

Annexure 3 – Zoned Flow Delivery Right Midlands Irrigation District

The Schedule

Serial number		
Irrigation District	Midlands Irrigation District	
The Water Entity	Tasmanian Irrigation Pty Ltd ACN 133 148 384	
Address of the Water Entity	Level 2 Terminal Building Launceston Airport Western Junction Tasmania	
Postal Address of the Water Entity	PO Box 84 Evandale TAS 7212	
The Customer		
Address of the Customer		
Postal Address of the Customer		
The Zoned Flow Rate	Summer Delivery Period	-
	Winter Delivery Period	
The Nominated Zone		
Term	From the date of this agreement extending until twenty five (25) years after Commissioning as extended under clause 2.2	
Irrigation Season	Each period commencing on 1 July and ending on the following 30 June	

Parties

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

Background

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

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) "the Annual Allocation" for an Irrigation Season means the Annual Allocation determined for that Irrigation Season by the Water Entity under an Irrigation Right;
- (b) "the Applicable Transmission Loss" for a delivery of water made under this agreement means the Transmission Loss incurred by the Water Entity in transporting water from the Delivery Point to the Connection Point at which the water is taken;
- (c) "the BBSY" for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00 am on that day or, if the BBSY is not quoted on that day, at 10.00 am on the last prior day on which it was quoted;

- (d) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
 - (e) "Connection Agreement" means a connection agreement between the Water Entity and an owner of land or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
 - (f) "the Connection Points" means points which:
 - (i) are the subject of a Connection Agreement;
 - (ii) are in the Nominated Zone; and
 - (iii) are recorded in the Water Entitlements Register as attached to this Zoned Flow Delivery Right;
 - (g) "the Customer" means the Customer named in the schedule;
 - (h) "the Delivery Periods" means the separate delivery periods of each Irrigation Season being:
 - (i) the Summer Delivery Period; and
 - (ii) the Winter Delivery Period;
 - (i) "the Delivery Point" in respect of a supply of water means:
 - (i) if the water is taken through a Connection Point on a pipe forming part of the Scheme, that Connection Point; or
 - (ii) if the water is taken through a Connection Point on a watercourse, the point at which the Water Entity delivers water into that watercourse for the purposes of the supply;
 - (j) "Force Majeure" means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
 - (k) "GST" has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
 - (l) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;
 - (m) "the holder" of this Zoned Flow Delivery Right means the person registered for the time being in the Water Entitlements Register as the holder of this Zoned Flow Delivery Right;
 - (n) "Insolvent" when used with reference to:
 - (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
 - (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
 - (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors,
- and "Insolvency" has a corresponding meaning;
- (o) "the Irrigation District" means the Irrigation District specified in the schedule;
 - (p) "an Irrigation Right" means an irrigation right granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District;
 - (q) "an Irrigation Season" means an Irrigation Season declared by the Water Entity for the Irrigation District under the Scheme By-Laws or, if not specified in the Scheme By-Laws, then the Irrigation Season specified in the schedule;
 - (r) "the Minimum Pressure" means if the Connection Point is on a pipeline forming part of the Scheme, 5 metres head, otherwise not applicable;
 - (s) "the National Water Initiative" means the inter-governmental agreement on a national water initiative between the Australian Government and the governments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
 - (t) "the Nominated Zone" means the Zone specified as the Nominated Zone in the schedule;
 - (u) "notify" means serve a written notice;
 - (v) "the Scheme" means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District and any watercourse used by the Water Entity to deliver water;
 - (w) "the Scheme By-Laws" means the by-laws if any made in respect of the Irrigation District under section 46 or section 47 of the Irrigation Clauses Act 1973;
 - (x) "the Scheme Zoned Flow Delivery Rights" means all rights to convey water through the Scheme granted by the Water Entity in respect of the Irrigation Scheme;
 - (y) "Statute" includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
 - (z) "the Summer Delivery Period" of an Irrigation Season means the period in that Irrigation Season starting on 1 October and ending on the last day of February following;
 - (aa) "the Term" means the term specified in the schedule;
 - (bb) "the Termination Fee" means:
 - (i) if a fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the lesser of that fee as at the date of termination and the base annual fee payable under clause 12.2(a) at the time of termination multiplied by 10; or
 - (ii) if no fee is set by the Scheme By Laws for termination of this Zoned Flow Delivery Right, the base annual fee payable under clause 12.2(a) at the time of termination multiplied by 10;
 - (cc) "the Trading Rules" means the Trading Rules forming annexure 1;
 - (dd) "Transmission Loss" means the transmission loss incurred by the Water Entity in transporting water via any watercourse as determined under the applicable watercourse authority held by the Water Entity under Part 6A of the Water Management Act 1999 in respect of that transport;

