



**Connection Agreement
River Connection**

Midlands Irrigation Scheme

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Parties

1. **THE WATER ENTITY** named in the schedule
("the Water Entity")
2. **THE LAND HOLDER** named in the schedule
("the Land Holder")

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. The Land Holder owns or is otherwise entitled to use land in the Irrigation District and each Connection Point is located:
 - (a) on the land;
 - (b) on a boundary of the land; or
 - (c) outside the land but the Land Holder has a right to transport water from that Connection Point to the land.
3. This agreement sets out the basis on which the Water Entity will agree to the Land Holder taking Scheme Water from the Watercourse at a Connection Point.
4. This agreement does not give the Land Holder any right to take water.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) "an Approved Water Meter" means:
 - (i) a Water Meter supplied by the Water Entity to the Land Holder under clause 3.1; or
 - (ii) a Water Meter approved from time to time by the Water Entity for the purpose of taking Scheme Water from the Watercourse under clause 3.3;
- (b) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (c) "Commissioning" means commissioning of the Scheme after completion of construction as determined by the Water Entity by notice to the Land Holder;
- (d) "a Connection Point" means:
 - (i) a Connection Point specified in the schedule; or
 - (ii) if a Connection Range is specified in the schedule, any point in the Connection Range on the Watercourse;
- (e) "a Connection Range" means a Connection Range specified in the schedule;
- (f) "a Farm Water Access Plan" for any land means a plan:
 - (i) approving and stating conditions for the use of water on that land;
 - (ii) completed by a pre-qualified consultant who has been approved by the Minister administering the Water Management Act 1999 and the Water Entity using property management planning modules for soil, water and biodiversity endorsed by the Minister administering the Water Management Act 1999; and
 - (iii) approved by the Water Entity;
- (g) "FWAP Water" means:
 - (i) all Scheme Water taken by the Land Holder from the Watercourse at the Connection Point;

- (ii) all Scheme Water taken by any person other than the Land Holder from the Watercourse at the Connection Point; and
 - (iii) all Scheme Water taken by the Land Holder at a point where the Land Holder has no entitlement under another agreement with the Water Entity to take Scheme Water;
- (h) “Infrastructure” means pipes, channels, connections, equipment or storage facilities to receive, store, transport and use water;
- (i) “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;
- (j) “the Irrigation District” means the Irrigation District specified in the schedule;
- (k) “an Irrigation Right” means an irrigation right granted by the Water Entity under section 23(2) of the Irrigation Clauses Act 1973 in respect of the Irrigation District;
- (l) “the Land Holder” means the Land Holder specified in the schedule;
- (m) “the Land Holder’s Infrastructure” means Infrastructure used by the Land Holder to take Scheme Water from the Watercourse under clause 4.1;
- (n) “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, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory;
- (o) “notify” means serve a written notice;
- (p) “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 Scheme Water;
- (q) “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;
- (r) “Scheme Water” means water supplied by the Water Entity as responsible water entity under the Water Management Act 1999 of the Irrigation District;
- (s) “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;
- (t) “the Term” means the term specified in the Schedule;
- (u) “the Watercourse” means the Watercourse specified in the schedule;
- (v) “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;
- (w) “Water Meter” means infrastructure that has the specific purpose of metering and monitoring the taking of Scheme Water from the Watercourse at a Connection Point; and
- (x) “a Zoned Flow Delivery Right” means a right for a share of the water delivery capacity of the Scheme.

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 continues until the earlier of:

- (a) the end of the Term; or
- (b) the date on which this Connection Agreement is terminated under this agreement if that occurs.

2.2 ***Extension of the Term***

- (a) The Water Entity may at any time before the Term ends and before this agreement is terminated under this agreement extend the Term by the period it notifies to the Land Holder.
- (b) If, before the Term ends and before this Connection Agreement 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 and unfettered 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. **The Water Meter**

3.1 ***Provision of a Water Meter***

If the Land Holder’s Infrastructure is approved under clause 3.3, the Water Entity agrees, at the cost of the Water Entity, to provide the Land Holder with one Water Meter provided that the Land Holder’s Infrastructure does not already include an Approved Water Meter.

