

Access Undertaking

by

SYDNEY WATER CORPORATION (ABN 49 776 225 038) being a Statutory State-owned corporation of 1 Smith Street, Parramatta, New South Wales 2150 ("**SWC**")

in favour of

INDEPENDENT PRICING AND REGULATORY TRIBUNAL being a body corporate established under **section 5** of the *Independent Pricing and Regulatory Tribunal Act 1992* ("**IPART**")

20 January 2012

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Access Undertaking

General terms

1 Background

1.1 Introduction

- (a) SWC is a statutory State-owned corporation constituted under the *State Owned Corporations Act 1989* and operates under the *Sydney Water Act 1994*.
- (b) SWC is a utility that supplies drinking water, recycled water, wastewater services and some stormwater services to over four million people in Sydney, the Illawarra and the Blue Mountains, as defined by its Area of Operations defined in the *Sydney Water Act 1994*.
- (c) SWC owns and operates the Water Supply Transport Network through which drinking water is transported and delivered to end customers in Sydney.
- (d) SWC also owns Water Treatment Plants and has long-term contracts with privately owned Water Treatment Plant operators.
- (e) SWC submits this Undertaking to IPART for approval under Division 5 of Part 3 of the WICA for the purpose of granting third-party Retailers access to the Water Network Services provided by the Water Supply Transport Network.

1.2 Objectives

The Undertaking has the following objectives:

- (a) providing a framework to manage negotiations with Applicants for access to Water Network Services provided through the Water Supply Transport Network for purposes of the retail supply of drinking water in SWC's Areas of Operations;
- (b) establishing a workable, open, non-discriminatory and efficient process for lodging and processing Access Applications;
- (c) providing a non-discriminatory approach to pricing and the provision of Water Network Services;
- (d) operating consistently with the objectives and principles in Division 7 of Part 3 of the WICA and the Competition Principles Agreement;
- (e) reaching an appropriate balance between:
 - (i) the legitimate business interests of SWC, including:
 - (A) the recovery of all efficient costs associated with providing access to the Water Network Services;

- (B) a fair and reasonable return on SWC's investment in the Water Supply Transport Network commensurate with its commercial risk;
- (C) projects and measures to support the supply/demand balance for water that are funded through "postage stamp" water service and usage prices;
- (ii) the public interest, including the public interest in having competition in markets; and
- (iii) the interests of Applicants wanting access to the Water Network Services, including providing access:
 - (A) on non-discriminatory price and non-price terms; and
 - (B) in a transparent, open, efficient and non-discriminatory manner;
- (f) providing an efficient, effective and binding dispute resolution process in the event that SWC and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
- (g) consistency with any relevant pricing determinations for the supply of water including (where applicable) the maintenance of "postage stamp pricing".

2 Term and variation

2.1 Commencement Date

This Undertaking will take effect from the date on which IPART approves this Undertaking.

2.2 Term and Expiry

This Undertaking will remain in effect for the duration of the 2012 IPART price determination and will therefore expire on 30 June 2016.

2.3 Variation

If, during the term of the Undertaking, SWC is of the opinion that circumstances have changed such that this Undertaking is no longer commercially viable for SWC, or becomes inconsistent with the objectives set out in clause 1.2, SWC may seek the approval of IPART to vary this Undertaking.

3 Scope

3.1 Application of Undertaking

- (a) This Undertaking applies to the negotiation of access to the following Water Network Services:
 - (i) Interconnection Services;

- (ii) Transport Services; or
- (iii) Off-take Services.

Each Water Network Service is more fully described in **Schedule 1**.

- (b) This Undertaking does not apply to the negotiation of any Access Agreement which will have a commencement date before IPART approves this Undertaking or after the expiry of this Undertaking.

3.2 What this Undertaking does not cover

To avoid doubt, this Undertaking does not apply to the negotiation of access to:

- (a) Water Treatment Services; or
- (b) the supply of bulk water.

4 Price and non-price terms

4.1 Overview

- (a) Under section 10 of the WICA, any new entrant Retailer must obtain sufficient quantities of water otherwise than from a public water utility. During the term of this Undertaking, the most probable source of potable water is from the Sydney Desalination Plant.
- (b) For the term of this Undertaking, and for purposes of the Standard Access Agreement, it is therefore assumed that an Applicant will be obtaining water from the Sydney Desalination Plant, not being a public water utility, and therefore not supplying water from any new potable water source into the Water Supply Transport Network. As such, Interconnection Services are not likely to be required during the term of this Undertaking and terms relating to the Interconnection Service have therefore not been included in the Standard Access Agreement.
- (c) For the term of this Access Undertaking, and for purposes of the Standard Access Agreement, it is considered unlikely that an Applicant will be supplying customers not connected to the Water Supply Transport Network and any new customers will be connected as part of SWC's normal operations. As such, Off-take Services are not likely to be required during the term of this Undertaking and terms relating to Off-take Services have therefore not been included in the Standard Access Agreement.
- (d) For the term of this Access Undertaking, if an Applicant intends to bring water from a new water source, and seeks Interconnection Services or Off-take Services, terms of access for these services may be negotiated with SWC under the process provided for in clause 5. Interconnection Services and Off-take Services therefore constitute Non-Standard Water Network Services.
- (e) For the term of this Access Undertaking, and for purposes of the Standard Access Agreement, it is considered likely that an Applicant will be acquiring Water Treatment Services from SWC. However, if the Applicant intends to acquire Water Treatment Services from another source, such arrangements

will require the negotiation of additional terms as the arrangements will depend on relevant upstream supply considerations and any requirements for the maintenance of postage stamp pricing.

- (f) Transport Services constitutes a Standard Water Network Service and Standard Terms for access have been included in the Standard Access Agreement.

4.2 Access to Standard Water Network Services

On request by an Applicant in accordance with clause 5, SWC will offer to supply Standard Water Network Services to the Applicant:

- (a) on Charges determined in accordance with the Charging Method described in **Schedule 2**; and
- (b) on the Standard Terms under clause 4.5.

4.3 Access to Non-Standard Water Network Services

- (a) This Undertaking recognises the ability of an Applicant to negotiate for, and an arbitrator to arbitrate on:
 - (i) access to Non-Standard Water Network Services (that are nonetheless within the ambit of Water Network Services);
 - (ii) Non Standard Terms which are to be negotiated (for Water Network Services); or
 - (iii) any combination of the above.
- (b) On request by an Applicant in accordance with clause 5, SWC will offer to supply Non-Standard Water Network Services to the Applicant on terms to be negotiated with SWC in accordance with clause 5.

4.4 Charges

- (a) SWC will calculate Charges for the Water Transport Service in accordance with the Charging Method outlined in **Schedule 2**.
- (b) SWC may, from time to time, publish sample charges on SWC's website, which are illustrative of Charges determined in accordance with the Charging Method. These Charges are not binding on SWC or an arbitrator.

4.5 Standard Terms

- (a) The Standard Terms are the terms and conditions set out in the Standard Access Agreement in **Schedule 3** to this Undertaking.
- (b) The Standard Terms apply for the term of the Undertaking.
- (c) Nothing in this Undertaking prevents the parties agreeing to include terms relating to the provision of the Water Network Services in an agreement also applying to access to other services provided by SWC but, to avoid doubt, this

Undertaking (including clauses 5 and 6) will only apply to the terms relating to the provision of access to Water Network Services.

- (d) SWC is under no obligation to provide a Water Network Service (or to enter into an Access Agreement for them) beyond the term of this Undertaking unless SWC chooses to do so in its absolute discretion.

4.6 Non-discriminatory provision

In providing Water Network Services, SWC must not discriminate between different Applicants or Users in favour of its own Retail Division, except to the extent that the cost of providing the Water Network Services to other Applicants or Users is higher.

4.7 No hindering provision

SWC must not engage in conduct for the purpose of preventing or hindering the provision of Water Network Services by any other User in the exercise of a right of access under this Undertaking.

4.8 Ring-fenced Information

During the negotiation process and during the term of an Access Agreement, SWC must:

- (a) not disclose Ring-fenced Information to any officers, employees, personnel or advisers of SWC's Retail Division; and
- (b) only disclose Ring-fenced Information to SWC's officers, employees and advisers who have a specific need to access the Ring-fenced Information and/or Competitively Sensitive Information for the purpose of SWC carrying out its obligations in relation to:
 - (i) the negotiation and execution of an Access Agreement;
 - (ii) the maintenance and operation of the Water Transport Supply Network;
 - (iii) strategic planning;
 - (iv) reporting; or
 - (v) calculation of Charges and for billing purposes.

5 Negotiation Process

5.1 Good faith negotiation

SWC will negotiate with an Applicant for the provision of Water Network Services in good faith in accordance with the terms of this Undertaking.

5.2 Framework

- (a) This part of the Undertaking outlines the negotiation process to be followed for an Applicant seeking Water Network Services, as guided by the Negotiation Protocols. It provides for:

- (i) **Preliminary Inquiry** - preliminary exchanges of information and any requested meeting to enable an Access Application to be lodged;
 - (ii) **Access Application** - submission of a formal Access Application by the Applicant;
 - (iii) **Negotiation** - negotiating an Access Agreement;
 - (iv) **Access Agreement** – acceptance and execution of an Access Agreement.
- (b) If, at any time during this process, a Dispute arises between the parties, then either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in clause 6.

5.3 Preliminary Inquiry

(a) Provision of information

- (i) Subject to clause 5.3(a)(iii), within ten Business Days after receipt of a request for information from an Applicant, SWC will provide a Consolidated Information Package (in written or electronic form) to the Applicant which relates to the provision of and charging for Water Network Services and which is reasonably required by the Applicant to assist in negotiations in relation to an Access Application.
- (ii) The Consolidated Information Package will include the following:
 - (A) a copy of this Undertaking which:
 - (aa) lists the Water Network Services that are provided by SWC, in accordance with this Undertaking (see **Schedule 1**);
 - (ab) outlines the procedure and timeline to be followed to obtain access (see section 5.4 below);
 - (ac) outlines the Charging Method (see **Schedule 2**); and
 - (ad) contains a copy of the Standard Access Agreement attached to this Undertaking (see **Schedule 3**);
 - (B) sample charges (if any), as published on SWC's website from time to time, which are illustrative of Charges determined in accordance with the Charging Method;
 - (C) a pro forma statement that negotiations will be conducted in accordance with this Undertaking (see **Schedule 4**); and
 - (D) such other information as SWC considers appropriate to include in the package.
- (iii) SWC's obligation under clause 5.3(a)(i) is subject to SWC not disclosing any information which would breach a confidentiality

obligation binding on it or which it considers (acting reasonably) is commercially sensitive in relation to its own operations.

(b) Parties to negotiations

- (i) If an Applicant does not comply with the relevant obligations and processes, and such non-compliance is material, SWC will not be obliged to continue negotiations regarding the provision of Water Network Services for that Applicant.
- (ii) An Applicant seeking Standard Water Network Services must hold a Retail Supplier's Licence or have applied for the necessary Retail Supplier's Licence. It is the responsibility of the Applicant to ensure that it complies with any relevant legal requirements for the supply of drinking water to end customers.
- (iii) An Applicant seeking Interconnection and/or Off-take Services must hold a Network Operator's Licence in relation to the Water Industry Infrastructure to be connected to the Water Supply Transport Network. It is the responsibility of the Applicant to ensure that it complies with the relevant legal requirements for the construction and operation of such infrastructure.
- (iv) If SWC refuses to negotiate, or ceases to negotiate, with an Applicant, for any reason, it will promptly provide to the Applicant written reasons for such refusal.
- (v) If the Applicant considers that SWC has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiations for any reason, then the Applicant may refer the matter to the arbitrator in accordance with clause 6.4. If the arbitrator determines that SWC has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiations, SWC will recommence negotiations immediately, subject to any other determination the arbitrator makes.
- (vi) If at any time, SWC is of the view that (acting reasonably) an Applicant's request for access is not in good faith or the Applicant is not negotiating in good faith, SWC may refer the request to the arbitrator in accordance with clause 6.4 for determination. If the arbitrator determines that the request or negotiation is not in good faith, then SWC will be entitled to cease negotiations, subject to any other determination the arbitrator makes. The arbitrator may consider whether or not an Applicant is negotiating in good faith as a preliminary or threshold question in any arbitration.

5.4 Access Application

(a) Application process

- (i) An Access Application must be submitted to SWC and must include the information contained in **Schedule 5**.
- (ii) Prior to an Applicant submitting an Access Application, SWC will, if requested conduct initial meetings with the Applicant within three

Business days of the request, to discuss the Access Application and to provide clarification of the process as outlined in this Undertaking and the Consolidated Information Package.

(b) **Acknowledgment**

(i) Upon receiving an Access Application from an Applicant, SWC will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within five Business Days of its receipt, or such longer period in accordance with clause 5.4(b)(iv).

(ii) If the Application is incomplete, prior to acknowledging the Access Application, SWC may seek in writing:

(A) such additional information; or

(B) clarification of the information that has been provided in the Access Application,

to the extent that such additional information or clarification is reasonably required to enable SWC to consider the Access Application.

(iii) If SWC seeks additional information or clarification in accordance with clause 5.4(b)(ii), it will advise the Applicant of the additional information or the clarification required within ten Business Days of receipt of the Access Application.

(iv) Upon receiving the required information or clarification from the Applicant, SWC will provide written acknowledgment of the receipt of the completed Access Application within five Business Days.

(c) **Prudential requirements**

(i) If at any time, SWC reasonably determines the Applicant does not satisfy the Prudential Requirements, SWC may issue a notice of intent not to proceed with the Access Application, to become effective ten Business Days after the issue of the notice.

(ii) If SWC issues a notice of intent, SWC will provide to the Applicant written reasons for its decision, including reasons why the Applicant does not meet the Prudential Requirements at the time it issues the notice.

(iii) For purposes of its assessment of whether the Applicant can satisfy the Prudential Requirements, SWC may engage an external credit review company to undertake a credit review of the Applicant.

(d) **Preliminary Assessment**

- (i) Within 28 calendar days of receiving an Access Application for Standard Water Network Services, SWC must provide the Applicant with a written Preliminary Assessment of the Access Application, containing:
- (A) details of the availability of the Standard Water Network Services requested in the Access Application;
 - (B) a copy of SWC's Operating Licence and a copy of the latest State of the Assets Report, together with any additional operations and planning information which the Applicant can reasonably expect to require SWC to supply to enable the parties to conclude an Access Agreement;
 - (C) the Standard Terms and conditions, including Charges determined in accordance with the Charging Method, on which the Standard Water Network Services will be provided by SWC;
 - (D) a response to any other matter raised in the Access Application for which a response is requested or warranted;
 - (E) details of any credit support SWC requires to address concerns as to whether Applicant satisfies the Prudential Requirements;
 - (F) details of SWC's operating protocols for the Standard Water Network Services; and
 - (G) any other information relevant to SWC's assessment of the Access Application necessary to enable the parties to conclude an Access Agreement.
- (ii) Within 60 calendar days of receiving an Access Application for Non-Standard Water Network Services, SWC must provide the Applicant with a written Preliminary Assessment of the Access Application, containing:
- (A) details of the availability of the Non-Standard Water Network Services requested in the Access Application;
 - (B) a copy of SWC's Operating Licence and a copy of the latest State of the Assets Report, together with any additional system operations and planning information which the Applicant can reasonably expect to require SWC to supply to enable the parties to conclude an Access Agreement;
 - (C) the Non-Standard Terms and conditions, including Charges determined in accordance with the Charging Method, on which the Non-Standard Water Network Services will be provided by SWC;

- (D) a response to any other matter raised in the Access Application for which a response is requested or warranted;
 - (E) details of any credit support SWC requires to address concerns as to whether Applicant satisfies the Prudential Requirements;
 - (F) details of SWC's operating protocols for the Non-Standard Water Network Services; and
 - (G) any other information relevant to SWC's assessment of the Access Application necessary to enable the parties to conclude an Access Agreement.
- (e) **Applicant's decision to proceed or not to proceed**
- (i) Within five Business Days of receipt of the Preliminary Assessment, the Applicant must:
 - (A) provide SWC with a Withdrawal Notice if it does not intend to proceed with the Access Application; or
 - (B) provide written notice to SWC that it intends to commence negotiations to progress towards an Access Agreement.
 - (ii) Following receipt of a Withdrawal Notice, SWC is no longer obliged to respond further to the Applicant unless the Applicant submits a new Access Application.

5.5 Negotiation of Access Agreement

- (a) The Negotiation Period will commence within five Business Days of receipt by SWC of the written notice in clause 5.4(e)(i)(B) and will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of access sought by the Applicant;
 - (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
 - (iii) the expiration of three months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period;
 - (iv) following referral to arbitration in accordance with clause 6.4, the arbitrator determines that the Applicant is not negotiating in good faith;
 - (v) following a determination or direction by the arbitrator in accordance with clause 6, where an Applicant does not comply with a determination or direction of the arbitrator, and that determination or direction is not the subject of review; or
 - (vi) a notice issued by SWC under clause 5.4(c) becomes effective.

- (b) Upon cessation of the Negotiation Period, SWC will be entitled to cease negotiations with the Applicant.
- (c) If, for any reason, the Negotiation Period ceases and an Access Agreement has not been executed, the Applicant may submit a new Access Application at any time, subject to clause 2.2, and this Undertaking will apply to the new Access Application.

5.6 Access Agreement

- (a) The granting of access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be SWC and the Applicant.
- (b) Once the Applicant has notified SWC that it is satisfied with the terms and conditions of the Access Agreement as drafted, SWC will within two Business Days, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.
- (c) If SWC offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, SWC will execute the Access Agreement within five Business Days of SWC providing a final Access Agreement to the Applicant under clause 5.6(b), or such longer period as is agreed by the parties.