- (ee) “the Water Entity” means the Water Entity specified in the schedule and any successor as the responsible water entity under the Water Management Act 1999 of the Irrigation District to which the benefit of this agreement has been assigned;
- (ff) “the Water Entitlements Register” means the Water Entitlements Register maintained by the Water Entity in respect of the Irrigation District under section 23(3B) of the Irrigation Clauses Act 1973 and the Trading Rules;
- (gg) “the Winter Delivery Period” of an Irrigation Season means the period in that Irrigation Season starting on 1 July and ending on 30 September following and starting on 1 March and ending on 30 June following;
- (hh) “Zone” means a part of the water delivery system of the Irrigation District identified by the Water Entity on the plan of Zones forming part of the Trading Rules as a separate zone for the purpose of granting Zoned Flow Delivery Rights;
- (ii) “this Zoned Flow Delivery Right” means this agreement and the right to convey water through the Scheme conferred on the Customer by this agreement identified by the Serial Number specified in the schedule; and
- (jj) “the Zoned Flow Rate” for a Delivery Period means the Zoned Flow Rate for that Delivery Period recorded in the Water Entitlements Register as attaching to this Zoned Flow Delivery Right from time to time being the rate specified in the schedule at the date of this agreement.

1.2 General

In this agreement:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure, or exhibit;
- (f) a recital, schedule, annexure or a description of the parties forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and

- (m) a reference to any thing (including any right) includes any part of that thing, but nothing in this clause 1.2(m) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. The Term

2.1 The term

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

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

2.2 Extension of the Term

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

3. This Zoned Flow Delivery Right

3.1 Grant of the Zoned Flow Delivery Right

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

3.2 No right to supply of water

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

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

3.3 Limited right to supply of water

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

4. Zoned Flow Rate

4.1 Delivery at the Zoned Flow Rate

During each Irrigation Season the Water Entity will use reasonable endeavours to procure the delivery of sufficient water to the Delivery Point so that the Customer may take from the Connection Points a daily aggregate quantity of water calculated at:

- (a) during the Summer Delivery Period, the Zoned Flow Rate for that Delivery Period reduced to allow for the Applicable Transmission Loss (if any) in respect of each taking of water; and
 - (b) during the Winter Delivery Period, the Zoned Flow Rate for that Delivery Period reduced to allow for the Applicable Transmission Loss (if any) in respect of each taking of water,
- and, if a Minimum Pressure is applicable, at a pressure not less than the Minimum Pressure.

4.2 The Connection Points

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

4.3 The Customer must not exceed entitlements

The Customer must not take from the Scheme:

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

5. Quality and use of water

5.1 No warranty by the Water Entity

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

5.2 Customer's risk

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

5.3 Water taken for use without a Connection Agreement

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

- (ii) a breach of clause 5.4 or clause 5.5.

5.4 No domestic use

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

5.5 Applicable law

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

6. Tradability

6.1 Dealing

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

6.2 Specific examples

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

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

6.3 No qualification to hold Zoned Flow Delivery Right

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

6.4 Can be dealt with separately from an Irrigation Right

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

6.5 Effect of transfer on type of Zoned Flow Rate

Zoned Flow Rate for a Delivery Period conferred by this Zoned Flow Delivery Right retains its character as Zoned Flow Rate for the same Delivery Period on transfer.

