expedient, in the Company's sole discretion, to:

- (1) exercise the Company's powers:
 - (a) under the Documents, including under clause 21.4(5)(a); and
 - (b) under any statute, including under the *Conveyancing Act 1919* (NSW); and
- (2) sell a Landholding by public auction or private treaty (and convey or transfer it to a purchaser) to recover Charges that are a charge on the Landholding in favour of the Company under section 355 of the Act if those Charges have remained unpaid for more than three years from the date on which they originally became payable. The Company must take reasonable steps to notify the Customer of the Company's intention to sell the Landholding. If, before the Landholding is sold, all of the relevant Charges are paid to the Company or an arrangement satisfactory to the Company for payment of all of the relevant Charges is entered into by the Customer, the Company must not proceed with the sale. The purchase money for

land sold under this clause 23 must be paid to the Company. The Company must apply any purchase money received by it, first, towards the expenses of the Company incurred in connection with the sale and, secondly, towards the relevant Charges. Any balance of the purchase money must be paid to the persons having estates or interests in the Landholding immediately before the sale accordingly to their respective estates and interests. The Company may pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it, and the receipt of the person to whom the payment is so made is an effectual discharge to the Company for it.

- 23.3 The Company may exercise its powers under this clause 23:
- (1) in its own name or in the name of the Customer; and
 - (2) even if it benefits from the exercise of the power.
- 23.4 The Customer declares that all acts and things done by the Company in exercising powers under this clause 23 will be as good and valid as if they had been done by the Customer and agreed to ratify and confirm whatever the Company does in exercising its powers under this clause 23.
- 23.5 If the Company requests, the Customer must execute a power of attorney to give effect to the appointment under this clause 23, appointing the Company as the Customer's attorney and conferring on the Company the rights and powers set out in this clause 23.
- 23.6 The appointment under this clause 23 is exclusive and the Company has authority to represent the Customer to the exclusion of the Customer. The Customer is not permitted to interfere with the Company's exercise of its rights as attorney.
- 23.7 The Customer indemnifies the Company against any Loss incurred by the Company in reliance on its power under this clause 23.

24 Limitation of liability and indemnity

- 24.1 To the maximum extent permitted by law:
- (1) all terms, conditions, warranties, statements or representations by the Company (whether express, implied, written, oral, collateral, statutory or otherwise) in connection with the subject matter of the Documents which are not expressly set out in the Documents are excluded, and to the extent they cannot be excluded, the Company disclaims all liability that it may have in relation to them; and
 - (2) the Customer must not make any Claim under or in connection with the Documents unless it is based solely on and limited to the express provisions of the Documents.
- 24.2 To the maximum extent permitted by law, the Customer agrees not to make and irrevocably waives all rights that it may have to make any Claim against the Company or any of its Personnel under:
- (1) Part 7.10 of the *Corporations Act 2001* (Cth);
 - (2) the *Australian Securities and Investments Commission Act 2001* (Cth) in connection with a breach of section 12DA of that Act; or
 - (3) section 18 of the *Australian Consumer Law*;

or any corresponding or similar provision of any Australian State or Territory legislation or any similar provision of any legislation in any relevant jurisdiction or any other applicable laws, in connection with the subject matter of the Documents.

24.3 Except as expressly set out in the Documents, the Customer releases the Company and its Personnel from all Claims, whether in tort (including negligence), statute, contract, or otherwise, and all Losses which the Customer has or may have which arise out of the negotiations for, or subject matter of, the Documents. The Customer agrees that each of the Company's Personnel are entitled to the benefit of the release, which may be enforced by the Company on behalf of any of them. The Company holds on trust for those people, jointly and severally, the benefit conferred by this clause 24.3.