6 Dispute resolution

6.1 Disputes

- (a) This clause 6 applies to any Dispute arising in relation to:
 - (i) the negotiation of terms of access in new Access Agreements; and
 - (ii) the negotiation of access to Water Network Services in addition to Water Network Services already the subject of an executed Access Agreement; and
 - (iii) if provided for under an executed Access Agreement, a decision by SWC to unilaterally vary the prices at which Water Network Services are provided under that executed Access Agreement, provided the User issues a Dispute Notice within 30 days of the notification of the new prices.
- (b) Any Dispute will, unless otherwise expressly agreed to the contrary by both parties, be resolved in accordance with this clause 6 and either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 6. The parties must act in good faith to settle the Dispute in accordance with this clause 6.
- (c) Other than as set out in clause 6.1(a)(ii) any disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement.

6.2 Negotiation

Within five Business Days of a party giving the other a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

6.3 Mediation

- (a) If the Dispute is not resolved under clause 6.2 within five Business Days after the date of the Dispute Notice then:
 - (i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this clause 6.3; or
 - (ii) if the parties do not wish to resolve the Dispute by mediation, either party may by notice in writing to the other, refer the Dispute to be determined by arbitration under clause 6.4.
- (b) If the parties agree to refer the Dispute to formal mediation in New South Wales, the Dispute will be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within three Business Days, a mediator appointed by the President of the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia (“**IAMA**”).
- (c) Unless the parties agree otherwise:
 - (i) the mediation will be conducted by a mediator (appointed under clause 6.3(b)) under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner);
 - (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
 - (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and
 - (iv) the costs of the mediator will be borne equally by the parties.

6.4 Referral to arbitration

- (a) Notwithstanding any other provision of this Undertaking, either party may, by notice in writing to the other, (“**Arbitration Notice**”), refer a Dispute to arbitration in accordance with this clause 6.4 at any time following the issue of a Dispute Notice. The Arbitration Notice must specify the nature of the Dispute, the matters in respect of which the party is seeking arbitration and the contact details of both parties and whether the parties have agreed or are likely to agree upon a private arbitrator if IPART does not arbitrate the Dispute.
- (b) If the Dispute referred to in the Arbitration Notice is already the subject of mediation in accordance with clause 6.3, that mediation will cease immediately.
- (c) Any arbitration will be conducted in accordance with clauses 6.5 to 6.7.

- (d) Subject to section 40(8) of the WICA, the arbitrator must use his or her best endeavours to determine the dispute within six months of the application for the dispute to IPART.
- (e) If this Undertaking imposes obligations on an arbitrator, the parties will procure that the arbitrator uses its best endeavours to meet those obligations.

6.5 Appointment of arbitrator

- (a) The parties may agree to resolve the Dispute by private arbitration or through arbitration conducted by IPART.
- (b) If a Dispute is referred to arbitration in accordance with clause 6.4, SWC must, within two Business Days, provide IPART with a copy of the relevant Dispute Notice and Arbitration Notice. All correspondence with IPART under this clause 6 must be addressed to:

The Chief Executive Officer
Independent Pricing and Regulatory Tribunal
Level 8,
1 Market Street
Sydney NSW 2000
Fax: (02) 9290 2061

- (c) If within five Business Days of receiving notice in accordance with clause 6.5(a), IPART advises SWC and any other party to the Dispute in writing that it wishes to be the arbitrator in respect of the Dispute, then IPART will be appointed to arbitrate the dispute and the arbitration will be conducted in accordance with clause 6.6. IPART may act as the arbitrator itself or appoint an arbitrator from a panel approved by the Minister.
- (d) If IPART:
 - (i) advises SWC and any other party to the Dispute in writing within five Business Days of receiving notice in accordance with clause 6.5(b) that it does not wish to be the arbitrator in respect of the Dispute; or
 - (ii) does not advise SWC and any other party to the Dispute in writing within five Business Days of receiving notice in accordance with clause 6.5(b) that it wishes to be the arbitrator in respect of the Dispute,then, subject to clause 6.5(f), the arbitration will be conducted by an arbitrator appointed by the agreement of the parties to the Dispute.
- (e) Within two Business Days of the parties agreeing an arbitrator, SWC must notify the IPART.
- (f) If the parties fail to agree an arbitrator within five Business Days of the expiry of the five Business Days referred to in clause 6.5(d)(i) or (ii) respectively, or such longer period as may be agreed by the parties, then either party may request the President of the NSW Chapter of IAMA to appoint an arbitrator.

6.6 Arbitration procedure if IPART is the arbitrator

- (a) If IPART is the arbitrator the arbitration will be conducted in accordance with the procedures, and IPART will have the powers, set out in Division 7 of Part 4A of the IPART Act and any references to a “final determination” or “interim determination” in those Subdivisions will be taken to mean a final or interim determination made by IPART.
- (b) In any arbitration conducted by IPART in accordance with this Undertaking:
 - (i) IPART cannot make a determination which would have the effect of setting the terms and conditions of access to a Water Network Service in respect of any period following the expiry of this Undertaking;
 - (ii) IPART must have regard to the provisions of this Undertaking, including the Charging Method;
 - (iii) a determination or direction of IPART will be final and binding, subject to any rights of review, and will have effect on and from the date of the determination.
- (c) Other than in circumstances where the determination or direction is the subject of review, if an Applicant or User does not comply with a determination or direction of IPART, SWC will not be obliged to continue negotiations for the provision of access to Water Network Services for that Applicant.

6.7 Arbitration procedure if IPART is not the arbitrator

- (a) If the arbitrator of a Dispute is not IPART, the arbitration will be conducted in accordance with the following procedures:
 - (i) the arbitrator will not be required to proceed with the arbitration unless and until the party that issued the Arbitration Notice has agreed to pay the arbitrator’s and other costs as determined in accordance with clause 6.7(h) and provided any indemnity as required in accordance with clause 6.7(j);
 - (ii) the arbitrator may make an interim determination granting access but only to Standard Water Network Services on the Standard Terms;
 - (iii) subject to the involvement of and disclosures to IPART, unless SWC and the Applicant agree otherwise, the arbitration must be conducted in private;
 - (iv) a party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration;
 - (v) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
 - (vi) the arbitrator must act as quickly as a proper consideration of the Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Dispute and all matters affecting the merits, and fair settlement, of the Dispute;

- (vii) the arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to a Dispute, and may require that the cases be presented within those periods;
 - (viii) the arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument;
 - (ix) the arbitrator may call on any party the arbitrator believes necessary to give evidence;
 - (x) the arbitrator will present its determination in a draft form to the parties and give the parties opportunity to comment before making a final determination;
 - (xi) the arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based;
 - (xii) unless the parties to the Dispute agree otherwise, any determination by the arbitrator will be confidential;
 - (xiii) the arbitrator may make any determination or direction in relation to the Dispute that it considers appropriate. For the avoidance of doubt, such determination or direction may include making a binding determination in relation to the Dispute, or requiring the parties to continue or re-commence negotiations.
- (b) The arbitrator may at any time terminate arbitration (without making an award) if it thinks that:
- (i) the notification of the Dispute is vexatious;
 - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the party who notified the Dispute has not engaged in negotiations in good faith.
- (c) In deciding a Dispute, the arbitrator must have regard to:
- (i) the provisions of this Undertaking (including clause 4 and the Charging Method); and
 - (ii) clauses 6(4)(i), (j) and (l) of the Competition Principles Agreement;
 - (iii) any guidance published by IPART, including Practice Directions under the WICA;
 - (iv) any submissions provided by IPART;
 - (v) the objectives and principles in Part 3 of the WICA, in particular, the pricing principles in Division 7.

- (d) In deciding a Dispute, the arbitrator may have regard to any other matters that it thinks are relevant.
- (e) In deciding a Dispute, the arbitrator must not:
 - (i) without the consent of all parties, make a determination which relates to matters which were not specified in the Arbitration Notice; or
 - (ii) make a determination which would have the effect of setting the terms and conditions of access to a Water Network Service in respect of any period following the expiry of this Undertaking.
- (f) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day that is earlier than the day on which the final determination is made. However, that specified day may not be earlier than the date of the Access Application.
- (g) Other than in circumstances where the determination or direction is the subject of review by a court of law, if an Applicant or User does not comply with a determination or direction of the arbitrator, SWC will not be obliged to continue negotiations for the provision of access to Water Network Services for that Applicant.
- (h) The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (i) The parties' appointment of the arbitrator must provide that:
 - (i) the arbitrator must keep IPART advised, not less frequently than fortnightly, about the progress of the arbitration, including timelines and processes;
 - (ii) the arbitrator must provide a copy of any correspondence between the arbitrator and IPART relating to procedural or other matters to the parties within three Business Days; and
 - (iii) IPART will have the right to make submissions to the arbitrator in respect of the Dispute (subject only to complying with the procedures and timeframes for submissions determined by the arbitrator).
- (j) The arbitrator may require the parties to indemnify it from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (k) SWC must send a copy of any determination made by the arbitrator to IPART within two Business Days of the determination being made.
- (l) The *Commercial Arbitration Act 2010* will apply to any arbitration undertaken in accordance with this clause 6.7. To the extent of any

inconsistency, the provisions of the Undertaking will have priority over the provisions of the *Commercial Arbitration Act 2010*.

- (m) A determination may conclusively resolve all disputes in a matter referred to it, rather than requiring recommencement of negotiations.

7 Confidentiality

7.1 Treatment of Confidential Information

- (a) Subject to clause 7.1(b), if a party provides Confidential Information to another party either:
 - (i) as part of the negotiation process for the provision of Water Network Services; or
 - (ii) for the purpose of resolving any Dispute,the recipient of that Confidential Information will treat that Confidential Information as confidential, the property of the provider of that information, and will use that information solely for the purpose of negotiating access to the Water Network Services or resolving any Dispute in accordance with this Undertaking.
- (b) A party is permitted to disclose Confidential Information:
 - (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
 - (ii) to any mediator or arbitrator appointed in accordance with clause 6 of this Undertaking for the purposes of that mediation or arbitration (and, if IPART is the arbitrator, subject to IPART's standard confidentiality protocols and procedures);
 - (iii) to IPART to the extent necessary for a party to comply with any written request by IPART, (subject to IPART's standard confidentiality protocols and procedures); or
 - (iv) if and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

7.2 Dispute resolution

- (a) If Confidential Information is provided to a mediator or arbitrator for the purpose of assisting in the resolution of any Dispute in accordance with clause 6, the mediator or arbitrator must (and the terms and conditions of appointment of the mediator or arbitrator must require them to) take all reasonable steps to protect the confidentiality of information that any party to the dispute has identified as confidential or commercially sensitive. This clause 7.2 is subject to IPART's obligations under legislation.

- (b) For the purpose of clause 7.2, any arbitrator appointed in accordance with clause 6 may require the parties to a Dispute to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:
- (i) requiring each party and their advisers to give confidentiality undertakings to each other party; and
 - (ii) limiting access to Confidential Information to specified individuals subject to confidentiality undertakings provided by those individuals.
- (c) Any arbitrator appointed in accordance with clause 7 may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.

8 Contact details

- (a) Persons wishing to contact SWC for further information or to apply for access to the Water Network Services should contact SWC at the following address:

*Managing Director
Sydney Water Corporation
Level 26
1 Smith Street
Parramatta
Sydney NSW 2150*

- (b) Applicants are also encouraged to review SWC's web site at <http://www.sydneywater.com.au/> which includes information relevant to the terms and conditions on which the Water Network Services will be provided.

9 Definitions

9.1 Definitions

“**Access Agreement**” means an agreement between a User and SWC for the provision of Water Network Services;

“**Access Application**” means an application for one or more of the Water Network Services as described in clause 5.4;

“**Applicant**” means the person seeking the provision of Water Network Services under clause 5;

“**Arbitration Notice**” has the meaning given in clause 6.4(a).

“**Business Day**” means a day which is not a Saturday, Sunday or public or bank holiday in New South Wales;

“**Charges**” means the charges described in clause 4.4 to be determined in accordance with the Charging Method;

“**Charging Method**” means the detailed principles described in **Schedule 2**, according to which the charges for Water Network Services will be calculated and illustrative samples of which will be published on SWC’s website from time to time;

“**Commencement Date**” has the meaning given in clause 2.1;

“**Competition Principles Agreement**” means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

“**Competitively Sensitive Information**” means information including forecasts, estimates, budgets, customer information, which SWC would not otherwise have access to in the absence of the negotiation process;

“**Confidential Information**” of a party means any information:

- (a) regarding the business affairs (including financial position, internal management, policies and strategies) of that party or its Related Bodies Corporate;
- (b) regarding clients, customers, employees, contractors of, or other persons doing business with, such party or its Related Bodies Corporate;
- (c) regarding the existence and the terms of this Undertaking, the Access Agreement and the commercial arrangement between the parties;
- (d) regarding any negotiations with third parties contemplated by this Undertaking;
- (e) which is, by its nature, confidential;
- (f) which the party knows, or ought to know, is confidential; or
- (g) which is Ring-fenced Information,

but excludes information that:

- (a) is comprised solely of the name, address and contact details of a person; or
- (b) was in the public domain at the time when it was supplied; or
- (c) subsequently becomes available other than through a breach of confidence or breach of this provision; or
- (d) was in lawful possession of the a party prior to being provided by the party; or
- (e) must be disclosed for the purpose of compliance with other legal requirements; or
- (f) ceases to be confidential in nature by any other lawful means;

“**Consolidated Information Package**” means the consolidated information package provided by SWC to the Applicant in accordance with clause 5.3(a);

“**Credit Support**” means either:

- (a) a Parent Guarantee; or
- (b) Security;

“**Dispute**” means a bona fide dispute between an Applicant or User and SWC arising under this Undertaking;

“**Dispute Notice**” means a written notice provided by an Applicant or User to SWC or by SWC to an Applicant or User specifying the Dispute and requiring the Dispute to be dealt with in the manner set out in clause 6.1;

“**General Terms**” means the terms set out in this Undertaking;

“**IAMA**” means the Institute of Arbitrators and Mediators of Australia;

“**IAMA Mediation Rules**” means the mediation rules of the Institute of Arbitrators and Mediators of Australia;

“**Interconnection Services**” has the meaning given in **Schedule 1** to this Undertaking;

“**IPART**” means the Independent Pricing and Regulatory Tribunal (NSW) being a body corporate established under section 5 of the *Independent Pricing and Regulatory Tribunal Act 1992*;

“**IPART Act**” means the *Independent Pricing and Regulatory Tribunal Act 1992*;

“**Material Default**” means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements referred to in the definition of Prudential Requirements;

“**Negotiation Period**” means the period during which negotiation in relation to a final Access Agreement is undertaken as specified in clause 5.5(a);

“**Negotiation Protocols**” means the protocols published pursuant to the Water Industry Competition (Access to Infrastructure Services) Regulation 2007, which outlines the minimum requirements for the process for negotiating access to the Water Network Services;

“**Network Operator’s Licence**” has the same meaning as in the WICA;

“**Non Standard Terms**” means those terms which do not comprise the Standard Terms contained in the Standard Access Agreement and which are negotiated between SWC and an Applicant;

“**Non-Standard Water Network Services**” includes Interconnection Services and services for which access can be negotiated under this Undertaking;

“**Off-take Services**” has the meaning as described in **Schedule 1** to this Undertaking;

“**Operating Licence**” means SWC’s operating licence granted under section 12 of the *Sydney Water Act 1994*;

“**Parent Guarantee**” means a guarantee given by a Related Body Corporate of the Applicant or User who has an investment grade credit rating or is otherwise acceptable to SWC (acting reasonably);

“**Practice Directions**” means the Practice Directions for the Arbitration of Disputes under the WICA;

“**Preliminary Assessment**” means the preliminary assessment provided by SWC to the Applicant in accordance with clauses 5.4(c) and 5.4(e);

“**Preliminary Inquiry**” means the preliminary inquiry as undertaken in accordance with clause 5.3;

“**Prudential Requirements**” means the following requirements that must be satisfied by an Applicant, as required in clause 5.4(c):

- (a) the Applicant must be Solvent; and
- (b) the Applicant must be able to demonstrate to SWC that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including timely payment of access charges and payment of insurance premiums and deductibles under any required policies of insurance or otherwise provides Credit Support acceptable to SWC (acting reasonably);

“**Related Body Corporate**” has the meaning given in the *Corporations Act 2001* (Cth);

“**Retail Division**” means a business unit or division of SWC which has responsibility for the retail supply of drinking water to end customers;

“**Retail Supplier’s Licence**” has the same meaning as in the WICA;

“**Retailer**” means a party who holds a Retail Supplier’s Licence for the purpose of retail supply of drinking water to customers;

“**Ring-fenced Information**” means the Ring-fenced information required to be provided to SWC as part of an Access Application, as listed in **Schedule 5**, as well as any Competitively Sensitive Information which is provided to SWC during the Negotiation of an Access Agreement and which is subject to clause 4.8;

“**Security**” means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by SWC and which is in a form reasonably satisfactory to SWC;

“**Solvent**” means that, in the last five years:

- (a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Applicant’s assets has not been appointed; or

- (e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

“**Standard Access Agreement**” means the standard access agreement in **Schedule 3**;

“**Standard Water Network Services**” means Transport Services;

“**Standard Terms**” means the standard terms and conditions described in clause 4.5;

“**SWC**” means Sydney Water Corporation (ABN 49 776 225 038);

“**SWC’s Areas of Operations**” has the meaning given in section 10 of the *Sydney Water Act 1994*;

“**Sydney Desalination Plant**” has the meaning given in the Standard Access Agreement;

“**Transport Services**” has the meaning given in the Standard Access Agreement and as described in **Schedule 1** to this Undertaking;

“**Undertaking**” means this document;

“**User**” means a person who has entered into an Access Agreement with SWC in relation to transport of drinking water;

“**Water Industry Infrastructure**” has the meaning provided in the WICA;

“**Water Network Services**” has the meaning given in clause 3.1;

“**Water Security Projects**” means projects to support the supply/demand balance of water;

“**Water Supply Transport Network**” means the network of SWC’s pipes, fittings, reservoirs, pumping stations and other facilities as specified in **Schedule 1** to the Standard Access Agreement;

“**Water Treatment Plants**” means the water treatment plants that provide treatment and filtration services for purposes of treating raw water so that it meets specified water quality standards. The relevant Water Treatment Plants, including those owned by SWC, are listed in **Schedule 1**;

“**Water Treatment Services**” means filtration and treatment services provided by a water treatment plant listed in Schedule 1, for purposes of treating raw water so that it meets specified water quality standards;

“**WICA**” means the *Water Industry Competition Act 2006*, as amended from time to time;

“**Withdrawal Notice**” means written notice under clause 5.4(e)(i)(A) of the Applicant’s intention to withdraw an Access Application.

