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# Application for early possession

Western Murray Irrigation Limited  
The Seller specified in the Details  
The Buyer specified in the Details

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## Details

<b>A. Early possession</b>	
Farm Number	
Specified Landholding (Lot & DP)	
Irrigation Area	Bga / Cma / Cwa ( <i>select one</i> )
Date of early possession	

<b>B. Seller</b>			
Name(s)			
Phone No		Fax No	
Account No			

**Signed by the Seller or for and on behalf of the Seller (where there are multiple owners, all must sign – if more than four owners, please request an additional owner's form):**

Signature:	Signature:
Director/secretary ( <i>select one if applicable</i> )	Director/secretary ( <i>select one if applicable</i> )
Print name:	Print name:
Date:        /        /	Date:        /        /

Signature:	Signature:
Print name:	Print name:
Date:        /        /	Date:        /        /

<b>WMI Office Use Only</b>			
Verify Seller's signatures		Comments:	
Out standings	Y / N	Trade Code	[#]
Amount	\$	Entered	

<b>C. Buyer</b>		
Name(s)		
Phone No	Fax No	
Account No	TBA	

**Signed by the Buyer or for and on behalf of the Buyer (where there are multiple owners, all must sign – if more than four owners, please request an additional owner's form):**

Signature:	Signature:
Director/secretary ( <i>select one if applicable</i> )	Director/secretary ( <i>select one if applicable</i> )
Print name:	Print name:
Date:        /        /	Date:        /        /

Signature:	Signature:
Print name:	Print name:
Date:        /        /	Date:        /        /

<b>WMI Office Use Only</b>			
Verify Buyer's signatures		Comments:	
Out standings	Y / N	Trade Code	[#]
Amount	\$	Entered	

<b>WMI Office Use Only</b>	
Trade No	[#]
Receipt No	
Date	/      /

## Parties

- (1) **Western Murray Irrigation Limited ABN 93 067 197 853 (Company)**
- (2) **The Seller specified in the Details (Seller)**
- (3) **The Buyer specified in the Details (Buyer)**

## Introduction

- A. The Seller and the Buyer have entered, or propose to enter, a contract for the sale of the Specified Landholding. The Seller and the Buyer wish to enter an arrangement for the Buyer to take early possession of the Specified Landholding before settlement of the contract of sale.
- B. The Seller and the Buyer apply to the Company and the Company agrees to register the early possession arrangement, on and subject to the terms of this Application.
- C. Under this Early Possession Arrangement, the Seller will remain responsible for all Charges, including Fixed Charges and Variable Charges, until the Company registers the Buyer as the holder of the Specified Landholding. The Company will invoice Variable Charges to the Seller up to the Early Possession Date, and to the Buyer, as agent for the Seller, on and from the Early Possession Date.
- D. The Seller and the Buyer are free to agree privately among themselves on how to apportion responsibility for Fixed Charges and Variable Charges, but the Company reserves the right to recover Charges from both the Seller and the Buyer, jointly and severally. Charges are also a charge on the Specified Landholding under section 356 of the *Water Management Act 2000* (NSW).

## Operative Parts

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### 1. **Defined terms and interpretation**

#### 1.1 **Terms defined in the General Conditions**

In this Application, unless the contrary intention appears, a word or phrase defined in the General Conditions has the same meaning in this Application.

#### 1.2 **Other defined terms**

The following definitions apply unless the contrary intention appears.

**Application** means this document.

**Associated Delivery Entitlements** means the Delivery Entitlements which have a Point of Supply at the Specified Landholding.

**Details** means the details set out in this Application under the heading “*Details*”.

**Early Possession Arrangement** means early possession by the Buyer of the Specified Landholding, on and subject to the terms of this Application.

**Early Possession Date** means the “*date of early possession*” specified in the Details.

**Expiry Date** means the date on which the Company registers the Buyer as the holder of Specified Landholding (regardless of when the Buyer becomes the registered proprietor of the Specified Landholding).

**General Conditions** means the General Conditions published on the Company's web site, as varied by the Company from time to time.

**Specified Landholding** means the Landholding specified in the Details.

**Term** means the period beginning on the Early Possession Date and ending, subject to clauses 5.2 and 5.3, on the Expiry Date.

### 1.3 Interpretation

Clause 1.2 (Interpretation) of the General Conditions applies to this Application with the necessary changes.

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## 2. Early Possession Arrangement

### 2.1 Application for early possession

The Seller and the Buyer apply to the Company for an Early Possession Arrangement, on and subject to the terms of this Application.