3.2 ***Land Holder to Install***

- (a) If the Water Entity provides a Water Meter under clause 3.1, the Land Holder must install the Water Meter by connection to the Land Holder’s Infrastructure;
- (b) The Water Entity may approve the installation of the Water Meter by the Land Holder and may withdraw that approval at its absolute discretion.

- (c) The Land Holder must not take Scheme Water from the Watercourse at a Connection Point if the installation of the Water Meter supplied by the Water Entity is not approved by the Water Entity under clause 3.2(a).

3.3 ***Approval of Land Holder's Infrastructure and Water Meter***

- (a) The Water Entity may approve the Land Holder's Infrastructure, including any Water Meter which is part of the Land Holder's Infrastructure, for the purpose of taking Scheme Water from the Watercourse at the Connection Point and may withdraw that approval at its absolute discretion.
- (b) In dealing with a request for approval under clause 3.3, the Water Entity need:
 - (i) only be concerned to ensure that the Land Holder's Infrastructure is suitable for use either by itself or is suitable for use in conjunction with a Water Meter supplied by the Water Entity under clause 0; and
 - (ii) not consider whether the Land Holder's Infrastructure will be fit for the Land Holder's purpose or the purpose of any other person.
- (c) For the sake of clarity, an approval under clause 3.3(a) will not constitute a representation or warranty of any kind.

3.4 ***Repairs***

- (a) The Land Holder is responsible for constructing, installing, maintaining, repairing and replacing the Land Holder's Infrastructure and any Approved Water Meter at its own expense.
- (b) The Water Entity may instruct the Land Holder:
 - (i) to repair any Approved Water Meter; or
 - (ii) to replace any Approved Water Meter if it is not repairable.
- (c) The costs of repair or replacement under clause 3.4(b) will be the costs of the Land Holder;
- (d) If the Land Holder fails to replace or repair the Approved Water Meter within a reasonable time, the Water Entity may undertake the repair or replacement works under clause 3.4(b) and the Land Holder must pay to the Water Entity any costs of repair or replacement that the Water Entity incurs.

3.5 ***Notification of deterioration or damage***

The Land Holder must notify the Water Entity if the Land Holder becomes aware, or ought to have become aware, of any deterioration or damage, or possible deterioration or damage to any Approved Water Meter.

4. The Land Holder's connection right and related obligations

4.1 ***Land Holder's right to extract at the Connection Point***

Subject to clause 4.2, the Land Holder may, after the Land Holder's Infrastructure has been approved under clause 3.3(a), use the Landholder's Infrastructure to take Scheme Water from the Watercourse at a Connection Point.

4.2 ***Approved Water Meter***

The Land Holder must;

- (a) not take any water whether or not it is Scheme Water from the Watercourse unless the water passes through an Approved Water Meter;
- (b) not tamper with or manipulate an Approved Water Meter; and
- (c) ensure that the Water Entity has such access to land as is necessary to allow the reading, inspection and testing of each Approved Water Meter.

4.3 ***Farm Water Access Plan***

The Land Holder must:

- (a) ensure that a Farm Water Access Plan is in place for each area of land on which FWAP Water is used;
- (b) for the sake of clarity, not use or allow others to use FWAP Water on any land for which a Farm Water Access Plan is not in place;
- (c) ensure that they and any other person who use FWAP Water use that water in compliance with a Farm Water Access Plan in place for the land on which the water is used; and
- (d) for the purpose of enabling the Water Entity to audit compliance with any Farm Water Access Plan for land on which FWAP Water is used, provide to the Water Entity such information and ensure that the Water Entity has such access to that land as the Water Entity reasonably requires.