9.2 Interpretation

In this Undertaking, unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to a person includes companies and associations;
- (c) a reference to a consent of a party means the prior written consent of that party;
- (d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (e) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;
- (f) a reference to a party includes its successors and permitted assigns;
- (g) notices that are required to be given in writing to SWC may, if so agreed by SWC, be provided in electronic form;
- (h) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to “law” includes a reference to any Act and the common law;
- (i) the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (j) a reference to \$ and dollars is to Australian currency.

Access Undertaking

DATED: _____ **SIGNED** for and on behalf of
SYDNEY WATER CORPORATION
(ABN 49 776 225 038) by its
duly authorised officer.

.....
(Signature)

.....
(Name)

.....
(Position)

Access Undertaking

Schedule 1 –Water Network Services

1 Transport Service

1.1 Definition

The Transport Service involves the transport of treated water from existing interconnection points on the Water Supply Transport Network and the Water Treatment Plants to end customers.

The Water Treatment Plants include:

- (a) Prospect;
- (b) Macarthur;
- (c) Woronora;
- (d) Illawarra;
- (e) North Richmond;
- (f) Cascades;
- (g) Orchard Hills;
- (h) Warragamba; and
- (i) Nepean.

2 Off-take Service

2.1 Definition

The Off-take Service involves the right to connect the Applicant's Off-take infrastructure to a point on the Water Supply Transport Network to extract a volume of treated water from the Water Supply Transport Network as determined in accordance the terms of an Access Agreement.

2.2 Negotiation for access to Off-take Services

- (a) Terms for access to Off-take Services will be negotiated between an Applicant and SWC.
- (b) The terms will include, amongst others, those which address the following aspects:
 - (i) the Applicant's obligations in relation to the Off-take point, including its design, relevant approvals, construction, costs, commissioning, operation, maintenance, decommissioning and/or removal of the Off-take Point;

- (ii) the volumes and availability of water to be extracted at the Off-take point;
- (iii) measurement of water to be extracted from the Off-take point as well as treated water flow meters at the Off-take point; and
- (iv) any limitations on water to be extracted at the Off-take point.

3 Interconnection Service

3.1 Definitions

The Interconnection Service means the right to:

- (a) connect the Applicant's interconnection infrastructure to the Water Supply Transport Network at the Interconnection Point located downstream of a Water Treatment Plant; and
- (b) use the Interconnection Point to inject treated water into the Water Supply Transport Network.

The **Interconnection Point** is the point at which the Access Holder's interconnection infrastructure connects with the Water Supply Transport Network and at which the Access Holder may inject treated water into the Water Supply Transport Network.

3.2 Negotiation for access to Interconnection Services

- (a) Terms for access to Interconnection Services will be negotiated between an Applicant and SWC.
- (b) The terms will include, amongst others, those which address the following aspects:
 - the Applicant's obligations in relation to the Interconnection Point, including its design, relevant approvals, construction, costs, commissioning, operation, maintenance, decommissioning and/or removal of the Interconnection Point;
 - water quality prior to injection into the Water Supply Transport Network;
 - input measurements and treated water flow meters; and
 - any limitations on water to be injected at the Interconnection Point.

Access Undertaking

Schedule 2 – Charging Method

1 Definitions

For purposes of this Schedule:

“**Bulk Water**” means Revenue Water plus Non-Revenue Water.

“**Revenue Water**” means billed metered consumption and billed unmetered consumption.

2 Overview

SWC will calculate and publish annual reference Charges for the provision of Transport Services in accordance with this Charging Method.

2.1 Pricing principles

Section 41 of the WICA specifies the pricing principles that IPART must have regard to in deciding whether or not to approve an access undertaking for the provision of infrastructure services. These principles include:

- (a) generating expected revenue for the service that is at least sufficient to meet the efficient costs of providing access to the service, and include a return on investment commensurate with the regulatory and commercial risks involved;
- (b) allowing multi-part pricing and price discrimination to the extent that it aids efficiency;
- (c) not allowing a vertically integrated service provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent to which the cost of providing access to other operators is higher; and
- (d) providing incentives to reduce costs or otherwise improve productivity.

In applying these principles, section 41(3) also requires that these principles ‘be implemented in a manner that is consistent with any relevant pricing determinations for the supply of water and the provision of sewerage services, including (where applicable) the maintenance of “postage stamp pricing” (that is, a system of pricing in which the same types of customers within the same area of operations are charged the same price for the same service).’

2.2 Volume risk on water sales

SWC proposes to accept volume risk over the term of this Access Undertaking. This means that the Charges payable by Applicants each financial year will be subject to an annual adjustment based on the actual volume of Revenue Water and Bulk Water as compared to the forecast of Revenue Water and Bulk Water used to set Charges for the financial year.

2.3 Water prices and services covered

IPART sets the prices that SWC can charge customers for water and currently sets the prices on a ‘postage stamp’ basis. The price paid by most customers consists of a

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service price (being a fixed component) and a usage price (being a variable volumetric component). The service price is based on the number and size of water meters connected to a property, termed 'Equivalent Meters', whereas the usage price is levied on a per kilolitre (kL) basis.

Detail on the level and structure of water prices is provided in IPART's latest determination for SWC's water, wastewater and sewerage prices, which is available on IPART's website.

The water prices set by IPART currently fund the provision of a number of products and services ("**Items**"), including:

- (a) bulk supply of water;
- (b) Water Treatment Services;
- (c) Transport Services;
- (d) water retail services; and
- (e) Water Security Projects. These currently include some recycling projects and water efficiency programs.

Collectively, the Items listed above are referred to as the 'Total Services' funded through water prices. IPART also allocates a proportion of SWC's corporate costs in setting water prices. However, these costs do not represent a separate service. Rather, they are additional costs incurred by SWC in providing the Items listed above.

For consistency between Transport Service Charges and water prices, it is necessary to ensure that each end customer, regardless of their choice of Retailer, contributes to the provision of Water Security Projects.

In addition, some of the revenues obtained from end customers served by the low cost Water Treatment Plants are used to partly offset the cost to end customers served by high cost Water Treatment Plants. This situation is an outcome of postage stamp pricing. As such, it is also necessary for end customers served by the low cost Water Treatment Plants, regardless of their choice of Retailer, to continue to contribute to the cost of providing Water Treatment Services at high cost Water Treatment Plants.

Given postage stamp water prices, Transport Service Charges will not vary according to the Applicant's end customers' locations or the sources of bulk water supply purchased by the Applicant.

2.4 Excluded services

Bulk water supply, Interconnection, Off-take, and retail services are excluded from the Charging Method.

3 Options for acquiring Transport Services

SWC has identified three Options by which an Applicant may seek to purchase Transport Services. These include:

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3.1 Option A

The Applicant purchases Transport Services, together with Water Treatment Services from SWC. In this case, the Charges for the provision of Water Transport Services will include the cost of providing Water Transport Services *plus* the cost of Water Security Projects (Items c and e above). The Applicant will also have a separate agreement with SWC for the provision of Water Treatment Services.

3.2 Option B

The Applicant purchases Transport Services from SWC and intends to negotiate directly with the privately-owned Water Treatment Plants for the provision of Water Treatment Services. In this case, the Charges for the provision of Transport Services will include the cost of providing Transport Services *plus* the cost of Water Security Projects (Items c and e) *plus* the 'unavoidable' costs incurred by SWC if it ceased purchasing Water Treatment Services from the privately-owned Water Treatment Plants. In this instance, the Applicant may have agreements with SWC for Water Treatment Services and will have an agreement with at least one of the privately-owned Water Treatment Plants for Water Treatment Services.

3.3 Option B

The Applicant purchases Transport Services and does not require Water Treatment Services for any of its bulk water supply. In this case, the Charges for the provision of Transport Services will include the cost of providing Transport Services *plus* the cost of Water Security Projects (Items c and e). The Applicant will not have any separate agreements with either SWC or the privately-owned Water Treatment Plants for the provision of Water Treatment Services.

If the Applicant seeks some option other than those identified above, then the application of the Charging Method will need to be negotiated on a case by case basis.

4 Calculation of Charges

4.1 Determining the cost of providing each Item

The Charging Method is based on the identified cost of providing each Item of Total Items funded through water prices. The cost of providing each Item is determined with reference to:

- (a) the 'notional' annual revenue requirement determined by IPART;
- (b) water prices determined by IPART;
- (c) water revenues, based on water prices and forecast activity volumes (also determined by IPART); and
- (d) the cost allocation principles.

IPART's notional revenue requirement is based on a standard 'building blocks' approach to determining the total revenues that SWC can obtain each year from end

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customers, as explained in IPART's latest determination for SWC's water, wastewater and sewerage prices, which is available on IPART's website.

IPART however, may decide to set water prices that are expected generate water revenues which are different from the notional revenue requirement in any particular year. IPART may decide set water prices that are expected to generate water revenues lower than the notional revenue requirement. Alternatively, IPART may apply a balancing mechanism, where revenues exceed costs in some years and are less than costs in other years. Therefore, the total cost of providing Total Items each year is set equal to water revenues, rather than the notional annual revenue requirement.

4.2 Cost allocation

IPART has published a *Draft Cost Allocation Guide* for infrastructure services declared under the WICA. The Guidelines are available on IPART's website.

SWC will allocate the water revenues for each year across Items consistent with IPART's latest published *Cost Allocation Guidelines*.

4.3 Gross up factor

A percentage of the water injected into SWC's Water Supply Transport Network does not attract any revenues from end customers ("**Non Revenue Water**"). This water includes:

- (a) unbilled metered consumption;
- (b) unbilled unmetered consumption;
- (c) unauthorised consumption;
- (d) customer meter under-registration; and
- (e) real losses (ie network leakage).

Billed metered consumption and billed unmetered consumption are known as 'Revenue Water'. Bulk supply in each year is equal to Revenue Water plus Non-Revenue Water.

The gross up factor recognises that the volume of water supplied by each Applicant must exceed the metered water use of their customers. The Gross Up Factor is calculated by dividing forecast Bulk Water in each year by forecast Bulk Water less forecast Non-Revenue Water. For example, if the forecast for a particular financial year is:

- Bulk Supply of 495 GL, consisting of:
 - 450 GL Revenue Water, and
 - 45 GL Non-Revenue Water, then

The gross up factor would be equal to $495/(495-45) = 1.101$.

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The volume of water used to calculate the volumetric charges for the Water Transport Service will be based on the Applicant's end customers' metered water use multiplied by the gross up factor.

4.4 Charges for the Water Transport Service - Options A and C

Charges for the provision of the Transport Service (Options A and B) comprises the cost of:

- (a) Transport Services, *plus*
- (b) Water Security Projects.

These costs will be recovered through a combination of fixed and volumetric charges. The fixed charge is based on the service water price paid by end customers.

Transport Charge (Fixed component) = [(Service Price *less* Water Security Charge) * Customers' Equivalent Meters] *less* [Average Retail costs per Customer * Customer properties]

plus

Transport Charge (Variable component, per kL) = Transport Charge * Customers' water use (KL) * gross up factor

plus

Water Security Charge (Fixed) = Water Security Charge * Customers' Equivalent Meters

The Water Security Charge (\$ per Equivalent Meter) is equal to the forecast cost of providing Water Security Projects divided by the total number of forecast Equivalent Meters in each financial year.

The Transport Charge (variable component, \$ per kL transported) is equal to:

- the cost of providing Transport Services, *less*
- the revenues obtained from the Transport Service Charge (Fixed Component), *divided by*
- forecast bulk supply.

In each financial year, the forecast revenues from the Transport Charge (Fixed and Variable) and Water Security Charge, when multiplied by all end customer Equivalent Meters and water use (including the gross up factor) must reconcile to the cost of providing Transport Services and Water Security Projects.

4.5 Charge for the Transport Service - Option B

Charges for the provision of the Transport Services under Option C comprises the cost of:

- (a) Transport Services, *plus*
- (b) Water Security Projects, *plus*

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(c) Unavoidable Water Filtration Costs.

Parts (1) and (2) are calculated as per Options A and B.

Unavoidable Water Treatment Costs can occur given the contractual arrangements that SWC has with each privately-owned Water Treatment Plants and the differences in the average cost of filtering water across Water Treatment Plants.

It will be necessary to determine unavoidable costs on a case by case basis, based on information provided by the Applicant on the volumes of water it intends to be treated through the each privately-owned Water Treatment Plant.

The principle to be applied is that the Transport Service Charge should include those costs (or proportion of those costs) that SWC cannot avoid if it ceased purchasing any Water Treatment Services from the privately-owned Water Treatment Plants. This could include:

- a proportion of the availability charges currently paid by SWC; and
- any revenues obtained from the end customer served by a low cost Water Treatment Plant used to partly cover the cost of end customers served by high cost Water Treatment Plants.

Unavoidable Water Treatment Costs are likely to depend on negotiations between SWC and the privately-owned Water Treatment Plant on a case-by-case basis. SWC may seek to alter the contractual arrangements with a privately-owned Water Treatment Plants if the Water Treatment Plant intends providing Water Treatment Services to parties other than SWC.

As such, it is not possible to specify in advance the level or structure of Unavoidable Water Treatment Costs.

4.6 Volume risk – annual adjustment based on actual outcomes

The total Charges that Applicants will pay each financial year will be subject to an annual adjustment. This adjustment reflects the allocation of risk over the actual sale of water each year compared to those forecast.

The adjustment calculated each financial year for each Applicant will amount to:

- (a) Additional Revenues *less* Additional Costs, *multiplied by*
- (b) The Applicant's share of Revenue Water.

Where in each financial year:

Additional Revenues = (Actual Revenue Water *minus* forecast Revenue Water) *
Water Usage Price

Additional costs = (Actual Bulk Supply less forecast bulk supply) * (Sydney Catchment Authority Variable Cost plus Average Variable Water Filtration Cost plus Transport Charge (variable Component))

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Schedule 3 – Standard Access Agreement

Standard Access Agreement

Sydney Water Corporation

("Sydney Water")

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("Access Holder")

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This document sets out an approved set of standard terms and conditions on which Sydney Water will provide the Water Network Services to an Access Holder. Subject to compliance with the Access Undertaking, it is open to the Access Holder to negotiate alternative terms and conditions on which Sydney Water will provide the Water Network Services to the Access Holder. In addition, the Access Holder may negotiate the terms and conditions on which Sydney Water will provide additional services that are covered by the Access Undertaking, but not provided for in this Agreement.

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Access Agreement made at _____ **on** _____

Parties **Sydney Water Corporation, ABN 49 776 225 038**, a statutory State-owned corporation, of 1 Smith Street, Parramatta, New South Wales 2150 ("**Sydney Water**")

and

The Access Holder

Recitals

- A. Sydney Water owns and operates the Water Supply Transport Network.
- B. Sydney Water owns and operates the Sydney Water Water Filtration Plants. Sydney Water also has long term contracts for the provision of Water Treatment Services from Privately Owned Water Filtration Plants.
- C. Sydney Water is required to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, and ensure that the systems and services meet quality and performance standards in accordance with section 14 of the *Sydney Water Act 1994* and Sydney Water's Operating Licence.
- D. The Access Holder has requested Sydney Water to supply:
 - (a) the Water Transport Service by means of the Water Supply Transport Network; and
 - (b) the Water Treatment Service from the Water Filtration Plants, which is the subject of a separate agreement.
- E. Sydney Water has agreed to supply the Water Transport Service on the terms and conditions of this Agreement.

1. Definitions and interpretation

1.1 Definitions

"**ACCC**" means the Australian Competition and Consumer Commission.

"**Access Holder**" has the meaning given in Schedule 1.

"**Access Holder Customer**" means a Customer that has a contract to acquire Water Supply Services from the Access Holder and is therefore the Access .

"**Access Undertaking**" means the Access Undertaking given by Sydney Water Corporation in favour of the Independent Pricing and Regulatory Tribunal dated [*insert*].

"**Agreement**" means this Access Agreement and the Schedules.

"**AH SDP Share**" means, for a Quarter, the volume of Treated Water that is injected into the Water Supply Transport Network by SDP, and allocated to the Access Holder in accordance with the Access Holder's Retail Supplier's Licence.

[Explanatory note: The definition of the "AH SDP Share", and other provisions of this Agreement that relate to the amount of water that is injected into the Water Supply Transport Network from SDP, and allocated to the Access Holder, may need to be amended

by negotiation between the parties to the extent that they are inconsistent with any licence condition/s imposed on the Access Holder, or SDP.]

"AH Total Share" means, for a Quarter, the total volume of Treated Water which:

- (a) is attributed to Access Holder Customers and is deemed to have been supplied to such Customers in that Quarter, as calculated by Sydney Water over the relevant Quarter, using the information received by Sydney Water under clause 6.3(a), clause 6.3(b), and/or Schedule 3; plus
- (b) the relevant Gross Up Factor for that Quarter.

"Approval" means:

- (a) any approval, authority, licence, document, permit, consent, registration, determination, certificate or privilege (including, without limitation, those required under the Water Industry Competition Act and associated Regulations) required in connection with the provision of Water Supply Services by a party to its Customers; and
- (b) any amendment, variation or supplement to such approval, authority, licence, document, permit, consent, registration, determination, certificate or privilege referred to in paragraph (a) of this definition.

"Assignment" has the meaning given in clause 20.1.

"Authority" means any Government or minister or any governmental or semi-governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any statute), local government authority, stock exchange, administrative or judicial body or tribunal.

"Billing Dispute" has the meaning given in clause 10.6.

"Billing Dispute Notice" has the meaning given in clause 10.6(c)(ii).

"Billing Dispute Procedures" means the procedures for resolving billing disputes between Sydney Water and the Access Holder as set out in clause 10.6.

"Billing Period" means the 3 month period commencing on **[insert]**.

