

## Water Entitlements Purchase Contract Sassafras Wesley Vale Irrigation District Augmentation

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

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### The Schedule

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

#### THE PURCHASER'S AND GUARANTORS' DETAILS

1. Name of Purchaser

(a) Address

(b) Postal address

2. Name of Guarantor

(c) Address

(d) Postal address

3. Name of Guarantor

(e) Address

(f) Postal address

4. Name of Guarantor

(g) Address

(h) Postal address

## PURCHASE DETAILS

5. Serial Number	
6. Irrigation District	The Sassafras Wesley Vale Irrigation District
7. Volume	
8. Flow Rate	
9. Zone	
10. Qualifying Land	PID(s): Description:
11. Preliminary Connection Point	Coordinates: mE mN MGA (GDA 94) Zone 55 Located on property: (PID) Description:
12. Purchase Price	(\$2,090 / ML)
13. Deposit Percentage	10% (2% for the first instalment and 8% for the second instalment)
14. Condition Precedent Date	The date public funding commitment received plus 15 months
15. Completion Date	The date twenty eight (28) calendar days after Commissioning has taken place
16. Sunset Date	The date forty-eight (48) months after the date of satisfaction or the Condition Precedent in clause 2.1(a)

## TASMANIAN IRRIGATION'S DETAILS

17. Address	Level 2, Terminal Building, Launceston Airport, Western Junction, Tasmania
18. Postal address	PO Box 84, Evandale, Tasmania 7212
19. Phone number	03 6398 8441
20. Email address	<a href="mailto:enquiries@tasmanianirrigation.com.au">enquiries@tasmanianirrigation.com.au</a>

## STATEMENT ON THE COLLECTION AND USE OF PERSONAL INFORMATION

Personal information is collected from you by Tasmanian Irrigation for the purpose of completing the sale of Water Entitlements, administering the Irrigation District and maintaining a public register of Water Entitlements for the Irrigation District (including in an online format). Your personal information will be used by Tasmanian Irrigation for the purpose for which it is collected and for other purposes permitted by the Water Management Act (Tas) 1999, the Irrigation Clauses Act (Tas) 1973 and any regulations made under those Act as they apply to the Irrigation District. If the information requested is not disclosed, details of the ownership of Water Entitlements may not be correctly recorded. Personal information will be managed by Tasmanian Irrigation in accordance with the Personal Information Protection Act (Tas) 2004 and the Privacy Act (Cth) 1998 as applicable and may be accessed by the individual to whom it relates on request to Tasmanian Irrigation. You may be charged a fee for this service.

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## Parties

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

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## Background

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

## The parties agree as follows

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### 1. Interpretation

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#### 1.1 Definitions

In this agreement:

- (a) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (b) "Commissioning" means commissioning of the Scheme after completion of construction as determined by Tasmanian Irrigation by notice to the Purchaser;
- (c) "Completion" means completion of the grant of the Water Entitlements under clause 4;
- (d) "the Completion Date" means the Completion Date specified in the schedule;
- (e) "the Condition Precedent" means the condition in clause 2.1;
- (f) "the Condition Precedent Date" means the Condition Precedent Date specified in the schedule;
- (g) "a Connection Agreement" means an agreement on the terms of the agreement forming annexure 4 between Tasmanian Irrigation and an owner of or another person entitled to use land within the Irrigation District providing for a point at which it is agreed that the owner of the land or another person may have access to water from the Scheme;
- (h) "the Connection Points" means the Connection Points nominated by Tasmanian Irrigation under clause 5.2;
- (i) "the Deposit" means the Deposit paid under clause 6.2(a);
- (j) "the Deposit Percentage" means the Deposit Percentage specified in the schedule;
- (k) "Final Government Approval" means that the Minister for Primary Industries and Water gives final approval for the construction of the Scheme by Tasmanian Irrigation;
- (l) "the Flow Rate" means the Flow Rate specified in the schedule;
- (m) "Force Majeure" means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party;
- (n) "GST" has the meaning given that term by the GST Act;