7. Transfer of Zoned Flow Rate

7.1 Permitted transfers

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

- (a) transfer all or part of the Zoned Flow Rate to another person on a temporary or permanent basis so that Zoned Flow Rate for the Summer Delivery Period or Zoned Flow Rate for the Winter Delivery Period transferred retain their character on transfer; and
- (b) receive transfers of parts of the zoned flow rate attached to Scheme Zoned Flow Delivery Rights as additions to the Zoned Flow Rate so that Zoned Flow Rate for the Summer Delivery Period or Zoned Flow Rate for the Winter Delivery Period transferred retain their character on transfer.

7.2 Conditions to transfer taking effect

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

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

7.3 When Water Entity must approve transfer

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

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

8. Transmission of this Zoned Flow Delivery Right

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

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

8.2 Death of a joint Customer

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

8.3 Where a Customer is under disability

Any of the following people:

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

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

8.4 Appointment of new trustee

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

9. Ownership of this Zoned Flow Delivery Right

9.1 The Water Entitlements Register

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

9.2 Absolute owner

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

10. Charge over Zoned Flow Delivery Right

10.1 The charge

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

10.2 Priority of charge

The charge is a first ranking charge.

10.3 Dealings free of the charge

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

10.4 Registration of charge

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

11. Voluntary termination of Zoned Flow Delivery Right

11.1 Right to terminate

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

11.2 Liability for accrued charges

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

12. Pricing and payment

12.1 Liability for charges, fees and rates

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

12.2 Basis for pricing

Pricing will be based on:

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

12.3 Determination of quantity of water

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

12.4 Payment

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

12.5 No set off

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

12.6 Interest

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

12.7 Failure of delivery

If the Water Entity is unable to deliver water to the Connection Points for a continuous period of ninety (90) days as a result of any event of Force Majeure or the failure of Water Entity to hold the necessary permits, the charge imposed under clause 12.2(a) will be rebated for the period in which water can not be delivered.

13. Metering and Measuring

13.1 Water Entity may install a meter

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

13.2 Must not by pass meter

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

14. Delivery interruptions

14.1 Right to stop or reduce delivery

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

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

14.2 Overcoming Force Majeure

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

- (a) settle any strike or other labour dispute on terms contrary to its wishes; or
- (b) contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.

15. Change of Responsible Water Entity

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

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

16. Customer's warranty

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

17. Insolvency of the Customer

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

18. Default and Termination

18.1 Customer's additional obligations

The Customer must not:

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

18.2 Cure notice

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

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

18.3 Cure period

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

18.4 Failure to comply with cure notice

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

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

18.5 Water Entity's costs

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

19. Liability

19.1 Circumstances where Water Entity is not liable

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

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

19.2 No liability for consequential loss

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

19.3 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Customer in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Customer to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 19.3(a) does not apply to the extent that the Water Entity is indemnified by insurance.
- (c) In this clause 19.3 "Claim" means any claim made by the Customer against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

20. Dispute resolution

20.1 Process for resolution

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

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

20.2 Continuing obligations

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

20.3 Right to seek interlocutory relief

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

21. Variation of this agreement by the Water Entity

21.1 Right to vary

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

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

21.2 Effect of variation

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

22. Notices

22.1 How given

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

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

22.2 Receipt of notice

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

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

22.3 Addresses

For the purpose of giving notices under this agreement:

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

23. General

23.1 Goods and Services Tax

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

23.2 Government fees

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

23.3 Indemnities

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

23.4 Survival

Clauses 11.2, 12, 18.5 and 19 will survive termination of this agreement.

23.5 Variation and waiver

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

23.6 Severance of invalid provisions

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

23.7 Applicable law

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

23.8 Whole agreement

This agreement, in connection with its subject matter:

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

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

23.9 Joint liability

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

23.10 Counterparts

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

23.11 Remedies

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