"Business Day" means a day in New South Wales that is not a Saturday, Sunday or a public holiday.

"Change in Law" means:

- (a) the amendment, repeal, change or expiry of a Law existing at the date of this Agreement;
- (b) the enactment or making of a new Law; or
- (c) a change in the interpretation or application of a Law brought about by:
 - (i) the amendment, repeal, change or expiry of another Law existing at the date of this Agreement; or
 - (ii) the enactment or making of a new Law, which directly affects the interpretation or application of the first mentioned Law,

but excluding any such amendment, repeal, change, expiry, enactment or making of a Law which, as at the date of this Agreement, was published or of which notice had been given to Sydney Water in substantially the same form as the amendment, repeal, change, expiry, enactment or making of the Law which eventuates after the date of this Agreement.

"Change of Control" means:

- (a) a Relevant Interest in more than 15% of the securities of the Access Holder that in normal circumstances entitle the holder to vote or participate at a meeting of the members of the Access Holder, or to vote or participate in the election or appointment of directors of the Access Holder, passes to a person or persons who did not have such relevant interest at the date of this Agreement; or
- (b) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis, and irrespective of whether such control is based on statutory, legal or equitable rights, and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of the management and policies of the Access Holder passes (whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of securities or shares in the Access Holder or otherwise) to a person or persons who did not have such ability or actual control at the date of this Agreement.

"Charges" means the Water Transport Service Charges and/or Other Charges (as the case may be) as determined by Sydney Water in accordance with Schedule 4.

"City Water Tunnel" means the City Water Tunnel at Erskineville, Sydney.

"Claim" includes any claim, action, demand or proceeding (including the costs and expenses of defending or settling any claim, action, demand or proceeding):

- (a) under, arising out of, or in any way in connection with, this Agreement;
- (b) arising out of, or in any way in connection with:
 - (i) the Treated Water input into the Water Supply Transport Network and allocated to the Access Holder; or
 - (ii) the AH Total Share;
- (c) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentations; or
 - (iii) for restitution, including restitution based on unjust enrichment.

"Codes of Conduct" means codes of conduct published by an Authority from time to time including:

- (a) a water industry code of conduct;
- (b) a marketing code of conduct; and
- (c) a transfer code of conduct.

"Commencement Date" means the date on which the conditions precedent to commencement of the Agreement have been satisfied in accordance with clause 3.1 or such later date as agreed by the parties in writing.

"Community Service Obligation" means any obligation imposed on a supplier of Water Supply Services by a Law, which relates to the supply of Water Supply Services and which is uncommercial, including obligations that are directly or indirectly funded by any Government.

"Competition and Consumer Act" means the *Competition and Consumer Act 2010* (Cth).

"Confidential Information" of a party means any information:

- (a) regarding the business affairs (including financial position, internal management, policies and strategies) of that party or its Related Bodies Corporate;
- (b) regarding clients, customers (including any Customers), employees, contractors of, or other persons doing business with, such party or its Related Bodies Corporate;
- (c) regarding the existence and the terms of this Agreement and the commercial arrangement between the parties;
- (d) regarding any negotiations with third parties contemplated by this Agreement;
- (e) which is, by its nature, confidential; or
- (f) which the party knows, or ought to know, is confidential.

"Coordination Protocol" means the protocol set out in Schedule 3 which provides for:

- (a) the provision from one party to the other of information relating to the operation of the Water Supply Transport Network, including the provision of meter reading results and Meter Reading Numbers from the Access Holder to Sydney Water pursuant to clause 6.3(a);
- (b) the coordination of the performance of certain of the parties' respective obligations to the Access Holder Customers; and
- (c) any other matters agreed by the parties.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"CPI" means the All Groups consumer price index published by the Australian Bureau of Statistics for New South Wales or, if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by IPART as the index that most appropriately replaces the CPI.

"CPI Rate" means the change (upward only) in the CPI measured from the CPI for the quarter ending immediately before the expiry of the Term to the CPI for the quarter ending immediately after the commencement of the Renewal Term, expressed as a percentage.

"Customer" means any person who is taken to have entered into a Customer Contract under section 55 or 57 of the Sydney Water Act, or to have entered into a contract on terms relating to the imposition of charges under sections 64 or 65 of the Sydney Water Act.

For the avoidance of doubt, "Customer":

- (a) includes New Customers; and

- (b) does not include the owner or operator of a water reticulation network connected to, or proposed to be connected to, the Water Supply Transport Network, or persons connected to such a network who have not entered into a Customer Contract.

"Customer Connection Point" means the point at which the Customer's private service for the supply of Treated Water lawfully connects to the Water Supply Transport Network.

"Customer Contract" means a contract between a Customer, including an Access Holder Customer, and Sydney Water under which Sydney Water provides services to that Customer.

"Customer Meter" means a meter that is legally installed on a Customer's premises.

"Customer Transfer Notification" has the same meaning as in the Transfer Code of Conduct.

"Disclosing Party" means the party which discloses Confidential Information to another party.

"Due Date" for an invoice issued pursuant to clause 10.2 means *[insert period]* Business Days from the date of that invoice.

"Emergency" means an Incident or Force Majeure Event or any other circumstance where there is, or Sydney Water, acting reasonably, believes there will be, an immediate threat to:

- (a) public interest, health or safety; or
- (b) the structural integrity or safety of any property, including the Water Supply Transport Network,

which:

- (c) causes or may cause an Environmental Condition to occur; or
- (d) may cause material damage to property or injury to persons,

and which Sydney Water determines (whether of its own volition or after consultation with the Access Holder) requires a significant, co-ordinated and immediate response.

"Environmental Condition" means:

- (a) any material injury or damage to persons, living organisms or property;
- (b) any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, including any odours or noise pollution; or
- (c) any event, circumstance, condition, operation or activity which is reasonably foreseeable as being likely to cause any of the damage described in paragraphs (a) or (b) of this definition and which, in Sydney Water's reasonable opinion, could result in Sydney Water or any other person incurring any material liability or being subject to a direction by a competent Authority.

"Event of Insolvency" means:

- (a) a "controller" (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;

- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(I) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- (g) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice;
- (h) anything analogous to anything referred to in paragraphs (a) to (g) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- (i) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

"Existing Supplier" means the party to this Agreement that transfers its Customer to the other party during the Term in accordance with the Transfer Code of Conduct and all other applicable Laws.

"Force Majeure Event" means any of the following events:

- (a) lightning, earthquake, cyclone, natural disaster, landslide or mudslide;
- (b) fire or explosion caused by an event referred to in paragraph (a);

- (c) a flood which might be expected to occur once or less in every [50] years if the Sydney Water could not have prevented the effects of such flood by taking those steps which a prudent, experienced and competent operator of water or wastewater infrastructure would have taken in the circumstances;
- (d) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Agreement), sabotage or act of public enemy;
- (e) war (declared or undeclared), invasion, act of foreign enemies, hostilities (whether war is declared or not), riot, civil war or commotion, rebellion, revolution, insurrection, military or usurped powers, martial law or confiscation by order of any authority;
- (f) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (g) state wide or industry wide industrial action within Australia,
affecting the Water Supply Transport Network, any Sydney Water Water Filtration Plant or storage facility which has not been caused by Sydney Water, and which:
 - (h) is beyond the reasonable control of Sydney Water; and
 - (i) prevents or delays Sydney Water from performing any of its non-financial obligations under this Agreement,

where that cause or the consequences of the cause have not resulted from Sydney Water breaching a term of this Agreement.

"Gross Up Factor" has the meaning given to that term in the Access Undertaking.

"Guidelines" means any guidelines, standards including Australian Standards, and Codes of Conduct or codes of practice published by an Authority from time to time including:

- (a) the *Australian Drinking Water Guidelines*, published by the Australian Government, the National Health and Medical Research Council and the Natural Resource Management Ministerial Council, as in force from time to time;
- (b) Edition No 34 of the code of practice produced by the Committee on Uniformity of Plumbing and Drainage Regulations in New South Wales on 1 July 2006 under the title *New South Wales Code of Practice for Plumbing and Drainage*; and
- (c) the Australian Standard entitled AS ISO 10002-2006, *Customer Satisfaction - Guidelines for complaints handling in organizations*, as published by Standards Australia in April 2006.

"Incident" means:

- (a) any event (such as fire, flood, explosion, accident, power failure, watermain break or blockage) which occurs in, or otherwise directly affects, the Water Supply Transport Network or any Sydney Water Water Filtration Plant or storage facility, and which causes, or may reasonably be expected to pose a danger of causing, any one or more of the following:
 - (i) material damage to, or interference with, the Water Supply Transport Network or any associated facility of Sydney Water or any of its wholesale or retail customers;

- (ii) material damage to any property or the security of any property, including material damage to any Sydney Water Water Filtration Plant or storage facility;
 - (iii) material personal injury or harm to any person;
 - (iv) either party failing to materially comply with its relevant operating or other licence or Approval;
 - (v) an Environmental Condition;
 - (vi) a material interruption to the availability and/or quality of the services Sydney Water supplies to customers;
 - (vii) prosecution, or the imposition of fines, by an Authority;
 - (viii) requirement for urgent action under Law; and
 - (ix) damage to the reputation or public image of Sydney Water; or
- (b) an event that causes or may reasonably be expected to pose a danger of causing the Treated Water not to satisfy the requirements of Sydney Water's Operating Licence.

"Indemnified Parties" means Sydney Water, its contractors, officers, employees and agents.

"Initial Term" has the meaning given in Schedule 1.

"Injection Point" means any or all of:

- (a) the point at which the Sydney Desalination Plant pipeline meets the City Water Tunnel; and
- (b) the points at which the Water Supply Transport Network connects to a Water Filtration Plant,

as set out in Schedule 1.

"Insurance Expert Report" is a report that complies with clause B2.2 of Licence Condition B2.

"Interconnection and Supply Agreements" means agreements Sydney Water may have with:

- (a) SDP and
- (b) Water Filtration Plants,

that regulate the injection of Treated Water from SDP and the Water Filtration Plants into the Water Supply Transport Network.

"Interest Rate" means the rate equal to the Bank Bill Reference Rate quoted by [*insert Bank name*] plus 3%.

"IPART" means the Independent Pricing and Regulatory Tribunal (NSW).

"Law" means:

- (a) those principles of law established by decisions of Courts;
- (b) statutes, regulations, by-laws and other subordinate regulations of any Authority;
- (c) Approvals (including any conditions or requirements under them);
- (d) Guidelines; and
- (e) determinations made by IPART or the ACCC or some other regulator in respect of or affecting the:
 - (i) Water Supply Transport Network;
 - (ii) any of the Water Network Services; or
 - (iii) Customers or the Customer Contract (as the case may be),

which are applicable to this Agreement.

"Liability" means any liability whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable;
- (d) present, prospective or contingent; or
- (e) owned, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

"Licence Condition B2" means standard Licence Condition B2 "Obtaining appropriate insurance" that may be stipulated in Schedule B of a Retail Supplier's Licence by the Minister in accordance with section 13(1)(b) of the Water Industry Competition Act.

"Licence Condition B3" means standard Licence Condition B3 "Maintaining appropriate insurance" that may be stipulated in Schedule B of a Retail Supplier's Licence by the Minister in accordance with section 13(1)(b) of the Water Industry Competition Act.

"Loss" includes:

- (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a), any fine or penalty, to the extent not prohibited by law.

"Material Change" means any circumstance that may arise during the Term of this Agreement which arises as a result of a Change in Law which affects the interpretation or application of this Agreement or which could not be reasonably foreseen or anticipated at the time this Agreement was entered into, which is beyond the reasonable control of Sydney Water and which:

- (a) has a material effect on the costs incurred by Sydney Water in supplying the Water Network Services to the Access Holder under this Agreement and in otherwise complying with this Agreement;
- (b) may potentially or actually:
 - (i) jeopardise the proper, efficient, economical and safe performance by Sydney Water of its functions and obligations;
 - (ii) adversely impact the operation, maintenance or ownership of Sydney Water's infrastructure, including the Water Supply Transport Network; or
 - (iii) give rise to a risk to health or safety or an Environmental Condition; or
- (c) may prevent or hinder Sydney Water from fulfilling any obligation under Law, including ensuring the continuity of essential water and waste water services in the areas covered by a Sydney Water Licence.

"Material Subcontractor" means major contractors, where the Access Holder has subcontractors undertaking parts of the Access Holder's operations relating to the provision of Water Supply Services to the Access Holder Customers.

"Meter Reading Number" means the digits representing the number of Kilotres registered on a Customer Meter at the point in time at which that Customer Meter is read by the Access Holder, Sydney Water or one of their contractors.

"Month" means a calendar month during the Term.

"New Customer" means a person who:

- (a) is not connected to the Water Supply Transport Network at the date of this Agreement; and
- (b) during the term, is connected by Sydney Water to the Water Supply Transport Network in the course of Sydney Water's normal operations.

"New Supplier" means the party to this Agreement to which a Customer is transferred during the Term in accordance with the Transfer Code of Conduct and any other applicable Law.

"Operating Licence" means Sydney Water's Operating Licence required under the Sydney Water Act.

"Operational Protocols" means protocols that Sydney Water may have with Water Filtration Plants that regulate the injection of Treated Water from those Water Filtration Plants into the Water Supply Transport Network.

"Other Charges" means the charges determined or calculated (as the case may be) in accordance with Schedule 4.

"Permitted Persons" has the meaning given in clause 14.1(b).

"Privately Owned Water Filtration Plant" means one or more of:

- (a) Prospect Water Filtration Plant;
- (b) Macarthur Water Filtration Plant;

- (c) Woronora Water Filtration Plant; and
- (d) Illawarra Filtration Plant,

being a Water Filtration Plant owned and operated by a third party.

"Quarter" means the 3 month period commencing on 1 January, 1 March, 1 June and 1 September (as the case may be) each year during the Term.

"Raw Water" means water that has not been treated or filtered at a Water Filtration Plant.

"Reasonable Costs" means the incremental or additional costs incurred, or to be incurred, by Sydney Water, acting reasonably that are attributable to the Access Holder, including any directly attributable capital and operating costs.

"Receiving Party" means a party to this Agreement who receives Confidential Information from another party to this Agreement.

"Related Body Corporate" has the meaning given to that term in section 50 of the Corporations Act.

"Relevant Interest" has the meaning given to that term in section 9 of the Corporations Act.

"Renewal Term" has the meaning given in Schedule 1.

"Retail Supplier's Licence" has the same meaning as in the Water Industry Competition Act.

"Retailer of Last Resort" means a person declared to be a retailer of last resort by the relevant Minister pursuant to section 54 of the Water Industry Competition Act.

"Review Date" has the meaning given in Schedule 1.

"Ring-fenced Information" has the meaning given to the term in the Access Undertaking.

"SDP" means Sydney Desalination Plant Pty Ltd.

"Security" has the meaning given in clause 18.1.

"Supply Failure Order" means an order made by the relevant Minister pursuant to section 56 of the Water Industry Competition Act.

"Sydney Desalination Plant" means the seawater reverse osmosis desalination plant constructed at Kurnell, including:

- (a) the intake structures and connecting tunnels/pipelines;
- (b) the outlet structures and connecting tunnels/pipelines;
- (c) the seawater pumping station and screening facility;
- (d) the drinking water storage tanks;
- (e) the drinking water pumping station; and
- (f) the Sydney Desalination Plant Pipeline,

and any other infrastructure used to treat, filter, store and convey Treated Water which is located upstream of the relevant Injection Point.

"Sydney Desalination Plant Pipeline" means the desalinated water delivery pipeline running from the Sydney Desalination Plant to the City Water Tunnel at Erskineville, Sydney.

"Sydney Water Act" means the *Sydney Water Act 1994* (NSW).

"Sydney Water Licences" mean all licences required to be held by Sydney Water in order to provide the Water Network Services, Water Supply Services and/or sewerage services, including any licence or other instruments which impose strict liability on Sydney Water.

"Sydney Water Water Filtration Plant" means one or more of:

- (a) Cascade Water Filtration Plant;
- (b) Nepean Water Filtration Plant;
- (c) North Richmond Water Filtration Plant;
- (d) Orchard Hills Water Filtration Plant; and
- (e) Warragamba Water Filtration Plant,

being a Water Filtration Plant owned by Sydney Water.

"Term" means the Initial Term and, if this Agreement is properly extended in accordance with clause 2.2, includes any Renewal Term.

"Third Party" means a person other than Sydney Water, the Access Holder or any of their Related Bodies Corporate.

"Transfer Code of Conduct" means the Transfer Code of Conduct established under regulation 27 of the *Water Industry Competition (General) Regulation 2008*.

"Transfer Date" means the date specified in a Customer Transfer Notification as the date on which a Customer will be transferred from the Existing Supplier to the New Supplier.

"Treated Water" means water which meets the water quality standards to which Sydney Water is required to manage drinking water under its Operating Licence.

"Water Filtration Plant" means a facility at which Raw Water is treated so that it meets the water quality of Treated Water following delivery to the plant.

"Water Industry Competition Act" means the *Water Industry Competition Act 2006* (NSW).

"Water Infrastructure" has the same meaning as in the Water Industry Competition Act.

"Water Network Services" means the Water Transport Service and the Water Filtration Service, where applicable, and any ancillary services (as the case may be).

"Water Supply Service" means the retail supply of Treated Water and all ancillary services.

"Water Supply Transport Network" means the network of Sydney Water's pipes, fittings, reservoirs, pumping stations and other facilities specified in Schedule 1.

"Water Transport Service" means the transport by means of the Water Supply Transport Network of an amount of Treated Water equal to the AH Total Share from the Injection Points to the Customer Connection Points specified in Schedule 1.

"Water Transport Service Charges" means the charges for the Water Transport Service supplied by Sydney Water to the Access Holder calculated in accordance with Schedule 4.

"Water Treatment Service" means the filtration and treatment of an amount of Raw Water sufficient to meet the use, or likely use, of the Access Holder Customers.

"Water Treatment Services Agreement" means the agreement between Sydney Water and the Access Holder for the provision by Sydney Water to the Access Holder of the Water Treatment Service, which is to be entered into on or around the date of this Agreement.