- (o) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;
- (p) "the Guarantors" means the Guarantors specified in the schedule;
- (q) "the Holders of the Rights" means the people registered from time to time on the WEPC Register as holding all or part of the Rights originally acquired by the Purchaser under this agreement;
- (r) "Insolvent" when used with reference to:
  - (i) any person, means a person:
    - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
    - B. who has ceased or has threatened to cease payment of its debts generally;
  - (ii) a natural person, means a natural person:
    - A. who is an undischarged bankrupt; or
    - B. who makes any composition or arrangement with his or her creditors;
  - (iii) a corporation, means a corporation:
    - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
    - B. in respect of the property of which a controller is appointed;
    - C. under administration; or
    - D. which makes a compromise or arrangement with its creditors,and "Insolvency" has a corresponding meaning;
- (s) "the Irrigation District" means the Irrigation District specified in the schedule;
- (t) "the Irrigation Right" means a right to an annual allocation up to the Volume from the Scheme in each irrigation season of the Irrigation District to be conferred under section 23(2) of the Irrigation Clauses Act by one or more agreements on the terms of the agreement forming annexure 2;
- (u) "notify" means serve a written notice;
- (v) "the Preliminary Connection Points" means:
  - (i) the Preliminary Connection Point specified in the schedule; and
  - (ii) any other points which Tasmanian Irrigation and the Purchaser agree are Preliminary Connection Points for the purposes of this agreement;
- (w) "the Purchase Price" means the Purchase Price specified in the schedule;
- (x) "the Qualifying Land" means the Qualifying Land specified in the schedule;
- (y) "the Rights" means the rights of the Purchaser under this agreement to the grant of the Water Entitlements;
- (z) "the Scheme" means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 planned for the Irrigation District and after Commissioning means that undertaking as constructed;
- (aa) "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;
- (bb) "the Sunset Date" means the Sunset Date specified in the schedule;

- (cc) “the Trading Rules” means the Trading Rules specified in the Water Entitlements;
- (dd) “the Volume” means the Volume of water specified in the schedule;
- (ee) “the Water Entitlements” means the Irrigation Right and the Zoned Flow Delivery Right;
- (ff) “the Water Entitlements Register” means the Water Entitlements Register maintained by Tasmanian Irrigation in respect of the Irrigation District under section 23(3B) of the Irrigation Clauses Act 1973 and the Trading Rules;
- (gg) “the WEPC Register” means a register to be maintained by Tasmanian irrigation in respect of all rights to purchase water entitlements for the Irrigation District;
- (hh) “the Zone” means the Zone of the water delivery system of the Irrigation District specified in the schedule with reference to the Zone Map;
- (ii) “the Zone Map” means the map of the water delivery system of the Irrigation District identifying separate zones forming annexure 1; and
- (jj) “the Zoned Flow Delivery Right” means a right for a share of the capacity of the Scheme in each irrigation season of the Irrigation District to deliver water within the Zone at the Flow Rate to be conferred by one or more agreements on the terms of the agreement forming annexure 3.

## 1.2 General

In this agreement, unless the context otherwise requires:

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

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

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## 2. Condition Precedent

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### 2.1 Condition Precedent to satisfy

This agreement (other than clause 2 and the payment of the Deposit under clause 6.2(a)) does not come into force or effect until Final Government Approval is received or Tasmanian Irrigation has waived that requirement.

### 2.2 Notification

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

### 2.3 Effect of failure to satisfy condition

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

### 2.4 Satisfaction of the Condition Precedent

- (a) Tasmanian Irrigation is under no obligation of any kind to procure the fulfilment of the Condition Precedent.
- (b) If the Condition Precedent is not fulfilled, Tasmanian Irrigation will not under any circumstances lose its right to rely on the termination of this agreement under clause 2.3(a).