### 2.2 Effect of early possession

- (a) This clause 2.2 applies if the Company accepts this Application.
- (b) The Seller authorises the Buyer to order water, as agent for the Seller:
  - (i) for delivery to the Specified Landholding.
  - (ii) exercising the Associated Delivery Entitlements (subject to the Seller's Water Delivery Agreement in respect of the Specified Landholding); and
  - (iii) during the Term.
- (c) The Company will deduct Water Allocation ordered for delivery to the Specified Landholding during the Term from the Buyer's Water Allocation Account.
- (d) The Company will issue an invoice to the Seller in respect of Variable Charges which accrue in respect of water delivered to the Specified Landholding in respect of the period up to and including the day before the Early Possession Date.
- (e) The Company will issue invoices to the Buyer as agent for the Seller in respect of:
  - (i) Variable Charges which accrue in respect of water delivered to the Specified Landholding in respect of the Term; and
  - (ii) Fixed Charges which accrue in respect of the Specified Landholding and the Associated Delivery Entitlements in respect of the Term.
- (f) If, after the Early Possession Date, the Company registers the Buyer as the holder of the Specified Landholding, then the liability of the Seller and the Buyer for:
  - (i) Charges paid in respect of the Specified Landholding (including Variable Charges in respect of water delivered to the Specified Landholding) in respect of the Term; and

- (ii) Charges paid in respect of the Associated Delivery Entitlements (including Fixed Charges) in respect of the Term, to the extent that the Associated Delivery Entitlements are transferred from the Seller to the Buyer,

will be treated by the Company as if the Company had registered the Buyer as the holder of the Specified Landholding and (if applicable) the Associated Delivery Entitlements on the Early Possession Date.

- (g) Without limiting clause 2.2(f):
  - (i) any arrangement made between the Seller and the Buyer (as between themselves) for apportioning Fixed Charges for Associated Delivery Entitlements being transferred (if applicable) or the Specified Landholding being transferred does not affect the liability of the Seller and the Buyer (as against the Company) under clause 7.1 of the General Conditions; and
  - (ii) to the extent that Associated Delivery Entitlements are transferred from the Buyer to the Seller, clauses 7.3 and 7.4 of the General Conditions will apply.
- (h) If, after the Early Possession Date, the Company registers a transfer of Delivery Entitlements by the Buyer from another Landholding of the Buyer to the Specified Landholding, the Buyer may elect, within 10 Business Days after registration of the transfer, to have the Charges in respect of those Delivery Entitlements treated as if the transfer had been registered on the Early Possession Date.

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### **3. Determination**

#### **3.1 Charges for Application**

Payment of the relevant Charge applicable to the Application must be made at the time and place of submission of the Application.

#### **3.2 Company's approval**

To the maximum extent permitted by law, the Company may, at its discretion, approve or refuse this Application (including by imposing conditions) by giving notice to the Seller and the Buyer.

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### **4. Confirmation**

#### **4.1 Seller remains holder of Specified Landholding and Associated Delivery Entitlements**

The Early Possession Arrangement does not limit or affect the Seller's obligations under the Water Delivery Agreement in respect of the Specified Landholding and Associated Delivery Entitlements, including in respect of Charges and the provision of security under the Transfer Rules Policy.

#### **4.2 Joint and several liability**

The Seller and the Buyer are jointly and severally liable for all Charges which accrue in respect of the Specified Landholding and Associated Delivery Entitlements, including Fixed Charges and Variable Charges, during the Term, but excluding Termination Fees for which the Seller will remain solely liable.

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## **5. Termination of Early Possession Arrangement**

### **5.1 End of Term**

The Early Possession Arrangement expires on the Expiry Date, unless it is terminated earlier in accordance with this Application.

### **5.2 Termination with consent of all parties**

The Early Possession Arrangement may be terminated before the end of the Term, by any party giving 10 Business Days' notice to the other parties.

### **5.3 Termination for default**

The Company may terminate the Early Possession Arrangement immediately by giving notice to the Seller and the Buyer if an Event of Default occurs in respect of the Seller or the Buyer.

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## **6. Termination of Delivery Entitlements**

### **6.1 No termination by the Buyer**

The Associated Delivery Entitlements cannot be terminated by the Buyer.

### **6.2 Termination by the Seller**

The Associated Delivery Entitlements cannot be terminated by the Seller without the Buyer's consent.

### **6.3 Termination by the Company**

Nothing in this Application limits or affects the Company's rights under any Water Entitlement Agreement, Water Delivery Agreement or the General Conditions to terminate the Associated Delivery Entitlements, including if an Event of Default occurs in respect of the Seller.

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## **7. General**

### **7.1 Assignment**

Neither the Seller nor the Buyer can assign a right under this Application without the prior written consent of the other party and the Company. An act or omission in contravention of this clause is ineffective.

### **7.2 Special Conditions**

The terms of this Application are Special Conditions for the purposes of any Water Delivery Agreement and Water Entitlement Agreement between the Company and the Seller or the Company and the Buyer.

### **7.3 Further assurances**

- (a) 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 this Application (including the transactions contemplated by this Application).

(b) The Customer must:

- (i) give to the Company any consent or authority; and
- (ii) 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 this Application.

#### 7.4 **No reliance**

Each party has entered into this Application without relying on any representation (whether negligently) by any other party or any person purporting to represent that party except for representations expressly set out in this Application.

#### 7.5 **Entire agreement**

This Application:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Application; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

#### 7.6 **Governing law**

- (a) The law of New South Wales governs this Application.
- (b) The Company and the Customer submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.