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation,

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa);

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) **"includes"** in any form is not a word of limitation; and

(k) a reference to **"\$"** or **"dollar"** is to Australian currency.

1.3 No bias against drafting party

Each provision of this Agreement will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

1.4 Business Day

If the day on or by which any thing is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Certification of copies

For the purposes of this Agreement, a copy of a document will be regarded as being duly certified by the Access Holder if it is certified as a true copy by a director, secretary or general manager of the Access Holder.

1.6 Cost of performing obligations

Each party must perform its obligations under this Agreement at its own cost, unless expressly provided otherwise.

1.7 Provisions limiting or excluding liability

Any provision of this Agreement which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

1.8 Order of precedence

The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:

- (a) the Agreement, excluding the Schedules to it; and
- (b) the remaining Schedules to the Agreement.

2. Commencement and Term

2.1 Commencement

This Agreement commences on the Commencement Date and continues until the earlier of:

- (a) the expiry of the Access Undertaking; and
- (b) the earlier termination of this Agreement in accordance with its terms.

2.2 Renewal Term

- (a) The Access Holder may elect to extend this Agreement for a Renewal Term by giving written notice to Sydney Water at least 12 months prior to expiry of the Initial Term or relevant Renewal Term, as the case may be.
- (b) Sydney Water will agree to extend the Agreement on terms and conditions to be negotiated and agreed between the parties (except for this clause 2.2) for the relevant Renewal Term if the Access Holder:
 - (i) gives notice in accordance with clause 2.2(a); and
 - (ii) is not in breach of the Agreement in any respect at the time the notice is given or any time from the date of the notice given in accordance with clause 2.2(a) up to the expiry of the Initial Term or relevant Renewal Term, as the case may be.

- (c) If Sydney Water and the Access Holder fail to reach agreement under clause 2.2(b) prior to the date on which the Renewal Term commences, the terms and conditions to apply will be:
- (i) the Charges that apply immediately prior to the date on which the Renewal Term commences, increased by the CPI Rate; and
 - (ii) all other terms and conditions that apply immediately prior to the date on which the Renewal Term commences,
- and those terms and conditions will continue to apply until the earlier of:
- (iii) the expiry of the Renewal Term; and
 - (iv) agreement by the parties of terms and conditions to apply for the remainder of the Renewal Term.

3. Conditions precedent

3.1 Commencement of Agreement

This Agreement will not have any force or effect until the following conditions have been satisfied to Sydney Water's reasonable satisfaction:

- (a) **(Approvals)**: the Access Holder has obtained, at its cost, all Approvals required to be held by the Access Holder for, or in connection with:
 - (i) the Water Network Services it is to receive under this Agreement; and
 - (ii) the provision of Water Supply Services to the Access Holder Customers, including but not limited to a Retail Supplier's Licence, and has ensured that any codes, plans, practices or policies developed by the Access Holder for the purposes of obtaining such Approvals are consistent with this Agreement;
- (b) **(Management Plans)**: the Access Holder has prepared and is able to implement all management plans required by any Approval referred to in clause 3.1(a); and
- (c) **(Insurance)**: the Access Holder has obtained all insurances required by any Approval referred to in clause 3.1(a) and clause 17.

3.2 Commencement of the Water Network Services

Sydney Water will have no obligation to provide any of the Water Network Services until the following conditions have been satisfied to Sydney Water's reasonable satisfaction:

- (a) **(Charges)**: the Access Holder has paid to Sydney Water all Reasonable Costs in the giving of approvals, consents, or permissions required to satisfy a condition precedent in clause 3.1, as notified by Sydney Water to the Access Holder at [*insert time*];
- (b) **(Security)**: the Access Holder has provided to Sydney Water any Security required by Sydney Water under clause 18;
- (c) **(Insurance)**: subject to clause 17.4(b), the Access Holder has provided the insurance information required by clause 17.4; and

- (d) **(Water Treatment Services Agreement):** Sydney Water and the Access Holder have entered into a Water Treatment Services Agreement.

3.3 Sydney Water to act reasonably

Sydney Water will not unreasonably withhold or delay providing any consent, approval, agreement or permission required to satisfy any of the conditions in clause 3.1 or clause 3.2.

3.4 Satisfaction of conditions

Either party may terminate this Agreement by giving the other party [*insert period*] written notice if:

- (a) the conditions in clause 3.1 are not satisfied within 6 months of the date on which the parties sign this Agreement, or such longer period as agreed by the parties; or
- (b) the conditions in clause 3.2 are not satisfied within 6 months of the Commencement Date, or such longer period as agreed by the parties,

and termination of the Agreement will take effect on the date on which the notice provided by the terminating party pursuant to this clause 3.4 expires.

4. Forecasts

4.1 Provision of forecasts

Where applicable, the Access Holder will comply with the Coordination Protocol set out in Schedule 3 with respect to the provision to Sydney Water of:

- (a) an initial forecast; and
- (b) ongoing forecasts,

in relation to:

- (c) the number of Customers to whom it expects to supply Water Supply Services;
- (d) the volume of Treated Water it expects to supply to those Customers; and
- (e) any other matters specified by the Coordination Protocol.

4.2 Additional Forecasts

- (a) Notwithstanding clause 4.1 or anything specified in the Coordination Protocol, the Access Holder must provide to Sydney Water any additional forecasts, including performance data, reasonably required by Sydney Water for the purposes of reporting to any Authority on its periodic planning for the maintenance and upgrade of the Water Supply Transport Network, as notified by Sydney Water.
- (b) Sydney Water will give the Access Holder at least 30 days' notice of the forecast it requires pursuant to clause 4.2(a).
- (c) Sydney Water may request further information and clarification of a forecast provided by the Access Holder by giving the Access Holder written details of the further information or clarification required and a reasonable time which will be no less than **[5]** Business Days to provide the further information or clarification.

- (d) The Access Holder must provide any further information or clarification sought by Sydney Water in accordance with clause 4.2(c).

4.3 Use of Forecasts

- (a) Sydney Water may use any forecasts provided pursuant to this clause 4 for purposes including:
 - (i) infrastructure planning;
 - (ii) system operation planning;
 - (iii) household level planning;
 - (iv) calculating the volume of Treated Water required to be injected into the Water Supply Transport Network; and
 - (v) any reporting required under its Operating Licence.
- (b) The Access Holder acknowledges and agrees that Sydney Water may disclose, on an aggregated basis, the information provided by the Access Holder to Sydney Water in accordance with this clause 4.
- (c) A forecast provided by the Access Holder to Sydney Water under this clause 4 will not be binding and in particular will not bind:
 - (i) the Access Holder to:
 - A. provide Water Supply Services to the number of Customers forecast; or
 - B. ensure that the Access Holder Customers extract the volume of Treated Water in its forecast; or
 - (ii) Sydney Water to:
 - A. provide any of the Water Network Services;
 - B. make available Treated Water; or
 - C. maintain or upgrade the Water Supply Transport Network to meet the Access Holder's forecasts.

5. Water Network Services

5.1 Supply of Water Network Services

Subject to clause 5.2, during the period from the date on which the Access Holder satisfies the conditions in clause 3.2 until expiry of the Term, Sydney Water will:

- (a) supply the Water Transport Service to the Access Holder in respect of the Access Holder Customers on the terms and conditions of this Agreement; and
- (b) supply the Water Treatment Service to the Access Holder pursuant to a separate Water Treatment Service Agreement in accordance with clause 8.

5.2 Water Industry Competition Act Licences

The Access Holder acknowledges that Sydney Water will supply the Water Network Services in accordance with clause 5.1 only in relation to the:

- (a) Water Infrastructure;
- (b) area/s of operations;
- (c) purpose; and
- (d) persons or classes of persons,

with respect to which the Access Holder's Retail Supplier's Licence is issued.

5.3 Exclusions from the Water Network Services

Sydney Water is not obliged under the terms of this Agreement to:

- (a) supply Water Treatment Services to the Access Holder other than where expressly provided in a separate Water Treatment Service Agreement between Sydney Water and the Access Holder;
- (b) provide any services by means of any infrastructure that is not owned or operated by Sydney Water;
- (c) subject to the requirements of the Coordination Protocol, provide billing services to Access Holder Customers or answer any enquiries from Access Holder Customers; or
- (d) exercise its statutory powers for the purposes of the establishment or operation of the Access Holder's business (such as the compulsory acquisition of land or powers to obtain entry to land).

The Access Holder may request that Sydney Water provides a service other than the Water Network Services to be supplied pursuant to clause 5.1 and, if Sydney Water agrees, Sydney Water will provide the service to the Access Holder on terms and conditions to be agreed by the parties.

5.4 Ancillary services

During the Term, Sydney Water will supply to the Access Holder any services ancillary to the Water Network Services on terms and conditions agreed by Sydney Water and the Access Holder.

6. Water Transport Service

6.1 Water inputs

Sydney Water will:

- (a) permit Treated Water to be injected into the Water Supply Transport Network at the Injection Points from the Sydney Desalination Plant and the Water Filtration Plants, in accordance with the terms and conditions of the Interconnection and Supply Agreements, and the Operational Protocols, that it may have with SDP and the Water Filtration Plants;

- (b) supply the Water Transport Service to the Access Holder in respect of the AH Total Share, in accordance with this Agreement; and
- (c) deliver a volume of water that is equal to the AH Total Share, less the Gross Up Factor, to Access Holder Customers.

6.2 Additional Treatment

If at any time during the Term, Sydney Water, acting reasonably, determines that the quality, volume, pressure or temperature of Treated Water within the Water Supply Transport Network may jeopardise the safe and efficient operation or performance of the network or give rise to health or environmental risks, Sydney Water may:

- (a) determine the quality, volume, pressure or temperature of Treated Water necessary to meet Sydney Water's requirements; and
- (b) take such other action as it considers to be necessary, acting reasonably, to ensure the Treated Water meets Sydney Water's requirements.

6.3 Treated Water extracted by Access Holder Customers

- (a) The Access Holder must read the Customer Meter of each Access Holder Customer and report the results of meter readings, including the Meter Reading Number, for such Customers to Sydney Water in accordance with Schedule 3.
- (b) If the Access Holder fails to comply with clause 6.3(a) and/or Schedule 3 due to the fact that it is unable to access an Access Holder Customer's Customer Meter, or because the Access Holder Customer's Customer Meter is broken, or for some other similar reason, Sydney Water may estimate the meter reading for that Access Holder Customer for the relevant Quarter in accordance with its usual practices.
- (c) Sydney Water may, at any time and at its cost, read the Customer Meter of any Access Holder Customer or Customers for operational purposes.
- (d) The Access Holder agrees to cooperate with and use all reasonable endeavours to ensure Sydney Water is able to access and read the Access Holder Customer Meters in accordance with clause 6.3(c).
- (e) Within [*insert*] Business Days from that date on which the report is provided by the Access Holder pursuant to clause 6.3(a), Sydney Water may appoint an auditor to audit the information provided by the Access Holder to Sydney Water pursuant to clause 6.3(a) and other relevant information maintained by the Access Holder to determine the volume of Treated Water extracted from the Water Supply Transport Network by the Access Holder Customers in the relevant Quarter.
- (f) Any audit conducted pursuant to this clause 6.3 must be completed within [*insert*] Business Days from the date on which the auditor is appointed.
- (g) If an Access Holder Customer's Customer Meter reading, or an audit, conducted pursuant to this clause 6.3 concludes that the volume of Treated Water extracted from the Water Supply Transport Network in the relevant Quarter was greater than or less than the volume notified by the Access Holder:
 - (i) the audit (where applicable) will be at the Access Holder's cost; and
 - (ii) the volume as determined by the auditor or the Access Holder Customer's Customer Meter reading (as applicable) will be used for the

purposes of calculating the Water Transport Service Charge pursuant to Schedule 4.

- (h) If an audit or an Access Holder Customer's Customer Meter reading pursuant to this clause 6.3 discloses any fraud or false, misleading or deceptive reporting, clause 19 will apply.

6.4 Coordination of metering obligations

Where applicable, the parties agree to coordinate the performance of, and comply with, their respective metering obligations in accordance with the Coordination Protocol set out in Schedule 3.

6.5 Passing of Risk and Title

The Access Holder acknowledges that, in respect of any Treated Water, or other water, treated, transported or supplied under this Agreement:

- (a) the Access Holder has no legal, equitable or other interest in the Treated Water or any other water before it is delivered to Access Holder Customers; and
- (b) the risk in the Treated Water will pass from Sydney Water to the Access Holder at the Access Holder Customer Connection Point/s.

6.6 Charges

The Access Holder must pay to Sydney Water the Water Transport Service Charges (as determined in accordance with Schedule 4) in accordance with clause 10.

7. Customer Transfers

7.1 New Supplier's obligations

- (a) This clause 7 applies where a Customer is transferred from the Existing Supplier to the New Supplier during the Term.
- (b) Subject to the provisions set out in Schedule 3, the New Supplier will be responsible for:
 - (i) supplying Water Supply Services to each of its Customers; and
 - (ii) providing billing services and customer enquiry services to each of its Customers,

from the Transfer Date for each relevant Customer.

7.2 Sydney Water's obligations

If a Customer is transferred from Sydney Water to a New Supplier during the Term, services other than the Water Supply Services, that are supplied by Sydney Water, remain subject to the obligations set out in the Customer Contract between that Customer and Sydney Water.

8. Water Treatment Service

8.1 Water Treatment Service

Sydney Water will provide the Water Treatment Service to the Access Holder at a Water Filtration Plant in accordance with a separate Water Treatment Service Agreement.

9. Charges

9.1 Charges

- (a) The Access Holder must pay the Charges to Sydney Water in accordance with clause 10.
- (b) The Access Holder must pay the full amount of all Charges owing to Sydney Water, as determined in accordance with this Agreement, notwithstanding that the Access Holder has not recovered, or may not recover, part or all of the Charges from the Access Holder Customers.

9.2 Review of Charges

Sydney Water may:

- (a) review the Charges in accordance with the procedures in Schedule 4; and
- (b) vary the Charges after completion of such a review with effect from the date specified in Schedule 4.

9.3 GST

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Unless otherwise stated, any amount, payment or consideration referred to under or in connection with this Agreement is exclusive of GST.
- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.
- (d) If a party is required under this Agreement to reimburse or pay another party an amount calculated by reference to a cost, expense, or other amount paid or incurred by that party, the amount of the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit to which that party is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this Agreement then:
 - (i) any party ("**Recipient**") that is required to provide consideration to another party ("**Supplier**") for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any consideration is to be first provided for that supply; and
 - (ii) the Supplier will issue a tax invoice to the Recipient for that supply.

- (f) If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient under clause 9.3(e) in respect of that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient (as appropriate).

10. Billing and payment

10.1 Liability

The Access Holder's liability to pay the Charges arises at the time the Water Network Services are supplied by Sydney Water to the Access Holder, unless the parties agree otherwise.

10.2 Invoices

On or before the [20th] Business Day of the Quarter following the Quarter in which Sydney Water supplies the Water Network Services to the Access Holder, Sydney Water will provide the Access Holder with an invoice for the Charges for the Water Network Services supplied by Sydney Water to the Access Holder in the previous Quarter.

10.3 Due Date

The Access Holder must pay the undisputed amount of each invoice provided in accordance with clause 10.2 by the Due Date and may not withhold, deduct or set off any amounts for accounts in credit, for counter-claims or for any other reason or attach any condition to the payment, unless otherwise agreed by Sydney Water or included in the invoice.

10.4 Interest

Sydney Water may charge the Access Holder interest at the Interest Rate for all amounts owing and which have not been paid in accordance with clause 10.3.

10.5 Recovery action

In addition to charging interest in accordance with clause 10.4 or exercising any other rights Sydney Water has at Law or under this Agreement and subject to clause 10.6, where an amount is outstanding and remains unpaid more than [20] Business Days after it is due for payment, Sydney Water reserves the right to take action, without further notice to the Access Holder, to recover any such amount as a debt due to Sydney Water.

10.6 Disputes

- (a) Disputes about the payment of Charges will be resolved in accordance with the Billing Dispute Procedures in this clause 10.
- (b) Except where a party seeks urgent injunctive relief, the Billing Dispute Procedures in this clause 10 must be invoked and properly terminated before either party may begin legal proceedings in relation to any billing dispute.
- (c) If the Access Holder wishes to dispute all or part of the Charges specified in an invoice ("**Billing Dispute**"), it may only do so in accordance with the following provisions:
- (i) any Billing Dispute must be made in good faith;

- (ii) the Access Holder must give Sydney Water a notice of the Billing Dispute ("**Billing Dispute Notice**") specifying the amounts in dispute and the relevant invoice, before the Due Date for the relevant invoice;
 - (iii) within [5] Business Days following the date of the Billing Dispute Notice, the parties must each appoint a negotiator for the purposes of this clause 10.6 ("**Negotiators**");
 - (iv) the Negotiators must meet within [10] Business Days of the date of the Billing Dispute Notice to attempt in good faith to resolve the Billing Dispute;
 - (v) if the Negotiators have not resolved the Billing Dispute within [20] Business Days of the date of the Billing Dispute Notice, the Negotiators must refer the Billing Dispute to their respective [*insert Officer*] (Access Holder) and Managing Director (Sydney Water) ("**Chief Officers**") for a decision; and
 - (vi) if the Billing Dispute is not resolved by the Chief Officers within [30] Business Days of the date of the Billing Dispute Notice, either party will be entitled to commence court proceedings in relation to the Billing Dispute.
- (d) If the Access Holder issues a Billing Dispute Notice in accordance with clause 10.6(c)(ii):
- (i) the Access Holder is not required to pay the amounts which it disputes in accordance with this clause 10.6 unless and until the Billing Dispute is resolved in favour of Sydney Water; and
 - (ii) the Access Holder must pay in accordance with clause 10.3 the balance of the Charges in any invoice which are not in dispute.