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## 3. The Sunset Date and termination by Tasmanian Irrigation

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### 3.1 Condition

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

### 3.2 Extension of Sunset Date

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

### 3.3 Purchaser’s right to terminate

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

### 3.4 Waiver of condition

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

### 3.5 Fulfilling the condition

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

### 3.6 Termination by Tasmanian Irrigation

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

### 3.7 Effect of termination

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

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

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## 4. Completion

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

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## 5. Grant of the Water Entitlements

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### 5.1 Agreement to grant

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

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

### 5.2 The Connection Points

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

- B. the Purchaser is an owner of the Qualifying Land; or
- C. Tasmanian Irrigation acting reasonably considers that the Purchaser is entitled to use the Qualifying Land; or

(ii) where on Completion the Purchaser is not the only Holder of the Rights:

- A. where the Connection Point is within or on the boundary of the Qualifying Land, with those Holders of the Rights who:
  - (I) own that part of the Qualifying Land on which the Connection Point is located; or
  - (II) Tasmanian Irrigation acting reasonably considers are entitled to use the that part of the Qualifying Land on which the Connection Point is located; or
- B. where the Connection Point is not within or on the boundary of the Qualifying Land, with those Holders of the Rights who have a right to transport water from the Connection Point to the Qualifying Land and:
  - (III) own the Qualifying Land; or
  - (IV) Tasmanian Irrigation acting reasonably considers are entitled to use the Qualifying Land on which the Connection Point is located.

(f) The obligation of Tasmanian Irrigation to enter a Connection Agreement in respect of a Connection Point under clause 5.2(e) is subject to the Purchaser making any payment the Purchaser has agreed to make to Tasmanian Irrigation in exchange for Tasmanian Irrigation approving and providing that Connection Point.

### 5.3 Method of grant

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

### 5.4 Effect of the grants

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

## 5.5 Effect of this agreement

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

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## 6. The Purchase Price

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### 6.1 Price

The Purchase Price is the price for the Water Entitlements.

### 6.2 How payable

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

- (a) a deposit equal to the Deposit Percentage multiplied by the Purchase Price payable in two instalments:
  - (i) the first instalment equal to two per cent (2%) multiplied by the Purchase Price on the signing of this agreement by both parties; and
  - (ii) the second instalment equal to eight per cent (8%) multiplied by the Purchase Price within seven (7) days after Tasmanian Irrigation notifies the Purchaser that the Condition Precedent has been satisfied; and
- (b) subject to any termination of this agreement under clause 3.3 or clause 3.6, the balance of the Purchase Price on Completion by:
  - (i) a cheque that is restrictively endorsed with the words "Not Negotiable" payable to Tasmanian Irrigation Pty Ltd; or
  - (ii) another payment method approved by Tasmanian Irrigation.

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## 7. Assignment of the Rights

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### 7.1 Before satisfaction of Condition Precedent

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

### 7.2 Right to assign

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

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

### 7.3 Requirement for registration

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

### 7.4 Effect of assignment

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

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## 8. Ownership of the Rights

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### 8.1 The WEPC Register

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

### 8.2 Transfers and security interests

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

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

### 8.3 Absolute owner

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

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## 9. Transmission of the Rights

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### 9.1 Death of a sole Holder of the Rights

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

### 9.2 Death of a joint Holder of the Rights

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

### 9.3 Where a Holder of the Rights is under disability

Any of the following people:

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

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

### 9.4 Appointment of new trustee

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

### 9.5 Holder of portion of the Rights

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

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## 10. Purchaser's warranty

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

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## 11. Purchaser's enquiries and reliance

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### 11.1 No warranties

The Purchaser agrees that:

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

### 11.2 Enquiries

The Purchaser:

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

### 11.3 Purchaser acknowledgement

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

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## 12. Termination of agreement

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### 12.1 Making time essential

Either Tasmanian Irrigation or the Purchaser may make time of the essence for Completion by twenty eight (28) calendar days notice to the other.

### 12.2 Right to terminate agreement for failure to perform

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

- (a) Completion has not occurred; and
  - (b) a party ("the defaulting party") has failed to perform any of its obligations under this agreement by the time specified in this agreement or continues to fail to do so,
- the other party may terminate this agreement by notice to the defaulting party without affecting any other right it might have.