24.4 The Customer acknowledges and agrees that:

- (1) except as expressly set out in the Documents, neither the Company nor any of its Personnel is responsible to the Customer for, and the Customer does not rely on, any statement or representation made, any advice, opinion, warranty, undertaking, promise, estimate, projection or forecast given, or any conduct of any kind engaged in, in relation to the subject matter of the Documents;
- (2) without limiting clause 24.4(1), neither the Company nor any of its Personnel is responsible to the Customer for, and the Customer does not rely on, any statement or representation made, any advice, opinion, warranty, undertaking, promise, estimate, projection or forecast given, or any conduct of any kind engaged in, in relation to:
 - (a) the availability or delivery of water at any particular time or its flow rate, pressure or height or depth relative to any Works, including where this restricts or prevents the taking of water through those Works;
 - (b) the nature, quality or fitness for any purpose of any water made available or delivered by the Company, including in relation to:
 - (i) fitness for human consumption, or for use in contact with humans;
or
 - (ii) fitness for watering livestock, crops or plants, spraying, manufacturing or any other use;
 - (c) whether or not any water made available or delivered by the Company has been filtered or treated, or filtered or treated to any particular standard;
 - (d) future matters, including future water availability, Charges and service levels;
 - (e) the regulation of the water industry, including any act or omission by the ACCC or any other Government Agency;
 - (f) the principles to be applied by the ACCC or any other Government Agency with respect to the regulation of the water industry and, in particular, matters affecting water availability, Charges and service levels;
 - (g) the results of reviews by the ACCC or any other Government Agency or any policies or procedures which they adopt; or
 - (h) the accuracy, reliability or completeness of the Policies;

- (3) without limiting clauses 24.4(1) or 24.4(2), except as expressly set out in the Documents, no statement or representation, no advice, opinion, warranty, undertaking, promise, estimate, projection or forecast and no conduct:
 - (a) has induced or influenced the Customer to enter into the Documents or agree to any or all of their provisions;
 - (b) has been relied on in any way by the Customer;
 - (c) has been warranted to the Customer as being true or accurate; or
 - (d) has been taken into account by the Customer as being important to the Customer's decision to enter into the Documents or agree to any or all of their provisions;
- (4) except as expressly set out in the Documents, the Customer enters into the Documents relying on their own evaluation, advice and investigations;
- (5) the Customer is capable of evaluating the merits and risks of filtering or treating the water made available or delivered by the Company;
- (6) the Customer is responsible for:
 - (a) determining whether or not to filter or treat, or filter or treat to any particular standard, the water made available or delivered by the Company; and
 - (b) at their own Cost, installing, commissioning, operating, repairing, replacing, maintaining and improving any filter or treatment; and
- (7) having conducted their own evaluation of the merits and risks of filtering or treating the water made available or delivered by the Company, the Customer understands the consequences of their determination (including the potential Loss which may result from their determination).

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

- (1) to the extent that the breach has arisen out of, or the Loss suffered is increased as a result of, any act or omission by or on behalf of the Company:
 - (a) that is required or permitted by any provision of the Documents; or
 - (b) that is for the purpose (directly or indirectly) of compliance with any Legal Requirement;
- (2) to the extent that the breach has arisen out of, or the Loss suffered is increased as a result of:
 - (a) a new law, or a change in the law (including its interpretation);
 - (b) a new rule or decision being made by any Government Agency, or a change in any rule or decision of any Government Agency;
 - (c) a new administrative practice or policy being introduced by any Government Agency, or a change in any administrative practice or policy of any Government Agency; or
- (3) for any Loss (including any indirect, consequential or economic loss, loss of profits or revenue, loss of production, loss of use, loss of goodwill or loss of opportunity)

which does not flow directly, naturally or in the usual course of things from that breach, whether or not that Loss was in the reasonable contemplation of the parties when the Documents were entered into.

- 24.6 The Company's liability, if any, under the Documents, in relation to the supply of a service not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited to payment of the cost of having the service supplied again.
- 24.7 The Customer indemnifies the Company against
- (1) all Losses incurred by the Company or the Customer arising directly or indirectly as a result of or in connection with:
 - (a) a breach by the Customer of a Document, whether express or implied; or
 - (b) any default, or any negligent or wilful act or omission of the Customer or its Personnel; and
 - (2) all Losses incurred by the Customer arising directly or indirectly as a result of or in connection with the performance by the Company of any of the obligations of the Company under a Document or a Legal Requirement, whether express or implied.
- 24.8 The limitations on the liability of the Company and indemnities contained in this clause 24 are in addition to:
- (1) the indemnities provided by section 137 of the Act and section 36 of Schedule 9 of the Act; and
 - (2) the exclusion of liability under section 397 of the Act for any act or omission done, or omitted to be done, in good faith for the purpose of executing the Act.

