

Annexure 2 – Irrigation 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 Annual Volume	
Term	From the date of this agreement extending until twenty five (25) years after Commissioning or 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 Water Entity will supply water to the Customer.
3. The right conferred by this agreement is an irrigation right within the meaning of section 23 of the Irrigation Clauses Act 1973.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

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

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

- (h) “the Connection Points” means points which:
 - (i) are the subject of a Connection Agreement; and
 - (ii) are recorded in the Water Entitlements Register as attached to this Irrigation Right;
- (i) “the Customer” means the Customer named in the schedule;
- (j) “the Delivery Point” in respect of a supply of water means:
 - (i) if the water is taken through a Connection Point to a pipe forming part of the Scheme, that Connection Point; or
 - (ii) if the water is taken through a Connection Point on a watercourse, the point at which the Water Entity delivers water into that watercourse for the purposes of the supply;
- (k) “the Expected Reliability”:
 - (i) means the condition that the sum of the lesser of the final Annual Allocation and the Annual Volume for any 100 consecutive Irrigation Seasons divided by the sum of the Annual Volume for the same 100 Irrigation Seasons will not be less than 0.95 assuming that the Scheme continues to operate as originally designed and that the aggregate annual volume of all Scheme Irrigation Rights does not exceed 38,500 ML; and
 - (ii) is the surety of this Irrigation Right for the purposes of the Irrigation Clauses Act 1973;
- (l) “Force Majeure” means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (m) “GST” has the meaning given that term by the A New Tax System (Goods and Services Tax) Act 1999;
- (n) “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;
- (o) “the holder” of this Irrigation Right means the person registered for the time being in the Water Entitlements Register as the holder of this Irrigation Right;
- (p) “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;
- (q) “the Irrigation District” means the Irrigation District specified in the schedule;
- (r) “this Irrigation Right” means the right conferred by this agreement on the Customer under section 23(2) of the Irrigation Clauses Act 1973 identified by the Serial Number specified in the schedule;
- (s) “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;
- (t) “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;
- (u) “notify” means serve a written notice;
- (v) “the Reliability Assessment Date” means April 2011;
- (w) “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;
- (x) “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;
- (y) “the Scheme Irrigation Rights” at any time means all irrigation rights granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District current at that time;
- (z) “Statute” includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (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 Irrigation Right, the lesser of that fee as at the date of termination and the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10; or
 - (ii) if no fee is set by the Scheme By Laws for termination of this Irrigation Right, the base annual fee payable under clause 13.2(a) at the time of termination multiplied by 10;
- (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) "Zone" means a part of the water delivery system of the Irrigation District identified by the Water Entity on the plan of Zones forming part of the Trading Rules as a separate zone for the purpose of granting Zoned Flow Delivery Rights; and
- (hh) "a Zoned Flow Delivery Right" means a right for a share of the water delivery capacity of the Scheme for a Zone.

1.2 General

In this agreement:

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

2.2 Extension of the Term

- (a) The Water Entity may at any time before the Term ends or before this Irrigation Right is terminated under this agreement extend the Term by the period it notifies to the Customer.

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

3. This Irrigation Right

3.1 Grant of the Irrigation Right

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

3.2 Annual Allocation

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

4. Reliability

4.1 Expected Reliability

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

4.2 Change in Reliability of this Irrigation Right

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

4.3 Error in assessment of the Expected Reliability

If the reliability of this Irrigation Right based on conditions applying at the Reliability Assessment Date is established to be less than the Expected Reliability and the reduction is the direct result of the actual sustainable limit of the Irrigation District assessed on the conditions applying at the Reliability Assessment Date being less than the sustainable limit estimated by the Water Entity as at that date:

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

5. Right to supply

5.1 Agreement to supply

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

- (a) if the Customer has a Zoned Flow Delivery Right for the Zone in which the Delivery Point is located, in accordance with that Zoned Flow Delivery Right; or
- (b) otherwise, at such time as the Water Entity is able to supply the water subject to and after taking into account:
 - (i) the Water Entity's obligation to supply water to holders of Zoned Flow Delivery Rights;
 - (ii) the capacity of the Scheme; and
 - (iii) other obligations of the Water Entity taking priority under the Irrigation Clauses Act 1973 to the rights of the Customer under this agreement.