4.4 No right to take water

- (a) This Connection Agreement does not confer any entitlement to take water from the Watercourse at the Connection Point.
- (b) Scheme Water may only be taken from the Watercourse at the Connection Point in accordance with an Irrigation Right, a Zoned Flow Delivery Right or any other agreement with the Water Entity.

4.5 No other connection

The Land Holder must not:

- (a) connect or maintain (and must not procure or permit others to connect or maintain on its behalf) a connection to any part of the Scheme; or
 - (b) take Scheme Water from any part of the Scheme,
- except as permitted by this agreement or another agreement with the Water Entity.

5. Quality and use of water

5.1 No warranty by the Water Entity

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

5.2 Land Holder's risk

The Land Holder accepts all risk in relation to the condition, quality or fitness for purpose of or any contamination in, any Scheme Water and, to the extent permitted by law, the Land Holder releases the Water Entity from any loss or damage suffered by the Land Holder in connection with the condition, quality, fitness for purpose of or any contamination in Scheme Water.

5.3 Scheme Water taken for use without a Connection Agreement

If the Land Holder allows Scheme Water to be taken by, or supplied to, a person who is not a party to a Connection Agreement with the Water Entity, the Land Holder accepts all risk in relation to that supply.

6. Assignment and novation

The Land Holder may with the consent of the Water Entity (not to be unreasonably withheld) novate or assign the Land Holder's rights and obligations under this Connection Agreement to an owner of or another person which the Water Entity acting reasonably considers is otherwise entitled to use land within the Irrigation District:

- (a) if the Connection Point is located on that land or on a boundary of that land; or
- (b) the Land Holder has a right to transport water from the Connection Point to that land.

7. 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 Land Holder, 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 Land Holder on the terms of this agreement as if it were the Water Entity named in this agreement; and
- (b) on such assignment or novation, will be taken to be released from all its obligations under this agreement.

8. Land Holder's warranty

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

9. Insolvency of the Land Holder

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

10. Default and Termination

10.1 Cure notice

If the Land Holder breaches any term of this Connection Agreement, then without prejudice to any other rights the Water Entity may have under this agreement or otherwise:

- (a) the Water Entity may give the Land Holder a “cure notice”; and
- (b) the Land Holder must remedy the breach within the “cure period” stated in the cure notice.

10.2 Cure period

The cure period stated in the cure notice must be reasonable having regard to the nature of the breach and the urgency of rectifying the breach but need not be longer than twenty eight (28) calendar days.

10.3 Failure to comply with cure notice

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

- (a) with notice to the Land Holder, step in and cure the Land Holder’s breach (and recover the costs of doing so as a debt that is due and payable by the Land Holder);
- (b) suspend any of the rights the Land Holder has to take from the Watercourse at the Connection Point water supplied under an Irrigation Right, a Zoned Flow Delivery Right or any other agreement with the Water Entity held by the Land Holder;
- (c) suspend any of the rights of the Land Holder under this Connection Agreement; and
- (d) terminate this Connection Agreement.

10.4 Additional rights to terminate

In addition to the right to terminate this agreement conferred by clause 10.3(d), the Water Entity may terminate this Connection Agreement if the Land Holder:

- (a) ceases to own or be otherwise entitled to use land in the Irrigation District satisfying one of the following:
 - (i) the Connection Point is located on the land;
 - (ii) the Connection Point is located on a boundary of the land; or
 - (iii) the Land Holder has a right to transport water from the Connection Point to the land; or
- (b) seriously or persistently breaches this agreement even though the Water Entity has not given a cure notice in respect of any breach in respect of which it acts.

10.5 Water Entity’s costs

The Land Holder 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 a breach specified in a cure notice including the cost of ascertaining and remedying the breach.

10.6 Removal of Connection Infrastructure

- (a) If this Connection Agreement is terminated, the Water Entity may, at the cost of the Land Holder, disconnect and remove any Connection Infrastructure and perform any works necessary or desirable to prevent the taking of water from the Watercourse at the Connection Point.
- (b) In addition to any other power the Water Entity might have to enter land, the Land Holder must not hinder or prevent the Water Entity from entering on to land owned or occupied by the Land Holder for the purpose of clause 10.6(a).
- (c) This clause 10.6 survives termination of this Connection Agreement.