25 Force majeure

- 25.1 In this clause 25, **Prescribed Event** means an event that:
- (1) is beyond the control of a party (**Affected Party**);
 - (2) occurs without the fault or negligence of the Affected Party,
- and includes:
- (3) act of God;
 - (4) war, terrorism, riot, insurrection, vandalism, sabotage, fire, lightning, explosion, earthquake, subsidence, flood, drought, power surge or failure, epidemic or national emergency;
 - (5) strike, lock out, ban, limitation of work and other industrial disturbance;
 - (6) law, rule or regulation of any Government Agency, and executive or administrative order or act of general or particular application; and
 - (7) a major structural failure of any of the Company's Works or Customer's Works.
- 25.2 If the Affected Party:

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

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

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

26 Privacy

- 26.1 Without limiting the Company's rights, the Company may disclose, and the Customer consents to the disclosure of, any information (including personal information of the Customer) in accordance with the Privacy Policy.

27 Time of the essence

- 27.1 Time is of the essence in respect of obligations to pay money under the Documents.

28 Further assurances

- 28.1 Each party must, at their own Cost, from time to time, do all things, including executing or producing documents, getting documents executed or produced by others and obtaining consents necessary or desirable to give full effect to the Documents (including the transactions contemplated by the Documents).

- 28.2 The Customer must:

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

that the Company determines is reasonably necessary for the Company to comply with the Company's obligations under a Legal Requirement or to give effect to a provision of the Documents.

29 Severability

- 29.1 If anything in the Documents is unenforceable, illegal or void or contravenes the law then it is severed and the rest of the Documents remain in force.
- 29.2 The rights and obligations of each party are not affected by any law that, but for this clause 29, would affect those rights and obligations.

30 No reliance

- 30.1 Each party has entered into the Documents without relying on any representation (whether or not negligently) by any other party or any person purporting to represent that party except for representations expressly set out in the Documents.

31 Variation

- 31.1 The Agreement may be varied, amended, supplemented or replaced by agreement between the Company and Customer.
- 31.2 In addition to its rights under clause 31.1, the Company may, from time to time, without the Customer's prior consent, vary, amend, supplement or replace the Agreement or any of the Policies by giving notice to the Customer. The parties agree to be bound by the variation, amendment, supplementation or replacement (whether material, adverse or otherwise).
- 31.3 The Customer acknowledges and accepts that this clause 31 is necessary for the proper and efficient management of the Documents.
- 31.4 Nothing in this clause affects clause 16.6.

32 Rights, powers and remedies

- 32.1 The rights, powers and remedies of each party are additional to other rights, powers and remedies independently given by law.
- 32.2 Each right, power and remedy provided in the Documents (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in the Documents.
- 32.3 The parties acknowledge and agree that:
- (1) monetary damages alone may not be a sufficient remedy for breach of the Documents; and
 - (2) in addition to any other remedy that may be available at law or in equity, each party is entitled to interim, interlocutory or permanent injunctions or any combination of them to prevent a breach and to compel specific performance of the Documents.
- 32.4 The failure of a party to exercise or enforce, or a delay by a party in exercising or enforcing, a right, power or remedy does not operate as a waiver of the exercise or enforcement by that party of that or any other right, power or remedy.
- 32.5 The exercise or enforcement by a party of a right, power or remedy does not preclude the further exercise or enforcement by that party of that right, power or remedy or the exercise or enforcement by that party of any other right, power or remedy.

- 32.6 A party may exercise or enforce a right, power or remedy (including giving or withholding their approval or consent, making elections or determinations) entirely at their discretion (including by imposing conditions).
- 32.7 A provision of the Agreement may only be waived if the waiver is signed by the person who has the benefit of the provision and who is therefore to be bound by the waiver. The Company will be bound by a waiver only if it is signed by an authorised officer of the Company.
- 32.8 No custom or practice which evolves between the parties will constitute a waiver or lessen the Company's right to insist upon the Customer's strict performance or observance of any provision of the Documents, or to exercise any of the Company's other rights.
- 32.9 Regardless of the Company's knowledge at the time, a demand by the Company for Charges or the subsequent acceptance of Charges will not constitute a waiver of any earlier default by the Customer.
- 32.10 In exercising or enforcing, or deciding not to exercise or enforce, a right, power or remedy, a party is not required to take into account any adverse effect on another party.
- 32.11 Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.
- 32.12 Waiver of a right, power or remedy is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 32.13 The certificate of any authorised officer of the Company as to:
- (1) the amount by which Charges are in arrears;
 - (2) the amount of Costs for the purposes of the Documents, including clauses 13.6(3) or 21.7; or
 - (3) the Company's determination of a volume of water under clause 13.3;
- is conclusive evidence of the matter certified.