### 12.3 Right to terminate for insolvency

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

### 12.4 Consequences of Tasmanian Irrigation terminating agreement

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

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

### 12.5 Consequences of Purchaser terminating agreement

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

### 12.6 Exclusive right of termination

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

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## 13. Guarantee

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### 13.1 Consideration

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

### 13.2 Guarantee

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

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

### 13.3 Tasmanian Irrigation's choice

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

### 13.4 Continuing guarantee

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

### 13.5 Guarantor's liability unaffected

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

- (a) Tasmanian Irrigation in relation to any liability arising under this agreement, without first telling the Guarantor or getting his consent:
  - (i) grants time or any other indulgence to the Purchaser or a Guarantor;
  - (ii) compounds, compromises or makes an arrangement with the Purchaser or a Guarantor; or
  - (iii) releases the Purchaser or a Guarantor,
- (b) Tasmanian Irrigation, without first telling the Guarantor or getting their consent:

- (i) agrees to vary this agreement;
  - (ii) waives any breach of this agreement; or
  - (iii) fails to enforce this agreement; or
- (c) Tasmanian Irrigation is made to disgorge any payment made by the Purchaser or the Guarantor.

#### 13.6 Application of payments to Tasmanian Irrigation

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

#### 13.7 Guarantor not to claim subrogation

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

#### 13.8 Effect of Purchaser's insolvency

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

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### 14. Purchaser's default

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#### 14.1 Obligation to pay

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

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

#### 14.2 Interest calculation

Interest under this clause 14.2 accrues daily, at the rate of eighteen per cent (18%) per annum, on all money that should have been paid by the Purchaser by the Completion Date, but that has not been either received by, or applied for the exclusive benefit of, Tasmanian Irrigation.

#### 14.3 Condition to Tasmanian Irrigation's obligations to complete

Payment of the amounts required to be paid under clause 14.1 is a condition precedent to Tasmanian Irrigation's obligations on Completion.

#### 14.4 Separate right

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

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

#### 14.5 Tasmanian Irrigation's wilful default

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

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### 15. Dispute resolution

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#### 15.1 Process for resolution

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

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

#### 15.2 Continuing obligations

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

#### 15.3 Right to seek interlocutory relief

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

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### 16. Notices

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#### 16.1 How given

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

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

#### 16.2 Receipt of notice

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

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

#### 16.3 Addresses

For the purpose of giving notices under this agreement:

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

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

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## **17. General**

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### **17.1 Goods and Services Tax**

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

### **17.2 Indemnities**

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

### **17.3 Variation and waiver**

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

### **17.4 Severance of invalid provisions**

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

### **17.5 Applicable law**

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

### **17.6 Whole agreement**

This agreement, in connection with its subject matter:

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

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

### **17.7 Joint liability**

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

### **17.8 Counterparts**

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

### **17.9 Remedies**

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

# Executed as an agreement on

\_\_\_ / \_\_\_ / \_\_\_

## EXECUTION BY PURCHASERS WHO ARE NATURAL PERSONS

### SIGNED by Purchaser 1

Signature \_\_\_\_\_

Name \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

### SIGNED by Purchaser 2

Signature \_\_\_\_\_

Name \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

### SIGNED by Purchaser 3

Signature \_\_\_\_\_

Name \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

### SIGNED by Purchaser 4

Signature \_\_\_\_\_

Name \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

## EXECUTION BY PURCHASERS WHO ARE NOT A NATURAL PERSON OR COMPANY

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

\_\_\_\_\_

#### by:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

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

\_\_\_\_\_

#### by:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

#### in the presence of:

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**EXECUTION BY PURCHASERS WHO ARE A COMPANY**

EXECUTED by **Company 1** (insert Company Name)

\_\_\_\_\_

under section 127(1) of the Corporations Act:

**Director:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**Director/Secretary**

Signature \_\_\_\_\_

Name \_\_\_\_\_

EXECUTED by **Company 2** (insert Company Name)

\_\_\_\_\_

under section 127(1) of the Corporations Act:

**Director:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**Director/Secretary:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**EXECUTION BY GUARANTORS**

**SIGNED by Guarantor 1**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**in the presence of:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**SIGNED by Guarantor 2**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**in the presence of:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**SIGNED by Guarantor 3**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**in the presence of:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**SIGNED by Guarantor 4**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**in the presence of:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

**EXECUTION BY TASMANIAN IRRIGATION PTY LTD**

EXECUTED by **Tasmanian Irrigation Pty Ltd** under section 127(1) of the Corporations Act:

**Director:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

**Director/Secretary:**

Signature \_\_\_\_\_

Name \_\_\_\_\_