10.7 Post-resolution

- (a) Once a dispute has been resolved in accordance with clause 10.6:
- (i) the Access Holder must pay to Sydney Water within [*insert period*] any amount which the Billing Dispute Procedures determine is owing by the Access Holder to Sydney Water together with interest on that amount calculated at the Interest Rate from the Due Date for payment of that amount determined in accordance with clause 10.3 until the date of payment of that amount; and
 - (ii) Sydney Water must pay to the Access Holder within [*insert period*] any amount which the Billing Dispute Procedures determine has been overpaid as a deduction on the next invoice by the Access Holder together with interest on that amount calculated at the Interest Rate from the date the amount was overpaid until the date the amount is repaid by Sydney Water to the Access Holder.
- (b) Except to the extent provided in clause 10.6(d)(i), neither party is excused from complying with its obligations under this Agreement whilst a Billing Dispute is being resolved.

11. Community Service Obligations

11.1 Access Holder Customers

If a Community Service Obligation applies in respect of the Access Holder Customers:

- (a) the Access Holder must make available the benefit of that Community Service Obligation to the Access Holder Customers to which the Community Service Obligation applies just as Sydney Water is required to make such benefit available to Customers; and
- (b) if Sydney Water receives any funding for a Community Service Obligation that applies to one or more Access Holder Customers, it must pass that funding on to the Access Holder as soon as practical after receipt of the funding.

11.2 Exclusions from Agreement

Nothing in this Agreement:

- (a) affects Sydney Water's obligations to provide the benefit of any Community Service Obligation relating to Customers connected to the Water Supply Transport Network, even if those Customers may acquire Water Supply Services from the Access Holder;
- (b) affects Sydney Water's ability to deliver other social programs from time to time, including:
 - (i) the provision of water, wastewater and stormwater services to exempt properties;
 - (ii) pensioner concessions;
 - (iii) no interest loans for water efficient appliances;
 - (iv) payment assistance schemes; and
 - (v) free supply to properties with kidney dialysis; or
- (c) prevents Sydney Water from implementing Government policy or other obligations or initiatives to reduce the volume of water used by Customers connected to the Water Supply Transport Network.

12. General obligations

12.1 Sydney Water

Sydney Water must:

- (a) comply with its obligations under the Sydney Water Act and the Sydney Water Licences;
- (b) comply with all applicable Laws, licences and Approvals with respect to the operation of the Water Supply Transport Network or the supply of the Water Network Services; and
- (c) comply with all applicable Laws, Licences and Guidelines with respect to the quality, composition and provision of Treated Water.

12.2 Access Holder

The Access Holder must, at its cost:

- (a) maintain and comply with all applicable Laws and Approvals with respect to using any Treated Water injected at the Injection Point/s, to the extent that its acts or omissions in this regard affect the Water Supply Transport Network, any Sydney Water Licence or Sydney Water's obligations under any applicable Law;
- (b) maintain and comply with all applicable Laws and Approvals with respect to the provision of Water Supply Services by the Access Holder to Access Holder Customers;
- (c) comply with all applicable Laws, Licences and Guidelines with respect to the quality, composition and provision of Treated Water; and
- (d) comply with all reasonable directions issued by Sydney Water relating to the Access Holder's actions which impact on the operation and maintenance of the Water Supply Transport Network or in respect of the management of Emergencies and Incidents in accordance with clause 13.

13. Maintenance, Emergencies and Incidents

13.1 Temporary suspension for modification and maintenance

- (a) Sydney Water may, acting reasonably, perform planned and unplanned inspections, modifications, maintenance, repairs and/or other works on the Water Supply Transport Network and/or associated infrastructure at any time (“**Maintenance Works**”).
- (b) Where Sydney Water determines that planned or unplanned Maintenance Works are necessary:
 - (i) Sydney Water may suspend the Water Network Services for such time as is reasonably required to complete the Maintenance Works;
 - (ii) where required by the Coordination Protocol set out in Schedule 3:
 - A. Sydney Water will notify the Access Holder of the Maintenance Works; and
 - B. the parties will coordinate the performance of, and comply with, their respective obligations in relation to the Maintenance Works,in accordance with the Coordination Protocol; and
 - (iii) Sydney Water will restore the Water Network Services as quickly as possible.

13.2 Notification of Incidents and Emergencies

Sydney Water must notify the Access Holder of the occurrence, or likely occurrence, of an Emergency or Incident in the Water Supply Transport Network, and must provide updates of the status of an Emergency or Incident, or likely Emergency or Incident, in the Water Supply Transport Network, in accordance with the Coordination Protocol set out in Schedule 3.

13.3 Management of Emergencies or Incidents in the Water Supply Transport Network or Sydney Water's network

In the event an Emergency occurs in any place, or an Incident occurs in, or otherwise directly affects, the Water Supply Transport Network, and the Emergency or Incident has a consequential effect on water quality such that it compromises or is likely to compromise the health and safety of the environment or the public or otherwise causes, or is likely to cause, an Environmental Condition:

- (a) Sydney Water will manage the response to the Emergency or Incident (as the case may be) and rectify the Emergency or Incident (as the case may be) as soon as possible, and in accordance with its usual practices;
- (b) Sydney Water may disrupt, reduce, suspend or terminate the supply of any of the Water Network Services in its absolute discretion;
- (c) Sydney Water and the Access Holder will coordinate the performance of, and comply with, their respective obligations in relation to the management of Incidents and Emergencies in accordance with the Coordination Protocol set out in Schedule 3;
- (d) Sydney Water may direct the Access Holder to comply with any Ministerial directions it receives in relation to the Water Supply Services;
- (e) Sydney Water and the Access Holder will use their best endeavours to minimise the period during which any of the Water Network Services are disrupted, reduced, suspended or terminated and Sydney Water will recommence supplying the disrupted, reduced, suspended or terminated Water Network Services as soon as reasonably practicable once the Emergency or Incident (as the case may be) has passed or been rectified to the reasonable satisfaction of Sydney Water;
- (f) the Access Holder will provide Sydney Water with all prompt and reasonable assistance requested by Sydney Water; and
- (g) the Access Holder must comply promptly with Sydney Water's reasonable and lawful directions, instructions or orders relating to security and emergency procedures and with any Laws relating to security or emergency procedures until the Emergency or Incident (as the case may be) has been rectified or has passed and the Water Network Services restored.

13.4 Responsibility for rectification costs

- (a) Sydney Water will be responsible for any rectification costs which result from:
 - (i) an Emergency which directly affects the Water Supply Transport Network;
 - (ii) an Incident which directly affects the Water Supply Transport Network; or
 - (iii) maintenance conducted by Sydney Water.
- (b) Other than as provided by clause 13.4(a), each party will, at their own cost, comply with any obligation imposed on them under clause 13.3 or under Schedule 3.

14. Confidentiality

14.1 Recipient's confidentiality obligations

A Receiving Party must:

- (a) keep the Confidential Information confidential;
 - (b) only disclose the Confidential Information to its officers, employees and advisers who:
 - (i) have a specific need to have access to the Confidential Information for the purpose of the Receiving Party carrying out its obligations in relation to the matters contemplated by this Agreement; and
 - (ii) where information is disclosed after the date of this Agreement, have been informed in writing that they owe a duty of confidence to the Disclosing Party,
- ("Permitted Persons");
- (c) take all steps and do all things reasonably necessary in order to safeguard the confidentiality of the Confidential Information, including informing in writing its officers, employees and advisers to whom Confidential Information has been disclosed prior to the date of this Agreement that they owe a duty of confidence to the Disclosing Party;
 - (d) not use or allow the use of, for any purpose, any portion of the Confidential Information except for the purpose of the Receiving Party carrying out its obligations in relation to the matters contemplated by this Agreement; and
 - (e) not make or allow copies of or extracts of all or any part of the Confidential Information except for the purposes of internal corporate decision procedures or for provision to Permitted Persons.

14.2 Permitted disclosure

Nothing in clause 14.1 restricts the disclosure of Confidential Information:

- (a) (**Public domain**): that is or becomes part of the public domain (other than by an act of the Receiving Party or a Permitted Person);
- (b) (**Outside parties**): that is disclosed to a party by a person who is not a party to this Agreement or a Permitted Person provided that information was not obtained directly or indirectly from any party to this Agreement;
- (c) (**Court**): in proceedings before any court or tribunal arising out of or in connection with this Agreement;
- (d) (**Regulatory body**): to the extent required by a lawful requirement of:
 - (i) any Authority or agency having jurisdiction over a party to this Agreement or its Related Bodies Corporate;
 - (ii) any stock exchange having jurisdiction over a party to this Agreement or its Related Bodies Corporate; or

- (iii) as required for any statutory, Government, Ministerial or Parliamentary purpose or process;
- (e) **(Law)**: if required under any Law or administrative guidelines, directive, request or policy, whether or not having force of law;
- (f) **(Consent)**: where the disclosure has been approved in writing by the Disclosing Party;
- (g) **(Other)**: which, in the reasonable opinion of the Sydney Water or the Access Holder (as applicable), is required to be disclosed to:
 - (i) any prospective investor in or lender to the Access Holder, including that party's officers, employees, professional advisers, auditors and consultants;
 - (ii) any relevant rating agency;
 - (iii) any insurer;
 - (iv) any of the parties' officers, employees, professional advisers, auditors and consultants; or
 - (v) any person to whom disclosure is reasonably necessary to enable that person to comply with this Agreement; or
- (h) **(Sydney Water)**: by Sydney Water:
 - (i) to any Minister of the Crown or parliamentary committee or which in the opinion of any Minister of the Crown is necessary in its interests of the peace, order and good government of the State of New South Wales; or
 - (ii) pursuant to any New South Wales Government policy relating to the disclosure of documents and/or information in relation to NSW Government procurement, tenders or contracts.

14.3 Information Requests

Subject to any applicable Law, including the Transfer Code of Conduct:

- (a) either party may request information from the other party in accordance with clauses 14.2(a)-14.2(h); and
- (b) if a party requests information in accordance with clause 14.3(a), the information must be provided within [*a reasonable time/ [x] days*].

14.4 Publicity

Neither party to this Agreement may:

- (a) make any derogatory, defamatory or otherwise negative comments in the press or other announcements or release in respect of, or in relation to, any matter arising out of this Agreement; or
- (b) make press or other announcements or releases about this Agreement (or the transactions contemplated by it) without the approval of each of the parties (acting reasonably and without undue delay),

unless the announcement or release is required to be made by Law or the rules of a stock exchange.

14.5 Injunctive relief

Each party acknowledges that a breach of this clause 14 by a party may cause the other party irreparable damage for which monetary damage would not be an adequate remedy and that, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach.

14.6 Return/destruction of documents on termination

On termination or expiry of this Agreement, each party will either return or destroy the other party's Confidential Information, as directed by that other party.

15. Acknowledgements

15.1 Access Holder's acknowledgements

The Access Holder acknowledges that:

- (a) Sydney Water will be in control and possession of all Treated Water once it has been injected into the Water Supply Transport Network at the Injection Point/s for the period it is in the Water Supply Transport Network but that Sydney Water has no control over, or responsibility for:
 - (i) Treated Water:
 - A. where the Treated Water is injected into the Water Supply Transport Network by SDP, before it is injected into the Water Supply Transport Network at the relevant Injection Point; and
 - B. where the Treated Water is injected into the Water Supply Transport Network from a Water Filtration Plant, before the water enters the Water Filtration Plant as Raw Water; or
 - (ii) Treated Water at any point beyond an Access Holder Customer Connection Point;
- (b) for the purposes of this Agreement, Sydney Water will provide Treated Water that complies with the requirements as specified in its current Operating Licence and in accordance with the Sydney Water Act; and
- (c) subject to clause 19.4, Sydney Water will not be liable for any loss suffered by the Access Holder or the Access Holder Customers as a result of any limited supply, interruption, cut-off or termination of supply of water under this Agreement.

15.2 Access Holder's warranties

The Access Holder warrants that it:

- (a) has authority to enter into this Agreement to supply Water Supply Services and to perform its obligations under this Agreement;
- (b) has relied only on:

- (i) its own inspections and investigations relating to the Treated Water supplied (or to be supplied) by Sydney Water;
 - (ii) the skill, judgment and any independent advice provided to the Access Holder (independently of Sydney Water); and
 - (iii) the express provisions of this Agreement;
- (c) is satisfied about the purposes for which Treated Water may be used; and
- (d) is satisfied, having conducted its own investigations, with the quantity, quality, volume, flow rate, condition and nature of the Treated Water on all conditions.

15.3 No representation or warranty

Sydney Water makes no representation or warranty whatsoever wherever express or implied to the Access Holder about any other goods or services supplied by it.

16. Indemnities and Liability

16.1 Liability and indemnity

- (a) The Access Holder must indemnify the Indemnified Parties from and against any Claim, Loss or Liability suffered or incurred by the Indemnified Parties, in respect of:
- (i) any injury to, or disease or death of, persons;
 - (ii) the loss of, loss of use of (whether total or partial), or destruction or damage to, any real or personal property; or
 - (iii) any economic loss,
- caused by, arising out of, or in any way in connection with an act or omission of the Access Holder, its employees, agents or subcontractors, except to the extent to which such Claim, Loss or Liability is caused or contributed by the breach of this Agreement by, or the negligent act or omission of, Sydney Water.
- (b) Clause 16.1(a) does not lessen or otherwise affect the Access Holder's other obligations under this Agreement.

16.2 Release

- (a) The Access Holder releases the Indemnified Parties from any liability or obligation to the Access Holder (or any person claiming through or on behalf of the Access Holder) in respect of:
- (i) loss of or damage to any real or personal property;
 - (ii) personal injury, disease or illness to, or death of, persons; or
 - (iii) financial loss or expense,
- arising out of or relating to the performance of its obligations under this Agreement.
- (b) The extent of the Access Holder's release in clause 16.2(a) will be reduced proportionally to the extent that:

- (i) an act or omission of any of the Indemnified Parties; or
- (ii) a breach of or default under this Agreement by Sydney Water,

has contributed to the loss, damage, injury, disease, illness, death, financial loss or expense.

16.3 Damage to third party property

- (a) Without limiting clause 16.2, where any loss of or damage to real or personal property occurs which arises out of, or in any way in connection with any failure by the Access Holder to comply with its obligations under this Agreement, the Access Holder must, at its cost, promptly repair any such loss or damage or, if the affected person agrees, reasonably compensate the affected person for that loss or damage.
- (b) If the Access Holder fails to carry out any repair work or to pay reasonable compensation under clause 16.3(a), Sydney Water may, after giving reasonable prior written notice to the Access Holder, carry out such work or pay any such reasonable compensation and any Loss or Liability reasonably suffered or incurred by Sydney Water will be a debt due and payable from the Access Holder to Sydney Water.

16.4 Defence of Claims

- (a) The parties shall render each other all reasonable assistance in the defence of any claim made against a party by a Third Party arising out of any Emergency, Incident or other event giving rise to a Claim or any Loss.
- (b) To the extent that the Access Holder is obliged to indemnify Sydney Water against a Claim by a Third Party against Sydney Water, the Access Holder may at its own expense defend and settle any action or proceedings in the name of Sydney Water and execute such documents in the action or proceedings as the Access Holder sees fit. The Access Holder indemnifies Sydney Water in respect of all costs, expenses and losses which Sydney Water may incur on account of the action or proceedings.

16.5 Limitation on liability

A party against whom a claim is made under the indemnity in clause 16.1 will not be liable under clause 16.1 unless the party relying on the indemnity or claim has used its reasonable efforts to mitigate its liability under the relevant indemnity or claim.

16.6 General

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Agreement.

17. Insurance

17.1 Insurance - Licence Conditions

- (a) This clause 17.1 applies where:
 - (i) Licence Condition B2; and
 - (ii) Licence Condition B3,

(together, the “**Insurance Conditions**”), are comprised in the Access Holder’s Retail Supplier’s Licence.
- (b) Prior to the commencement of this Agreement, the Access Holder must, at its own cost, effect and maintain:
 - (i) all insurances required by its Retail Supplier’s Licence in accordance with and for the periods required by its Retail Supplier’s Licence; and
 - (ii) any other insurances required to be effected by Law, until the expiration of the Term.
- (c) The Access Holder acknowledges that Sydney Water may require the Access Holder to effect and maintain at its cost additional insurances on terms and for a period reasonably required by Sydney Water, where these insurances:
 - (i) are not required by the Insurance Conditions; and
 - (ii) are, in Sydney Water’s reasonable opinion, necessary to protect the rights and interests of Sydney Water.

17.2 Insurance - No Licence Conditions

- (a) This clause 17.2 applies where clause 17.1 does not apply.
- (b) Prior to the commencement of this Agreement, the Access Holder will be required to effect and maintain, at its cost:
 - (i) all insurances reasonably required by Sydney Water on terms and conditions and for periods reasonably required by Sydney Water and notified to the Access Holder; and
 - (ii) any other insurances required to be effected by Law, until the expiration of the Term.

17.3 Subcontractors to effect and maintain insurance

- (a) The Access Holder must ensure that all subcontractors, before commencing work under their respective sub-contracts, are covered by or effect and maintain for each insurance or other cover the Access Holder is required to maintain in accordance with clause 17.1 or clause 17.2, as applicable, policies of insurance or other cover of the types and for the amounts and periods as required by that clause.
- (b) The Access Holder must ensure that all subcontractors who are to provide professional services, before commencing work under their respective sub-contracts, are covered by or effect and maintain for each insurance or other cover the Access Holder is required to maintain in accordance with clause 17.1 or clause

17.2, as applicable, and that is relevant to the particular subcontractor, policies of insurance or other cover of the types and for the amounts and periods required by that clause.