33 Continuing obligations

- 33.1 The rights and obligations of the parties do not merge on the completion of any transaction contemplated by the Documents. They also survive the execution and delivery of any conveyance, assignment, transfer or other document entered into for the purpose of implementing any transaction contemplated by the Documents.
- 33.2 Each indemnity in the Documents survives the expiry or termination of the Agreement. A party may enforce a right of indemnity at any time, including before they have suffered Loss.
- 33.3 Clauses 24, 38 and this clause 33 survive the expiry or termination of the Agreement.
- 33.4 Clauses 8 and 9 of the Water Delivery Agreement survive the expiry or termination of the Water Delivery Agreement.

34 Costs

- 34.1 Each party must pay their own Costs connected with the negotiation, preparation and execution of the Documents.

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

35 Notices

- 35.1 Each communication in connection with the Documents (including a notice, agreement, authorisation, consent, request, waiver or demand) (**Notice**) has no legal effect unless it is in writing.
- 35.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia, and the Notice may be included in any newsletter posted by the Company;
 - (2) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
 - (3) sent by facsimile to the facsimile number of the addressee;
 - (4) sent by e-mail to the e-mail address of the addressee;
 - (5) sent by text message to the addressee's number for receipt of text messages;
 - (6) delivered at the address for service of the addressee;
 - (7) delivered personally to the addressee; or
 - (8) given by the Company, in the case of a variation, amendment, supplementation or replacement of the Agreement or any of the Policies, by the Company publishing the variation, amendment, supplementation or replacement on the Company's web site.
- 35.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 35.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 35.4 If a Notice is sent or delivered in a manner provided by clause 35.2, it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post from within Australia to an address in Australia, on the second Business Day (at the address to which it is posted) after posting;
 - (2) if sent by post to an address outside Australia or sent by post from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting;
 - (3) if sent by facsimile before 5 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;
 - (4) if sent by e-mail before 5 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;

- (5) if sent by text message before 5 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;
- (6) if otherwise delivered before 5 pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery; or
- (7) if published on the Company's web site, on the second Business Day (at the Company's registered office) after publication.

35.5 Despite clause 35.4(3):

- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
- (2) an e-mail or text message is not treated as given or received if within two hours after the time sent the sender receives an automated message that the e-mail or text message or has not been delivered; and
- (3) a facsimile, e-mail or text message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within two hours after the transmission ends or by 11 am on the Business Day on which it would otherwise be treated as given and received, whichever is later.

35.6 If a Notice is served by a method which is provided by law but is not provided by clause 35.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.

35.7 A Notice sent or delivered in a manner provided by clause 35.2 must be treated as validly given to and received by the party to which it is addressed even if:

- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
- (2) the Notice is returned unclaimed; or
- (3) in the case of a Notice sent by e-mail or text message, the e-mail or text message is not delivered or opened.

35.8 The Company's address for service, facsimile number and e-mail address are:

Attention: Company Secretary
 Address: Western Murray Irrigation Limited
 PO Box 346
 Dareton NSW 2717
 Facsimile No: (03) 5027 4880
 E-mail: enquiries@westernmurray.com.au

35.9 The Customer's address for service, facsimile number, e-mail address and number for receipt of text messages (if any) are set out in Schedule 1 of the Agreement.

35.10 A party may change their address for service, facsimile number, e-mail address or number for receipt of text messages by giving notice of that change to the other party. If the Customer notifies a change under this clause 35.10, they must notify the same change:

- (1) under each other Water Entitlement Agreement and Water Delivery Agreement (if any) between the Company and the Customer; and

- (2) where relevant, with respect to the register of members of the Company, if the Customer is a member of the Company.
- 35.11 If the party to which a Notice is intended to be given consists of more than one person then the Notice must be treated as given to that party if given to any of those persons.
- 35.12 Any Notice issued by the Company is binding on the Customer unless it contains a manifest error. The Customer must immediately notify the Company of any manifest error of which the Customer becomes aware.
- 35.13 The Company may from time to time issue amending Notices. These Notices will replace or amend any prior relevant notices issued to the Customer.
- 35.14 A Notice relating to the Documents must be written in English and may be given by an authorised representative of the sender.

