

## Price and Service Plan 2015-18

### Attachment 8.13: Example Service Replacement Contract

---

## SERVICE REPLACEMENT CONTRACT

REFERENCE SCHEDULE			
TasWater		Customer	
Name:	Tasmanian Water and Sewerage Corporation Pty Ltd	Name/s:	[#insert#]
ABN:	47 162 220 653	Contact person:	[#insert#]
Address:	163-169 Main Road Moonah, Tasmania 7009	Contact Address:	[#insert#]
Email:	[#insert#]	Phone:	[#insert#]
Contact person:	[#insert#]	Email:	[#insert#]
Property			
Address:	[#insert#]	Certificate of Title Volume [#insert#] Folio [#insert#]	
		Billing Point Number:	[#insert#]
Term of this Contract			
Commencement Date:	The date that this Contract is signed by the Customer and TasWater.		
End Date:	14 days after TasWater has completed the Disconnection.		
Funds			
[#insert#]			
Contract			
<p>The Contract that the Customer has entered into with TasWater consists of this <b>Reference Schedule</b> signed by the Customer and the terms and conditions set out in the attached document headed <b>Terms and Conditions</b>.</p> <p>By signing this Reference Schedule, each Customer acknowledges and agrees that they have received, read and understood the Terms and Conditions that form a part of this Contract.</p>			

# SERVICE REPLACEMENT CONTRACT

## REFERENCE SCHEDULE

### SIGNING PAGE

Date of Service Replacement Contract: the..... day of ..... 20.....

#### TasWater

**EXECUTED** by an authorised representative of **Tasmanian Water** )  
**and Sewerage Corporation Pty Ltd (ABN: 47 162 220 653)** in )  
accordance with section 126 of the *Corporations Act 2001 (Cth)* )

in the presence of:

.....  
Signature

.....  
Witness Signature

.....  
Witness Full Name (print)

#### Customer

**SIGNED** by **#INSERT CUSTOMER NAME/S#:**

.....  
Signature

.....  
Full Name (print)

.....  
Signature

.....  
Full Name (print)

**In the presence of:**

.....  
Witness Signature

.....  
Witness Full Name (print)

#### If Customer is a company

**EXECUTED** by ( **ABN** ) pursuant to section 127 of the  
*Corporations Act 2001 (Cth)* by:

.....  
Director Signature

.....  
Director Full Name (print)

.....  
\*Director/\*Secretary Signature

.....  
\*Director/\*Secretary Full Name (print)

(\* please strike out inapplicable \*if Sole Director/Secretary write 'Sole')

# SERVICE REPLACEMENT CONTRACT

## TERMS AND CONDITIONS

### BACKGROUND

- A. TasWater is responsible for the provision of water and sewerage services in the State of Tasmania pursuant to the WSIA.
- B. TasWater is unable to supply water to the Customer in accordance with section 56U of the WSIA and the Customer Service Code for the Water and Sewerage Industry.
- C. TasWater wishes to withdraw the water service it currently provides to the Customer and the Customer agrees to this on the terms and conditions of this Contract.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

**Billing Point Number** means the number for identifying the agreed Connection Point for supply to the Customer as set out in the Reference Schedule.

**Business Day** means a day that is not a Saturday or a Sunday; or a public holiday or a statutory holiday as defined in the *Statutory Holidays Act 2000* (TAS) in Hobart.

**Commencement Date** means the date set out in the Reference Schedule.

**Connection Point** means the point of supply to which TasWater currently delivers water to the Customer identified by the Billing Point Number.

**Contract** has the meaning given to that term in the Reference Schedule.

**Customer** means the party described as such in the Reference Schedule.

**Disconnection** means the disconnection of the private plumbing of the Property at the Connection Point as contemplated by clause 5.2 (Disconnection).

**End Date** means the date set out in the Reference Schedule.

**Funds** means the amount of money specified in the Reference Schedule.

**Irrigation Purposes** means any purpose other than domestic use.

**Legislative Requirements** means any:

- (a) Acts, ordinances, regulations, by-laws, orders, awards, codes, codes of practice, standards and proclamations whether Commonwealth, State or local; and
- (b) Certificates, licences, consents, permits, approvals, authorisations and requirements or anybody, authority, board or organisation having jurisdiction in connection with the Works or the Disconnection.

**Personal Information** has the meaning given to that phrase in the *Personal Information Protection Act 2004* (Tas).

**Property** means the property described in the Reference Schedule.

**Reference Schedule** means that part of the Contract headed 'Reference Schedule'.

**Standard Customer Contract** means the customer contract developed and approved under section 65 of the WSIA for the provision of water and sewerage services to customers and published on TasWater's website.

**TasWater** means the party described as such in the Reference Schedule.

**Term** means the period from the Commencement Date up to and including the End Date.

**Works** means all things required to service the potable water requirements of the Property without a TasWater connection, which

may include the installation of a rainwater tank, pump and associated plumbing works.