17.4 Evidence of insurance

- (a) Where clause 17.1 applies, before Sydney Water commences to provide the Water Network Services and after that time, annually, and at other times requested by Sydney Water, the Access Holder must give to Sydney Water:
- (i) a copy of each certificate of currency of insurance provided to IPART in accordance with its Retail Supplier's Licence; and
 - (ii) subject to clause 17.4(b), a copy of any:
 - A. Insurance Expert Report; and
 - B. certificate of currency,
- that the Access Holder is required to provide to IPART in accordance with the Insurance Conditions.
- (b) Where the Access Holder is not required by the Insurance Conditions to provide to IPART an item listed in clause 17.4(a)(ii)A or clause 17.4(a)(ii)B prior to the time at which the Access Holder has satisfied all of the other conditions precedent listed in clause 3.2, the Access Holder is not required to provide that item to Sydney Water prior to Sydney Water commencing to provide the Water Network Services, but must provide that item to Sydney Water as soon as reasonably practicable following the date on which it is required by the Insurance Conditions to provide it to IPART.
- (c) Where either clause 17.1 or clause 17.2 applies, before Sydney Water commences to provide the Water Network Services, and after that time annually and at other times requested by Sydney Water, the Access Holder must give Sydney Water, in respect of each insurance policy and other cover required by clause 17.1(c), clause 17.2, and clause 17.3, as applicable, the original or a certified copy of:
- (i) the full insurance policy wording;
 - (ii) the schedule and any endorsement slips;
 - (iii) renewal certificates or certificates of currency issued by the insurer; and
 - (iv) a certificate from an insurance broker, lawyer, risk manager or insurer certifying that the policies required, where applicable, by clause 17.1(c), clause 17.2 and clause 17.3, satisfy the requirements of these clauses and that there have been no alterations to the policies.
- (d) If the Access Holder fails to comply with this clause 17.4, Sydney Water may (but is not obliged to) effect and maintain the insurance policy or other cover and recover from the Access Holder all costs and expenses incurred by it as a debt due and payable to Sydney Water. The Access Holder is not relieved of any liability under this Agreement due to, or as a result of, Sydney Water effecting or maintaining any insurance policy or other cover referred to in this clause 17.4.
- (e) For valuable consideration the Access Holder irrevocably appoints Sydney Water as its attorney with power in the name of the Access Holder or the attorney to:

- (i) do anything the attorney considers necessary or appropriate to facilitate the exercise of Sydney Water's rights under clause 17.4(d); and
- (ii) cancel, terminate or procure the cancellation or termination of any contract of insurance effected by the attorney pursuant to clause 17.4(d) and to give valid receipts for any return premium or other insurance proceeds.

17.5 Maintaining insurance and notices

In relation to the insurance policies and other cover required to be arranged and effected under clause 17.1 or clause 17.2, as applicable, the Access Holder must:

- (a) ensure that insurance premiums are paid on time, deductibles or excesses are paid or discharged promptly, and the conditions of cover are otherwise complied with and provide Sydney Water with copies of all receipts for payments for premiums if and when requested by Sydney Water;
- (b) indemnify Sydney Water against any liability or loss arising from, and any costs, charges and expenses incurred by Sydney Water in connection with the Access Holder failing to comply with its obligations under the *Workers Compensation Act 1987* (NSW) including as a result of:
 - (i) any claim made against Sydney Water under section 20(1) of the *Workers Compensation Act 1987* (NSW); or
 - (ii) any increase in the premium payable by Sydney Water under Sydney Water's own workers compensation insurance;
- (c) not do, or omit to do, anything which might vitiate, impair or derogate from the cover under any insurance policy or other cover or which might prejudice any claim under any policy or other cover;
- (d) ensure each year that each policy previously given remains in place or in force, and if altered in any way, that the relevant policy in its altered form continues to comply with the requirements of clauses 17.1 to 17.3;
- (e) reinstate an insurance policy if it lapses;
- (f) not cancel, vary or allow any insurance policy to lapse without the prior written consent of Sydney Water;
- (g) immediately notify Sydney Water of any fact or circumstance or change in circumstances which may prejudice an insurance policy such that it no longer complies with the requirements of clauses 17.1 to 17.3;
- (h) promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the insurance policies (whether held solely or jointly with others) in all respects, including where failure to do so would violate or invalidate the relevant policy;
- (i) promptly give written notice to Sydney Water if an insurer gives notice of cancellation, avoidance or other notice in respect of any insurance policy or other cover effected under this clause 17 and provide to Sydney Water a copy of such notice;

- (j) as soon as practicable notify Sydney Water of any occurrence that may give rise to a claim which could materially reduce the available limit under any insurance policy maintained by the Access Holder and thereafter keep Sydney Water informed of developments concerning the claim;
- (k) ensure that as soon as practicable any approved designer, any approved contractor, any approved subcontractor, consultant and employee inform Sydney Water in writing of any occurrence that may give rise to a claim under the insurances required by clauses 17.1 to 17.3; as applicable, which is material to the subject matter of this Agreement and must keep Sydney Water informed of subsequent developments concerning the claim;
- (l) fully co-operate with Sydney Water in relation to a claim under the insurance policies;
- (m) promptly notify Sydney Water if, at any point, it fails to comply with any of its obligations under this clause 17; and
- (n) comply at all times with the terms of each insurance policy.

17.6 Access Holder's liability

The Access Holder's obligations under this clause 17 including to effect insurance, and the effecting of such insurance, do not limit or derogate in any respect from the other obligations of the Access Holder, or its liabilities, under this Agreement.

18. Security

18.1 Obligations to grant Security

- (a) The Access Holder must deliver to Sydney Water and keep current at all times during the Term, security for the Access Holder's obligations under this Agreement in the form of an unconditional and irrevocable bank guarantee, letter of credit, or performance or insurance bond ("**Security**") issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by Sydney Water in the amount of the average of all of the Charges for a [*insert*] period in advance, plus such other amount reasonably determined by Sydney Water from time to time, and containing such other terms and conditions acceptable to Sydney Water.
- (b) The continuance of the Security is a condition of the performance by Sydney Water of its obligations under this Agreement.
- (c) The amount of the Security will be reviewed by Sydney Water every 12 months from the Commencement Date. The results of the review are not subject to clause 23.
- (d) Upon termination or expiry of the Agreement, Sydney Water shall release the Security to the Access Holder provided that at such time the Access Holder is not in default in the payment of any monies owed by it to Sydney Water under this Agreement.

18.2 Exercise of Security

- (a) The Security shall be held by Sydney Water as security for the performance of the obligations of the Access Holder under this Agreement and may be called upon by

Sydney Water in any circumstances in which Sydney Water suffers any loss as a result of default by the Access Holder under this Agreement.

- (b) If Sydney Water exercises or draws on the Security, the Access Holder must promptly provide a replacement form of Security for the amount drawn or exercised by Sydney Water against the Security and otherwise on the same terms as the Security.

19. Suspension, disconnection and termination

19.1 Suspension

- (a) Sydney Water may immediately suspend the supply of a Water Network Service, provided it notifies the Access Holder where practicable and provides the Access Holder with as much notice as is reasonably practicable:
 - (i) during an Emergency or an Incident; or
 - (ii) where, in the reasonable opinion of Sydney Water, the supply of that Water Network Service may pose a threat to the health or safety of persons, a hazard to equipment or a threat to the security of the Water Supply Transport Network, or is likely to impede the activities of authorised persons responding to an Emergency or Incident,and is entitled to continue such suspension until (as the case requires) the relevant Emergency, Incident or threat has passed or until the normal operation of the Water Supply Transport Network is no longer adversely affected or threatened.
- (b) If:
 - (i) the Access Holder has failed to pay monies owing under this Agreement;
 - (ii) the Access Holder breaches a material obligation under this Agreement other than as specified in clause 19.1(b)(i), 19.1(b)(iii), 19.1(b)(iv) or 19.1(b)(v);
 - (iii) an Event of Insolvency occurs in respect of the Access Holder;
 - (iv) a Change of Control or Assignment takes place otherwise than in accordance with clause 20; or
 - (v) a Customer Meter Reading conducted or an audit report obtained by Sydney Water pursuant to clause 6.3 or Schedule 3 discloses any fraud or false, misleading or deceptive reporting by the Access Holder,("Termination Event"), Sydney Water may within [20] Business Days after becoming aware of the Termination Event give a written notice ("Termination Notice") to the Access Holder which complies with clause 19.1(c).
- (c) Any Termination Notice given by Sydney Water pursuant to clause 19.1(b) must:
 - (i) specify the Termination Event and the Water Network Service or Services in respect of which the event has occurred;
 - (ii) require the Access Holder to institute remedial action (if any) in respect of that event; and

- (iii) specify the action which may follow if the Access Holder fails to comply with the notice.

19.2 Termination rights

- (a) If:
 - (i) the Access Holder fails to supply Water Supply Services to Access Holder Customers for a period of more than [*insert period*] without the prior written consent of Sydney Water (such consent not to be unreasonably withheld);
 - (ii) a Termination Event described in clause 19.1(b) occurs in respect of the Access Holder and:
 - A. that Termination Event materially impairs, or is likely to materially impair, the ability of the Access Holder to supply Water Supply Services to its Customers; or
 - B. the Access Holder fails to institute remedial action as specified in the Termination Notice provided under clause 19.1(b), within [*insert period*] of the Termination Notice (“**Remedy Period**”),

Sydney Water may terminate all or any part of this Agreement (including terminating the supply of one or more Water Network Services) by written notice given to the Access Holder within [20] Business Days after becoming aware of the cessation, reasonable grounds or expiry of the Remedy Period (as the case may be) and this Agreement will terminate on expiry of that notice period.

- (b) Either party may at any time immediately terminate all or any part of this Agreement (including terminating the supply of one or more Water Network Services) by giving written notice of termination to the other party if a Force Majeure Event occurs and it substantially and adversely affects the ability of Sydney Water to perform its obligations to the Access Holder for a continuous period of [*insert period*].
- (c) For the avoidance of doubt, if a party terminates the supply of a Water Network Service pursuant to this clause 19, the supply of other Water Network Services pursuant to this Agreement may not be affected and will continue on the terms and conditions of this Agreement.

19.3 Immediate termination

Notwithstanding any other provision of this Agreement:

- (a) Sydney Water may at any time immediately terminate all or any part of this Agreement (including terminating the supply of one or more Water Network Services) by giving written notice of termination to the Access Holder if:
 - (i) an Event of Insolvency occurs in respect of the Access Holder; or
 - (ii) a Change of Control or Assignment occurs otherwise than in accordance with clause 20; or
 - (iii) the Access Holder’s Retail Supplier’s Licence is cancelled; or

- (iv) a Retailer of Last Resort is appointed in relation to the Access Holder Customers; and
- (b) this Agreement will immediately terminate upon termination of the Water Treatment Services Agreement.

19.4 Breach by Sydney Water

- (a) If Sydney Water breaches a material obligation under this Agreement the Access Holder may within [20] Business Days after becoming aware of the breach give Sydney Water a written notice:
 - (i) specifying the material breach;
 - (ii) requiring Sydney Water to institute remedial action (if any) in respect of the breach; and
 - (iii) specifying the action which may follow if Sydney Water fails to comply with the notice.
- (b) If Sydney Water fails to institute remedial action as specified in the notice given pursuant to clause 19.4(a) within [20] Business Days after the date of that notice (in this clause 19.4, the "**Remedy Period**"), the Access Holder may, by written notice given to Sydney Water within [20] Business Days after expiry of the Remedy Period:
 - (i) terminate this Agreement, and this Agreement will terminate after the expiry of [*insert period*] Business Days from the date of such notice; and/or
 - (ii) pursue Sydney Water for any remedies which may be available to the Access Holder at law or in equity.

19.5 Effect of termination

Termination or expiry of this Agreement for any reason:

- (a) shall not operate as a waiver of any breach by a party of any of its obligations;
- (b) is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of the termination or expiry, including a right of indemnity; and
- (c) shall not extinguish or otherwise affect the provisions of this Agreement which by their nature survive termination.

19.6 Consequences of termination

On termination or expiry of this Agreement:

- (a) the Access Holder will pay to Sydney Water within [*insert period*] from the date of termination or expiry, all Charges for the Water Network Services supplied by Sydney Water to the Access Holder and the Reasonable Cost in supplying Water Supply Services to each Access Holder Customer from the date on which Sydney Water commences supply until the date on which each Access Holder Customer is transferred to Sydney Water or another supplier of Water Supply Services as notified to the Access Holder; and

- (b) the parties will comply with all obligations which survive termination or expiry of this Agreement.

20. Change of Control/Assignment

20.1 Assignment

The Access Holder may not assign, sell, transfer, subcontract to a Material Subcontractor, license, mortgage, charge or otherwise dispose of, or deal with (each an "**Assignment**"), its rights and obligations under this Agreement:

- (a) without the prior written consent of Sydney Water (not to be unreasonably withheld); and
- (b) unless on or before such Assignment, the assignee, transferee, Material Subcontractor, licensee, mortgagee or chargee enters into an access agreement with Sydney Water, on such terms which are substantially similar to this Agreement as Sydney Water may reasonably determine.

20.2 Consent

Without limiting clause 20.1(b), Sydney Water must not withhold consent under clause 20.1(a) where:

- (a) Sydney Water has been provided with written details of the proposed replacement access holder;
- (b) the proposed replacement access holder is a reputable corporation;
- (c) in Sydney Water's reasonable opinion, the proposed replacement access holder (whether by itself or by way of support from its shareholders in a form acceptable to Sydney Water acting reasonably):
 - (i) has sufficient expertise and ability; and
 - (ii) is of sufficiently high financial and commercial standing,to properly carry out the obligations of the Access Holder under the Agreement;
- (d) the proposed replacement access holder has agreed to be bound by the terms of all relevant Licences and Approvals; and
- (e) a person other than Sydney Water bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (i) any enquiries which Sydney Water may make for the purposes of determining whether to consent to the novation or appointment; and
 - (ii) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

20.3 Change of Control

- (a) For the purposes of clause 20.1, any Change of Control of the Access Holder will be deemed to be an Assignment by the Access Holder of its rights and obligations under this Agreement.

- (b) However, it will not be deemed an Assignment under clause 20.1 if the Change of Control results from a listing of the Shares of the Access Holder on a stock exchange. If the Shares in the Access Holder are listed on a stock exchange, the Access Holder must notify Sydney Water in writing of such proposed or actual Change of Control as soon as practicable after the Access Holder becomes aware of the proposed or actual Change of Control.

20.4 Effect of an Assignment

An Assignment of rights and obligations under this Agreement will not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other which may have accrued under this Agreement prior to the date of the Assignment.

21. Material Change and Reviews

21.1 Material Change

- (a) If a Material Change occurs, either party (the "**Notifying Party**") may give the other party within [*insert period*] written notice of the Material Change and notice: of whether the Notifying Party wishes to:
- (i) vary this Agreement to address the Material Change; or
 - (ii) if, in the Notifying Party's reasonable opinion, the Agreement cannot be varied to address the Material Change, terminate this Agreement.
- (b) If the Notifying Party proposes varying this Agreement and gives notice to the other party pursuant to clause 21.1(a)(i), the Notifying Party will within [*insert period*] provide to the other party in writing the draft variations to this Agreement which the Notifying Party believes are required to address the Material change, acting reasonably ("**Proposed Variation**").
- (c) Within [*insert number*] Business Days of the date on which the Proposed Variation is given to the other party, the other party must give the Notifying Party written notice of whether or not it accepts the Proposed Variation.
- (d) If the other party accepts the Proposed Variation, this Agreement will be varied in accordance with the Proposed Variation with effect from the date of the notice given pursuant to clause 21.1(c).
- (e) If the other party does not accept the Proposed Variation, either party may refer the matter for resolution in accordance with clause 23 for determination of whether or not the Proposed Variation contains the variations reasonably required to address the Material Change and this Agreement will be varied in accordance with the Proposed Variation and the resolution or determination made pursuant to clause 23 on the date of the resolution or determination (as the case may be) with effect from the date of the resolution or determination (as the case may be), unless otherwise agreed by the parties or determined by the arbitrator in accordance with clause 23.
- (f) If the Notifying Party determines (acting reasonably) that the Agreement cannot be varied to address the Material Change, it may terminate this Agreement by giving the Access Holder [*insert period*] written notice and this Agreement will terminate on expiry of that notice period.
- (g) If the Notifying Party determines that the Agreement is to be terminated pursuant to clause 21.1(f) and the other party wishes to dispute this determination, the other party may, by giving the Notifying Party written notice within [*insert*] Business

Days from the date of the notice given pursuant to clause 21.1(a), refer the matter for resolution in accordance with clause 23 for determination of whether or not it would be reasonable in all the circumstances for the Agreement to be varied to address the Material Change.

21.2 Review rights

- (a) On any Review Date, either party (the "**Notifying Party**") may notify the other party of any provision of this Agreement which it reasonably believes to be harsh, oppressive or unworkable by giving written notice to the other party within [*insert period*] from the relevant Review Date specifying:
 - (i) the relevant provisions;
 - (ii) the proposed variations to those provisions; and
 - (iii) the reasons for seeking the review of those provisions, ("**Proposed Variation**").
- (b) Within [*insert number*] Business Days of the date on which the Proposed Variation is given to the other party, the other party must give the Notifying Party written notice of whether or not it accepts the Proposed Variation.
- (c) The parties will negotiate in good faith for a period of [15] Business Days the variations set out in the Proposed Variation.
- (d) If, after the good faith negotiations, the other party accepts the Proposed Variation, this Agreement will be varied in accordance with the Proposed Variation with effect from the date of the notice given pursuant to clause 21.2(b).
- (e) If, after the good faith negotiations, the other party does not accept the Proposed Variation, either party may refer the matter for resolution in accordance with clause 23 for determination of whether or not the Proposed Variation contains the variations reasonably required to address the concerns raised by the Notifying Party in the Proposed Variation and this Agreement will be varied in accordance with the Proposed Variation and the resolution or determination made pursuant to clause 23 on the date of the resolution or determination (as the case may be), unless otherwise agreed by the parties or determined by the arbitrator in accordance with clause 23.

22. Force majeure

22.1 Notification

- (a) If Sydney Water alleges or wishes to claim that a Force Majeure Event has occurred, it must promptly give the Access Holder notice of the Force Majeure Event as soon as Sydney Water becomes aware of the occurrence of such Force Majeure Event.
- (b) As soon as reasonably practicable after giving notice under clause 22.1(a), Sydney Water must give the Access Holder (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:
 - (i) the nature of the Force Majeure Event;
 - (ii) details of the obligations of Sydney Water affected by the Force Majeure Event;

- (iii) details of the action that Sydney Water has taken and/or proposes to take to remedy the situation and the program for doing so; and
 - (iv) an estimate of the time during which Sydney Water will be unable to carry out the affected obligations due to the Force Majeure Event.
- (c) Sydney Water must, after giving notice under clause 22.1(a), continue to keep the Access Holder informed of all relevant information pertaining to the Force Majeure Event.