36 Joint holders

- 36.1 Where two or more persons are registered as the holders of an Entitlement or Water Allocation, the Company is not bound to treat them other than as holding the Entitlement or Water Allocation as joint tenants with benefits of survivorship, subject to clause 36.2 and to the following:
- (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the Entitlement or Water Allocation;
 - (2) the joint holders of the Entitlement or Water Allocation are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Entitlement or Water Allocation;
 - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the Entitlement or Water Allocation, but the Company may require such evidence of death as it sees fit; and
 - (4) only the person whose name stands first in the Register as one of the joint holders of the Entitlement is entitled to delivery of the certificate relating to the Entitlement or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.
- 36.2 Where three or more persons are registered holders of an Entitlement or Water Allocation (or a request is made to register more than three persons) only the first three named persons are regarded as holders of the Entitlement or Water Allocation and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased member.

37 Transmission of entitlements

- 37.1 If the Customer dies, and the Customer is not a joint holder, the Company is not obliged to recognise anyone except the personal representative of the deceased Customer as being entitled to the deceased Customer's interest in their Entitlements and Water Allocation.
- 37.2 If the person entitled to the Customer's Entitlements and Water Allocation as the personal representative of a deceased Customer or because of the bankruptcy or mental incapacity of the Customer (**Successor**) gives the Company the information it reasonably requires to

establish the Successor's entitlement to be registered as holder of the Customer's Entitlements and Water Allocation:

- (1) the Successor may:
 - (a) by giving a signed notice to the Company, elect to be registered as the holder of the Customer's Entitlements and Water Allocation; or
 - (b) by giving a completed transfer form to the Company, transfer the Customer's Entitlements and Water Allocation to another person; and
 - (2) the Successor, whether or not registered as the holder of the Customer's Entitlements and Water Allocation, is entitled to the same rights, and is subject to the same liabilities, as if the Successor were registered as holder of the Customer's Entitlements and Water Allocation.
- 37.3 On receiving an election under clause 37.2(1)(a), the Company must register the Successor as the holder of the Customer's Entitlements and Water Allocation.
- 37.4 A transfer under clause 37.2(1)(b) is subject to the Transfer Rules Policy.
- 37.5 If the Customer dies, and the Customer is a joint holder, the Company will recognise only the survivor as being entitled to the deceased Customer's interest in their Entitlements and Water Allocation. The estate of the deceased Customer is not released from any liability in respect of the Customer's Entitlements and Water Allocation.
- 37.6 This clause 37 has effect subject to clause 15 and the *Bankruptcy Act 1966* (Cth).

38 Security interests

- 38.1 The Customer acknowledges that certain Charges are a charge on the Landholding in favour of the Company under section 355 of the Act.
- 38.2 The Customer charges the Landholding with due payment of the Charges.
- 38.3 The Company has a first and paramount lien on all of the Customer's Entitlements and Water Allocation in respect of all Charges presently payable by the Customer or the Customer's estate to the Company. The Company may at any time exempt any of the Customer's Entitlements or Water Allocation wholly or in part from this clause 38.3.
- 38.4 The Customer may grant and register with the Company in the prescribed form a lien, mortgage or charge to any third party over the Customer's Entitlements, with the approval of the Company which shall not be unreasonably withheld, and on condition that:
- (1) the third party agrees that any security interest of the Company under the Documents ranks ahead of the third party's security interest and the third party's security interest is subject to the Company's rights under the Documents, including the right to transfer, cancel or terminate Entitlements and Water Allocation under clause 21.4; and
 - (2) the Company has no obligations to the third party, including having no obligation to notify the third party of the Company's exercise, or intention to exercise, any of its rights under the Documents.
- 38.5 The Company's rights, powers and remedies under the Documents are not affected by any security interest given to any person in connection with the Documents, whether or not the security interest is recognised by the Company.

39 Recognition of ownership

- 39.1 Except as required by law, the Company is not bound to recognise a person as holding Entitlements or Water Allocation or entering into the Agreement upon any trust.
- 39.2 Subject to clause 38, the Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of the Customer's Entitlements, Water Allocation or the Agreement except, where applicable, an absolute right of the Customer.
- 39.3 Clause 39.2 applies whether or not the Company has notice of the interest or right, but does not apply where the Company is bound to recognise the interest or right by law.

40 Entire agreement

- 40.1 The Documents:
- (1) are the entire agreement and understanding between the parties on everything connected with the subject matter of the Documents; and
 - (2) supersede any prior agreement or understanding on anything connected with that subject matter.

41 Governing law

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

42 Execution by counterparts

- 42.1 The Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

43 Execution by attorney

- 43.1 Where the Agreement is executed by an attorney, that attorney, by executing, declares that they have no notice of revocation, termination or suspension of the power of attorney under which they execute the Agreement.