**WSIA** means the *Water and Sewerage Industry Act 2008*.

### 1.2 Interpretation

- (a) Unless the contrary intention appears, an expression used in this Contract has the same meaning:
    - (i) as it has in the WSIA; or
    - (ii) For terms used in provisions of the Standard Customer Contract that apply to this Contract, as it has in the Standard Customer Contract.
  - (b) A reference to:
    - (i) one gender includes the others;
    - (ii) the singular includes the plural and the plural includes the singular;
    - (iii) a person includes a body corporate;
    - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
    - (v) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
      - (A) that Statutory Provision as amended or re-enacted from time to time;
      - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
      - (C) another regulation or other statutory instrument made or issued under that Statutory Provision; and
    - (vi) money is to Australian dollars, unless otherwise stated.
  - (c) "Including" and similar expressions are not words of limitation.
  - (d) Unless the contrary intention appears a reference to a clause or schedule is a reference to a clause of or a schedule to this Contract.
  - (e) Unless the contrary intention appears a reference to a document (including a reference to this Contract) is to that document as amended, novated or replaced.
  - (f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - (g) Headings and any table of contents or index are for convenience only and do not form part of this Contract or affect its interpretation.
  - (h) A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract.
  - (i) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
  - (j) All references to time are to Australian Eastern Standard time.
- ### 1.3 Parties
- (a) If a party is made up of more than one person, or a term is used in this Contract to refer to more than one party, then:
    - (i) a reference to a party includes each and every person;
    - (ii) those persons are bound separately; and
    - (iii) any two or more persons are bound jointly and severally.

# SERVICE REPLACEMENT CONTRACT

## TERMS AND CONDITIONS

- (b) A party which is a trustee of a trust is bound in its personal capacity and in its capacity as trustee.

## 2 TERM

### 2.1 Term of Contract

This Contract commences on the Commencement Date and continues for the Term.

## 3 Works

### 3.1 Works and Disconnection

In consideration for TasWater agreeing to pay the Funds and undertake the Disconnection, the Customer agrees to have the Works undertaken on the terms set out in this Contract.

### 3.2 Customer Acknowledgement

The Customer acknowledges and agrees that:

- (a) TasWater has assessed the Property to determine the likely costs for the Works to be undertaken;
- (b) the Funds to be paid by TasWater represent the reasonable costs likely to be incurred by the Customer as a result of having the Works undertaken in accordance with this Contract; and
- (c) other than by payment of the Funds in accordance with clause 5.1 (Payment), TasWater is not obliged to pay any additional amounts to the Customer in connection with the Works or this Contract.

## 4 Customer's Obligations

### 4.1 Works

The Customer must ensure that the Works are undertaken and completed:

- (a) within 6 months of the Commencement Date;
- (b) with due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in undertaking works similar to the Works; and
- (c) in accordance with all applicable laws and Legislative Requirements.

### 4.2 Customer responsibility for approvals

The Customer must obtain and maintain for the Term all approvals, permits, consents and licences required for the Works to be carried out in accordance with this Contract.

### 4.3 TasWater may inspect Works

TasWater may inspect the Works prior to completing the Disconnection, to ensure the Works have been completed in accordance with the terms of this Contract.

### 4.4 Proof of completion

Within 6 months of the Commencement Date, the Customer must provide TasWater with a copy of the Council 'Certificate of Completion – Plumbing' as proof of completion of the Works.

### 4.5 Customer responsibility for potable supply

After the Disconnection is completed, the Customer will be responsible for the provision and maintenance of a potable supply to the Property.

## 5 TasWater's Obligations

### 5.1 Payment

Subject to the Customer complying with all of its obligations under this Contract, TasWater will pay the Funds to the Customer by payment of:

- (a) \$500.00 within 30 days of the Commencement Date; and
- (b) the balance of the Funds, within 30 days of receipt of proof of

completion of the Works in accordance with clause 4.4 (Proof of completion),

by cheques made out to the Customer according to the Customer details set out in the Reference Schedule.

### 5.2 Disconnection

Subject to the Customer complying with all of its obligations under this Contract, within 14 days of receipt of proof of completion of the Works in accordance with clause 4.4 (Proof of completion), TasWater will undertake the Disconnection.

## 6 APPLICATION OF THE STANDARD CUSTOMER CONTRACT

### 6.1 Standard Customer Contract

Unless and until TasWater completes the Disconnection:

- (a) the Customer remains a TasWater customer under the Standard Customer Contract; and
- (b) except as otherwise provided in this Contract, the supply of water the Customer receives and all other rights and obligations of both parties in connection with that supply of water continue in accordance with the provisions of the Standard Customer Contract.

### 6.2 Application

Clause 6.1 (Standard Customer Contract) applies despite anything to the contrary in the Standard Customer Contract.