22.2 Meeting

The parties must meet within [5] Business Days of delivery of a notice under clause 22.1(a) to determine:

- (a) whether a Force Majeure Event has occurred; and
- (b) the estimated duration of the Force Majeure Event.

22.3 Suspension of obligations

Subject to clause 22.4, if a Force Majeure Event occurs:

- (a) Sydney Water's obligations under this Agreement (other than clause 5 and this clause 22) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays Sydney Water from performing those obligations;
- (b) no Suspension Notice or notice of breach may be given under clause 19 in respect of a breach of such obligations during the period of suspension;
- (c) Sydney Water must notify the Access Holder immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event; and
- (d) Sydney Water must recommence performing its obligations which were suspended under clause 22.3(a) upon becoming able to do so.

22.4 Emergencies and Incidents

In the event a Force Majeure Event is also an Emergency or an Incident, the parties must comply with the provisions of clause 13 in managing that Emergency or Incident.

22.5 Payments and financial relief

Except to the extent expressly provided in this Agreement, nothing in this clause 22 will oblige Sydney Water to:

- (a) pay any compensation to the Access Holder due to the occurrence of a Force Majeure Event; or
- (b) provide any financial relief or provide any services to the Access Holder during the period of suspension.

22.6 Best endeavours to mitigate effect

During the period of suspension under clause 22.3, Sydney Water must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event, which may include incurring

reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

23. Dispute resolution

23.1 Management of disputes

- (a) If a dispute arises between the parties in connection with or arising from this Agreement, the dispute shall be managed as follows:
 - (i) in the case of a billing dispute, the dispute shall be managed in accordance with the Billing Dispute Procedures; and
 - (ii) in the case of a non-billing dispute arising between the parties relating to, or arising out of, this Agreement ("**Dispute**"), the Dispute shall be managed in accordance with the procedures set out in this clause 23.
- (b) Either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with under this clause 23. The parties must use reasonable endeavours acting in good faith to settle the Dispute as soon as practicable.
- (c) The procedure that is to be followed to settle a Dispute arising under this Agreement is as follows:
 - (i) first, negotiation of the Dispute under clause 23.2;
 - (ii) second, if the parties agree, mediation of the Dispute under clause 23.3; and
 - (iii) third, determination by a court of appropriate jurisdiction.

23.2 Negotiation

- (a) If there is a Dispute between the parties relating to or arising out of this Agreement, then within [5] Business Days of a party giving the other a Dispute Notice in accordance with clause 23.1(b), senior representatives from each party who have authority to conclude a binding settlement of the Dispute must meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.
- (b) If the Dispute is not resolved by the parties under clause 23.2(a) within [15] Business Days from the date on which one party gave the other a Dispute Notice in accordance with clause 23.1(b), then:
 - (i) if the parties agree within a further [5] Business Days, they will refer the Dispute for resolution by mediation pursuant to clause 23.3; or
 - (ii) if the parties do not agree to resolve the Dispute by mediation in accordance with clause 23.2(b)(i), either party will be entitled to commence court proceedings in relation to the Dispute.

23.3 Mediation

If the Dispute is referred to mediation pursuant to clause 23.2(b)(i), the Dispute must be dealt with by mediation to be conducted in Sydney on the following terms:

- (a) the mediator will be chosen and appointed by the parties or, failing agreement within [5] Business Days from date on which the Dispute is referred to mediation ("**Referral Date**"), a mediator having the characteristics set out in clause 23.3(b) will be appointed by the President, for the time being, of the Institute of Arbitrators and Mediators Australia and the parties will be bound by his/her choice of mediator;
- (b) a mediator appointed under clause 23.3(a) must, unless the parties agree otherwise:
 - (i) be available to commence the mediation process by conducting a preliminary conference within [3] Business Days of his or her appointment;
 - (ii) have at least [5 years] of experience in conducting commercial mediations or have had previous judicial experience;
 - (iii) assist the parties to reach a resolution of the Dispute by agreement which complies with all applicable laws in each relevant jurisdiction, including the Competition and Consumer Act;
 - (iv) act impartially; and
 - (v) terminate the mediation after the mediation proper has continued for at least [1] day if, after consultation with the parties, the mediator forms the view that the mediation process is exhausted and unlikely to resolve the Dispute;
- (c) the parties must enter into a mediation agreement with the mediator upon any terms reasonably requested by the mediator and which is consistent with any applicable terms of this Agreement;
- (d) the only preparatory steps in relation to the mediation will be for each party to prepare a position paper for submission to the appointed mediator and each other party at least [1] full Business Day prior to the mediation proper;
- (e) each party must be represented at the mediation proper by at least 1 person (who may be a legally qualified person) who has the requisite authority to conclude a binding settlement to the Dispute; and
- (f) if the Dispute is not resolved within [10] Business Days of appointment of the mediator, either party will be entitled to commence court proceedings in relation to the Dispute.

23.4 Confidentiality

- (a) Any information or documents obtained through or under clauses 23.2 to 23.3 must not be used for any purpose other than the resolution or determination of the relevant Dispute.
- (b) The parties will keep the mediation, including the relevant subject matter and any evidence heard during the process, confidential and not disclose such matters, except to their professional advisers who are under obligations of confidence or to the extent required by a lawful requirement of:

- (i) any Government or Governmental body, Authority or agency having jurisdiction over a party to this Agreement or its Related Bodies Corporate; or
- (ii) any stock exchange having jurisdiction over a party to this Agreement or its Related Bodies Corporate.

23.5 Severability

Clause 23 is severable from the rest of this Agreement and will remain in full force and effect despite the termination, or invalidity for any reason, of this Agreement.

23.6 Parties to provide information

The parties must comply with all reasonable requests by the relevant mediator appointed in accordance with clause 23.3 for information relating to the matters giving rise to their appointment and the parties must co-operate in facilitating the resolution or determination of all disputes as expeditiously as possible.

23.7 Access to courts

- (a) Notwithstanding any other provision of this clause 23, a party may seek an order from a court of competent jurisdiction for an injunction or other urgent relief.
- (b) Apart from seeking urgent relief or other enforcement under clause 23.7(a), no party may commence proceedings in any court against any other party in respect of any dispute, claim, disagreement or failure to agree in respect of any issue relating to this Agreement, its subject-matter, validity, scope or interpretation unless the claimant party has first complied fully with the applicable dispute resolution provisions of this Agreement.

23.8 Costs of process

The parties agree that the fees of any mediator and the costs of any mediation conducted in accordance with clause 23.3 such as room fees or transcript (if any) are to be borne equally between them but that the legal expenses of each party are to be borne by that party alone.

24. General

24.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

To Sydney Water Corporation:

Name: Sydney Water Corporation
Address: 1 Smith Street, Parramatta NSW 2150
Fax:
For the attention of:

To

Name:

Address:

Fax:

For the attention of:

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 24.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

24.2 Governing law

This Agreement is governed by and must be construed according to the law applying in New South Wales.

24.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 24.3(a).

24.4 Amendments

This Agreement may only be varied by a document signed by or on behalf of each party.

24.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or

enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

24.6 Further acts and documents

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

24.7 Consents

A consent required under this Agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

24.8 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.

24.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

24.10 Expenses

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

24.11 Stamp duties

The Access Holder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement and each transaction effected by or made under this Agreement; and
- (b) indemnifies each other party against any liability arising from failure to comply with clause 24.11(a).

24.12 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

24.13 Relationship of the parties

Nothing in this Agreement creates or constitutes, or will be construed or interpreted as creating or constituting, the relationship of principal and agent, a partnership, joint venture or fiduciary relationship between Sydney Water and the Access Holder.

Schedule 1 - Agreement details

Access Holder	
Water Supply Transport Network	
Injection Points	
Customer Connection Points	
Initial Term	
Renewal Term	
Review Dates	

Schedule 2 - AH Total Share Methodology

1. AH Total Share

AH Total Share:	The billed metered water use of the Access Holder Customers, divided by Total Revenue Water (being the total of the billed metered Treated Water consumption and the billed unmetered Treated Water consumption).
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2. Methodology for determining the AH Total Share

The AH Total Share is calculated on the basis of the proportion that the Access Holder Customers’ consumption of Treated Water bears to the total consumption of Treated Water from the Water Supply Transport Network that attracts service or usage charges, (Total Revenue Water), and includes billed metered and billed unmetered consumption.

Total Revenue Water is calculated using the Water Balance, which is a representation of the various types of uses and losses of Treated Water in the Water Supply Transport Network. Figure 1 summarises the elements of the Water Balance.

The method for determining the Water Balance is defined in the National Water Commission’s (NWC) *2010-11 National Performance Framework*. In line with this method, Sydney Water has developed a detailed procedure for determining the Water Balance. Amongst other things, the Water Balance calculates annual real losses from the Water Supply Transport Network by deducting all known uses from the total amount of Treated Water produced.

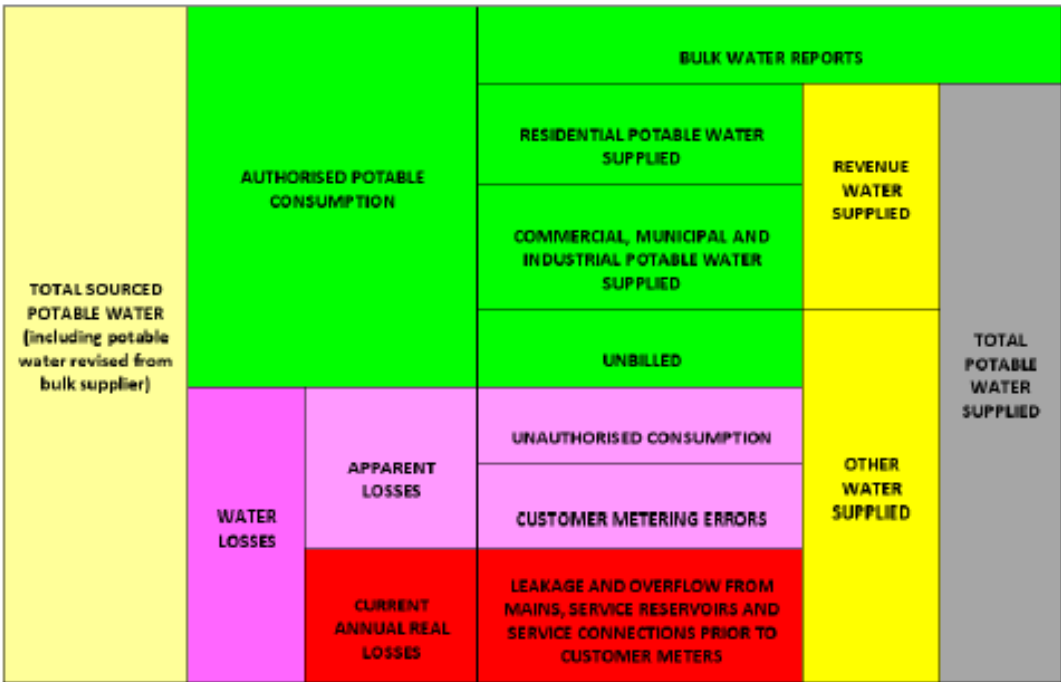


Figure 1: Water Balance Calculation

Schedule 3 - Coordination Protocol

The provisions to be included in this Coordination Protocol will depend on a number of factors relevant to the particular Access Holder, including the interaction (if any) between the Water Supply Transport Network and the Access Holder's Water Infrastructure, and whether the Access Holder Customers are small or large customers, or both. The Coordination Protocol will need to be negotiated by the parties prior to entry into the Agreement, and set out in this Schedule 3.

The Coordination Protocol may provide for matters including, but not limited to:

- (a) (forecasts):*
 - (i) the provision of forecast information from the Access Holder to Sydney Water;*
 - (ii) the provision of large customer daily profiles from the Access Holder to Sydney Water;*
 - (iii) actions to be taken when forecasts provided by the Access Holder are inaccurate;*
- (b) (metering):*
 - (i) the Access Holder's meter reading obligations;*
 - (ii) the coordination of meter tests and meter re-reads;*
 - (iii) reconciliation of "unders" and "overs" determined by a meter test, a meter re-read or otherwise;*
- (c) (communication of information):*
 - (i) the communication of information from one party to the other:*
 - (A) relating to the Water Supply Transport Network;*
 - (B) relevant to particular Customer requirements, for example, Customers on kidney dialysis;*
 - (ii) Sydney Water's obligations to notify the Access Holder of, and provide information in relation to, matters such as:*
 - (A) planned and unplanned Maintenance Works;*
 - (B) Emergencies and Incidents;*
 - (C) water restrictions;*
 - (D) Access Holder Customer disconnections,*
that occur or are likely to occur in or to the Water Supply Transport Network, including the provision of updates;
- (d) (management of Access Holder Customers): the coordination and management of the parties' respective obligations in relation to:*

- (i) *the handling of Access Holder Customers' inquiries, complaints and notifications;*
- (ii) *notifying, and communicating with, Access Holder Customers about matters including:*
 - (A) *planned and unplanned Maintenance Works;*
 - (B) *Emergencies and Incidents;*
 - (C) *water restrictions;*
 - (D) *Access Holder Customer disconnections,*
that occur or are likely to occur in or to the Water Supply Transport Network,
including providing updates;
- (iii) *the provision of certain services to Access Holder Customers during or in relation to events such as those listed above, for example, providing emergency services;*
- (e) *(payments to Sydney Water): the recovery by Sydney Water of payments owing from Access Holder Customers, for example, for the provision of ancillary services;*
- (f) *(rebates and redress):*
 - (i) *the management and distribution of rebates or other compensation owed by Sydney Water to Access Holder Customers;*
 - (ii) *the provision by Sydney Water to Access Holder Customers of other forms of redress.*

Schedule 4 - Charges

Water Transport Service Charges	Calculated each year in accordance with the Charging Method
Other Charges Specify:	

Signed as an agreement.

Signed for and on behalf of **Sydney Water Corporation** by [], its Attorney under a Power of Attorney dated [] and registered Book [] No. [] and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Attorney

Signature of Witness

Name of Attorney in full

Name of Witness in full

The Common Seal of [] was affixed in the presence of:

Signature of sole Director and Secretary

Name of sole Director and Secretary in full who states that he or she is the sole Director and sole company Secretary of []

Access Undertaking

Schedule 4 – Proforma statement in relation to the negotiation process

[Insert date]

[Insert Applicant's details]

Negotiation of terms of access to the Water Network Services

On [insert date], the Independent Pricing and Regulatory Tribunal (“**IPART**”) approved an access undertaking given by Sydney Water Corporation (“**Sydney Water**”) under Part 3 Division 5 of the Water Industry Competition Act 2006 (“**WICA**”) with respect to the provision by Sydney Water of access to its Water Network Services (“**Access Undertaking**”). Terms used in this letter have the same meaning as in the Access Undertaking.

As an Applicant seeking access under the Access Undertaking to some or all of the Water Network Services you are entitled, Under Part 3 Division 6 of the WICA, to negotiate with Sydney Water the terms on which you will receive such access and, if necessary, to apply to IPART for a dispute regarding these terms to be determined through arbitration.

Section 40(2) of the WICA provides that IPART may refuse an application to arbitrate a dispute if it is not satisfied that the Applicant has, in good faith, attempted to resolve the dispute by negotiation. Clause 8 of the Water Industry Competition (Access to Infrastructure Services) Regulation 2007 (“**Regulation**”) outlines factors to be considered by IPART in determining whether the parties to the dispute have in fact made this good faith attempt. Generally, IPART will consider whether the parties have followed the Negotiation Protocols established under the Regulation, or an alternative agreed negotiation process, as an indication of their good faith efforts to resolve the dispute.

Section 6 of the Access Undertaking outlines a detailed negotiation procedure that is modelled on, and closely guided by, the Negotiation Protocols (“**Negotiation Procedure**”) and which, if followed, will provide evidence to IPART that Sydney Water and a relevant Applicant have, in good faith, attempted to reach agreement on the access sought.

Negotiation of the terms of access to the relevant Water Network Services between you and Sydney Water will be conducted in accordance with the Negotiation Procedure (“**Proposal**”). By signing this letter, both you and Sydney Water affirm that all negotiations for your access to the Water Network Services will be conducted in accordance with the Negotiation Procedure. Please acknowledge your agreement by signing and dating this letter in the space provided below.

Yours sincerely

[Insert Authorised SWC Officer's details]

Access Undertaking

Acknowledgment:

EXECUTED by [*insert name of Applicant*] in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

.....
Signature of director

.....
Signature of director

.....
Name of director (block letters)

.....
Name of director (block letters)

Access Undertaking

Schedule 5 – Access Application information

Access Applications are to be submitted to SWC in written or electronic form and clearly state that the Access Application is made in accordance with this Undertaking and must be accompanied by the following information:

Applicant details:

- Company name
- ABN/ACN
- Website (if available)
- Address
- Contact details
- Details of authorised company representative (including authorisation)
- Duration of the Access Agreement sought

Request details:

- Details of the services and extent of access being sought
- Relevant Area/Part of the Water Supply Transport Network

Prudential Requirement details:

Information demonstrating the Applicant satisfies the Prudential Requirements, including:

- Details of the Applicant's credit rating (if applicable)
- The Applicant's most recent financial statements
- Commercial trade references (if available)

Ring-fenced Information (as relevant to the services being sought):

- Information concerning the estimated volume of treated water to be injected into the Water Supply Transport Network on behalf of the Applicant;
- Information concerning the estimated volume and quantity of treated water to be extracted by the Applicant at an Off-take point on the Water Supply Transport Network;
- Information required to calculate the Charges in accordance with the Charging Method;
- Information concerning the design, construction and operation of the:
 - 1 Off-take point; or
 - 2 Applicant's Off-take infrastructure.