11. Liability

11.1 *Limit to Water Entity's liability*

The Water Entity will not be liable for any inability of the Land Holder to take Scheme Water from the Watercourse at the Connection Point.

11.2 *Indemnity*

The Land Holder must indemnify the Water Entity against all loss the Water Entity suffers as a result of or in connection with loss of life, personal injury or damage to property including the Scheme that is caused or contributed to by:

- (a) the Land Holder, any person claiming through or under the Land Holder or any person acting with the Land Holder's authority or permission;
- (b) the Land Holder's Infrastructure, its use or misuse; or
- (c) the taking or use of any water taken from the Watercourse at the Connection Point.

11.3 *No liability for consequential loss*

The Water Entity has no liability to the Land Holder, nor will the Land Holder 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).

11.4 *Liability Cap*

- (a) The maximum aggregate liability of the Water Entity to the Land Holder in connection with all Claims arising from events occurring in any period of twelve (12) months is limited to all amounts paid by the Land Holder to the Water Entity in the twelve (12) months prior to the last event giving rise to any of those Claims.
- (b) Clause 11.4(a) does not apply to the extent that the Water Entity is indemnified by insurance.
- (c) In this clause 11.4 "Claim" means any claim made by the Land Holder 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.

12. Dispute resolution

12.1 *Process for resolution*

If any dispute or difference between the Land Holder and the Water Entity arises out of this Connection Agreement:

- (a) either the Land Holder or the Water Entity may notify the other of them of the dispute or difference and invoke this clause 12.1;
- (b) the Land Holder and the Water Entity must within thirty (30) calendar days after the notice referred to in clause 12.1(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 12.1(b) or the meeting has not taken place within thirty (30) calendar days after the notice referred to in clause 12.1(a) is given, either the Land Holder or the Water Entity 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 by either party.

12.2 *Continuing obligations*

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

12.3 *Right to seek interlocutory relief*

Nothing in this clause 12 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

13. Variation of this agreement by the Water Entity

13.1 *Right to vary*

The Water Entity may amend this agreement by notice in writing to the Land Holder where the Water Entity considers in good faith that an amendment to this agreement is necessary or desirable:

- (a) to comply with a Statute; or
- (b) as a result of a change to, or replacement of, the National Water Initiative.

13.2 *Effect of variation*

The agreement will apply as varied with effect from the date the notice required under clause 13.1 is given.

14. Notices

14.1 *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.

14.2 *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).

14.3 *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 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.

15. General

15.1 *Exercise of Water Entity's rights*

Any right conferred by the Water Entity under this Connection Agreement may be exercised by any authorised officer, servant, contractor or agent of the Water Entity.

15.2 *Indemnities*

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

15.3 *Variation and waiver*

Other than variations made under clause 13, 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.

15.4 *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.

15.5 *Applicable law*

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

15.6 *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, 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.

15.7 ***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.

15.8 ***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.

15.9 ***Remedies***

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

The Schedule

Serial number						
The Irrigation District		The 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 Tasmania 7212				
The Land Holder						
Address of the Land Holder						
Postal address of the Land Holder						
The Term		The date of this agreement extending until twenty five (25) years after Commissioning or as extended under clause 2.2				
Watercourse						
Connection Point(s)	Property					
	Property ID(s)					
	Connection Points	Connection Point (1)	Water Meter Serial No.		Outlet ID:	
			Easting	mE		GDA MGA Zone 55
			Northing	mN		
		Connection Point (2)	Water Meter Serial No. 13-5160		Outlet ID: RC-016	
			Easting	mE		GDA MGA Zone 55
			Northing	mN		
		Connection Point (3)	Water Meter Serial No.		Outlet ID: RC-033	
			Easting	mE		GDA MGA Zone 55
Northing			mN			