## 7 CUSTOMER ACKNOWLEDGEMENTS

### 7.1 Specific acknowledgements

Despite clause 6.1 (Standard Customer Contract), the Customer acknowledges that:

- (a) TasWater has specifically brought to the Customer's attention the requirement that the Customer boil the water supplied under the Standard Customer Contract prior to human consumption, prior to the Disconnection;
- (b) the Disconnection will result in the infrastructure in the street of the Property only being charged with water for Irrigation Purposes;
- (c) TasWater is not responsible for the provision of fire protection services to the Customer or for the operation, or maintenance of any infrastructure, goods or services on or in the Property;
- (d) After the Disconnection is completed, the Customer will indemnify and keep indemnified TasWater against any claim, suit or proceeding arising from the failure to provide or maintain a potable supply to the Property

## 8 LIABILITY

- (a) Despite any other provision of this Contract, nothing in this Contract is to be read as excluding, restricting or modifying the application of any Legislative Requirements which by law cannot be excluded, restricted or modified.
- (b) Notwithstanding any other provision of this Contract, the liability of TasWater, if any, for anything arising out of or in connection with the provision of any services (including the Disconnection) under this Contract (including a breach of a guarantee or warranty implied by any Legislative Requirements in relation to the supply of any service, not of a kind ordinarily acquired for personal, domestic or household use or consumption) is limited, at TasWater's option, to:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.
- (c) Notwithstanding any other provision of this Contract, the

# SERVICE REPLACEMENT CONTRACT

## TERMS AND CONDITIONS

liability of TasWater, if any, for anything arising out of or in connection with the supply of goods under this Contract (including a breach of a guarantee or warranty implied by any law (including any Legislative Requirements), except for any guarantee or warranty implied by sections 51, 52 or 53 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), in relation to the supply of any goods, not ordinarily acquired for personal, domestic or household use or consumption) is limited, at TasWater's option, to:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired.

### 9 CONFIDENTIALITY

- (a) The terms and conditions of this Contract and any confidential information that is produced, or exchanged under this Contract remains strictly confidential between the parties and is not to be disclosed, unless consent of the party who supplied the information is obtained in writing, or disclosure is required by law, a government authority having jurisdiction over either party or this Contract, or in connection with legal proceedings, whether they relate to this Contract or not.
- (b) This clause survives the termination (for any reason) of this Contract.

### 10 PERSONAL INFORMATION

Any Personal Information of the Customer will only be collected, stored, used, or disclosed by TasWater in accordance with the *Personal Information Protection Act 2004* (Tas).

### 11 NOTICES

#### 11.1 Form

Any notice, consent approval, waiver and other communications to be given under or in connection with this Contract must be in writing, signed or clearly sanctioned by an authorised officer of the sender and marked for the attention as set out or referred to in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

#### 11.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Reference Schedule; or
- (b) sent by prepaid post to the address set out or referred to in the Reference Schedule; or
- (c) sent by fax to the fax number set out or referred to in the Reference Schedule.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that postal address or fax number.

#### 11.3 When effective

They take effect from the time they are received unless a later time is specified in them.

#### 11.4 Receipt– postal

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

#### 11.5 Receipt – fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

#### 11.6 Receipt - general

Despite clauses 11.4 (Receipt – postal) and 11.5 (Receipt – fax), if they are received after 5pm in the place of receipt or on a non-Business Day, they are taken to be received at 9am on the next Business Day.

### 12 LAW APPLICABLE

#### 12.1 Governing law

The laws of Tasmania govern this Contract.

#### 12.2 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Tasmania and any other Court that can hear appeals from those courts.

### 13 GENERAL

#### 13.1 Costs

Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation and execution of this Contract, and all other matters and agreements referred to in this Contract.

#### 13.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Contract.

#### 13.3 Counterparts

This Contract may be entered into in any number of counterparts. A party may execute this Contract by signing any counterpart. All counterparts, taken together, constitute one Contract.

#### 13.4 Consents

Unless this Contract expressly provides otherwise, a consent under this Contract may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

#### 13.5 Waiver

The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

#### 13.6 Amendments

An amendment or variation to this Contract is not effective unless it is in writing and signed by the parties.

#### 13.7 Assignment

A party cannot assign or otherwise transfer any of its rights under this Contract without the prior written consent of each other party (which will not be unreasonably withheld).

#### 13.8 Severance

If anything in this Contract is unenforceable, illegal, void or voidable then it is severed and the rest of this Contract remains in force,

# SERVICE REPLACEMENT CONTRACT

## TERMS AND CONDITIONS

unless the severance would change the underlying principal commercial purpose or effect of this Contract.

### **13.9 Exclusion of relationships**

The parties acknowledge and agree that this Contract and the performance of this Contract does not represent or imply a partnership, agency, fiduciary relationship, joint venture, distribution or any other category of commercial or personal

relationship between the parties recognised at law or in equity as giving rise to forms of specific rights and obligations.

### **13.10 Continuance of obligations**

All Customer acknowledgements, liability provisions (including the rights and obligations flowing from breach of this Contract), and confidentiality obligations in this Contract survive the expiry or termination (for any reason) of this Contract.

Not for Approval