5.2 Transmission Loss

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

5.3 The Connection Points

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

5.4 Waiver of right to connection

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

5.5 No claim for failure to supply water

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

5.6 Limited right to supply of water

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

6. Quality and use of water

6.1 No warranty by the Water Entity

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

6.2 Customer's risk

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

6.3 Water taken for use without a Connection Agreement

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

6.4 No domestic use

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

6.5 Applicable law

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

6.6 Excess water

- (a) The Customer must not take more water from the Scheme in any Irrigation Season than:
 - (i) the Annual Allocation the Customer is entitled to take during that Irrigation Season under this Irrigation Right reduced by the total of the Applicable Transmission Losses (if any); or
 - (ii) amounts the Customer is entitled to take under any other agreement with the Water Entity.
- (b) If the Customer does take more water from the Scheme in any Irrigation Season than:
 - (i) the Annual Allocation the Customer is entitled to take under this Irrigation Right during that Irrigation Season reduced by the total of the Applicable Transmission Losses (if any); or
 - (ii) amounts the Customer is entitled to take under any other agreement with the Water Entity,then the Customer must pay such fee in respect of the excess water taken as the Water Entity imposes under the Scheme By Laws or, in the absence of the Scheme By Laws, as determined on demand by the Water Entity.

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

7.3 No qualification to hold Irrigation Right

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

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

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

8. Transfer of Annual Volume

8.1 Permitted transfers

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

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

8.2 Conditions to transfer taking effect

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

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

8.3 When Water Entity must approve transfer

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

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

7. Tradability

7.1 Dealing

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

7.2 Specific examples

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

9. Transmission of this Irrigation Right

9.1 Death of a sole Holder of this Irrigation Right

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

9.2 Death of a joint Customer

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

9.3 Where a Customer is under disability

Any of the following people:

- (a) any person entitled to this Irrigation Right in consequence of the Insolvency of a Customer;
 - (b) the legal personal representatives of a deceased Customer;
 - (c) the beneficiaries of a deceased Customer becoming entitled to this Irrigation Right under the will of the deceased Customer or the next of kin of a deceased Customer entitled to this Irrigation Right on an intestacy; and
 - (d) any person having authority in law to manage the affairs of a Customer who by reason of mental or physical infirmity is unable to manage his affairs,
- may, on producing such evidence as to his or their status or authority as the Water Entity requires, deal with the Annual Volume in the same manner as the Customer could have if the Customer had been alive or capable of dealing with the Annual Volume.

9.4 Appointment of new trustee

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

10. Ownership of this Irrigation Right

10.1 The Water Entitlements Register

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

10.2 Absolute owner

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

11. Charge over Irrigation Right

11.1 The charge

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

11.2 Priority of charge

The charge is a first ranking charge.

11.3 Dealings free of the charge

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

11.4 Registration of charge

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

12. Voluntary termination of Irrigation Right

12.1 Right to terminate

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

12.2 Liability for accrued charges

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

13. Pricing and payment

13.1 Liability for charges, fees and rates

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

13.2 Basis for pricing

Pricing will be based on:

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

13.3 Determination of quantity of water

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

13.4 Payment

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

13.5 No set off

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

13.6 Interest

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

14. Metering and Measuring

14.1 Water Entity may install a meter

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

14.2 Must not by pass meter

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

15. Change of Responsible Water Entity

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

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

16. Customer's warranty

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

17. Insolvency of the Customer

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

18. Default and Termination

18.1 Customer's additional obligations

The Customer must not:

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

18.2 Cure notice

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

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

18.3 Cure period

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

18.4 Failure to comply with cure notice

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

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

18.5 Water Entity's costs

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

19. Liability

19.1 Circumstances where Water Entity is not liable

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

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

19.2 No liability for consequential loss

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

19.3 Liability Cap

- (a) The maximum aggregate liability of the Water Entity to the Customer in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Customer to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 19.3(a) does not apply:
 - (i) to the extent that the Water Entity is indemnified by insurance; and
 - (ii) in respect of any liability of the Water Entity arising under clause 4.
- (c) In this clause 19.3 "Claim" means any claim made by the Customer against the Water Entity arising under this agreement including from a claimed breach of any representation, warranty or other term of or in connection with this agreement.

20. Dispute resolution

20.1 Process for resolution

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

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

20.3 Right to seek interlocutory relief

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

21. Variation of this agreement by the Water Entity

21.1 Right to vary

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

- (a) an amendment will not materially change the terms and conditions of this agreement;
- (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 12.2, 13, 18.5 and 19 will survive termination of this agreement.

23.5 Variation and waiver

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

23.6 Severance of invalid provisions

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

23.7 Applicable law

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

23.8 Whole agreement

This agreement, in connection with its subject matter:

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

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

23.9 Joint liability

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

23.10 Counterparts

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

23.11 Remedies

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