

Stormwater Harvesting and Re-use Agreement

Sydney Water Corporation

and

Harvester

[date Agreement entered into]

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Parties

Sydney Water Corporation ABN 49 776 225 038 of 1 Smith Street, Parramatta, New South Wales, (**Sydney Water**)

Harvester ABN _____ of, New South Wales (**Harvester**)

Recital

- A. Sydney Water is a statutory State Owned Corporation constituted under the *State Owned Corporations Act 1989* (NSW) and under the *Sydney Water Act 1994* (NSW).
- B. Harvester is [.....]
- C. Sydney Water owns, operates and maintains a number of Stormwater Networks within its area of operations.
- D. Harvester has requested Sydney Water to permit it to connect to and take Stormwater from a nominated Stormwater Network for Re-use Water.
- E. Sydney Water is willing to permit connection to the Stormwater Network to Harvester on the terms and conditions set out in this Agreement.
- F. Sydney Water will receive no financial gain from making Stormwater available to Harvester (other than recovery of its costs) and accordingly its principal objectives in entering into this Agreement are to:
 - (i) facilitate Stormwater Harvesting by providing timely information, advice and responses to enquiries and applications;
 - (ii) encourage improved Stormwater management and Re-use Water outcomes;
 - (iii) ensure the operation of the Stormwater Networks is not compromised; and
 - (iv) ensure that the extraction and use of Stormwater for Stormwater Harvesting does not expose Sydney Water to business or legal risks that cannot be managed.
- G. Sydney Water will adopt a first come, first served approach in allocating access to Stormwater flows. When advising future applicants of the availability of Stormwater in its Stormwater Networks, Sydney Water will:
 - (i) acknowledge and honour its existing commitments, including to other stormwater harvesting operations; and
 - (ii) take into consideration downstream ecosystems and other environmental impacts.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

"Agreement" means this document once executed and any subsequent variations to this Agreement as agreed in writing between the parties.

"Application for Stormwater Harvesting Connection" means an application made by Harvester to Sydney Water (in accordance with Sydney Water's requirements) for the construction of the Connection Points.

"Approval" means any authorisation, permit, consent, licence or approval required by any Authority under any Law.

"Authority" means any government department, local government, government or statutory authority, or any other body, which has jurisdiction over, a right to impose a requirement or whose consent is required in connection with the performance by Harvester of its obligations under this Agreement.

"Availability Period" means the period commencing from the date that the conditions precedent to the taking of Stormwater contained in clause 3.2 to this Agreement are satisfied and (unless this Agreement is terminated earlier by either party in accordance with this Agreement) expiring on the Termination Date.

"Claim" means in relation to any person, a claim, action, proceedings or demand made against the person, however arising and whether present or future, fixed unascertained, actual or contingent.

"Connection Points" mean either or both the Extraction Point and the Stormwater Discharge Point.

"Consumer Price Index" means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics as per Table 1 of ABS Catalogue 6401.0 or the index officially substituted for it.

"Contamination" means any substance which poses a risk of harm to human health or the environment.

"CPI Review Date" means each first day of July every year commencing on the first 1 July after the date of this Agreement.

"Current CPI" means the Consumer Price Index for the quarter ending immediately before the relevant CPI Review Date.

"Domestic Wastewater" means water which has in it human faecal matter, urine or refuse of any type produced in, and which is permitted to be discharged to a Sydney Water sewer from, any premises used exclusively for residential purposes.

"Extraction Point" means the point for the taking of Stormwater by Harvester and described in Schedule 1.

"Facility" means the water treatment facility operated by Harvester to treat the Stormwater to standards suitable for the Proposed Uses described in Schedule 1.

"Fee(s)" means one or more of: the Harvester Connection Fee; the Harvester Maintenance Fee and the Harvester Disconnection Fee.

"Guidelines" means such guidelines notified by Sydney Water to Harvester from time to time in relation to taking, treating and use of Stormwater including:

- (a) the *NWQMS Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (Phase 2) Stormwater Harvesting and Reuse (July 2009) Document no.2*. This document provides guidance on managing potential public health and environmental risks associated with nonpotable potential end uses of roofwater and stormwater;
- (b) the minimum quality and treatment requirements of recycled water for various uses are recommended in the *NWQMS Guidelines for Sewerage Systems Use of Reclaimed Water*;
- (c) *NSW Guidelines for Urban and Residential Use of Reclaimed Water (1993)*. These guidelines were developed by the then Recycled Water Coordination Committee (a NSW Government Committee, containing representatives from the various water supply authorities and other experts, that was established to develop guidelines for use of recycled water);
- (d) *Environmental Guidelines: Use of Effluent by Irrigation*, NSW Department of Environment and Conservation (2004);
- (e) *NSW Code of Practice, Plumbing and Drainage (2nd Edition) (1999)*;
- (f) *Interim Guidance for Greywater and Sewage Recycling in Multi-unit Dwellings and Commercial Premises*, NSW Health (2004); and
- (g) *Managing Urban Stormwater – Harvesting and Reuse*, NSW Department of Environment and Conservation (April 2006);
- (h) *Evaluating Options for Water Sensitive Urban Design – a national guide*, Joint Steering Committee for Water Sensitive Cities (July 2009).

"Harvester" means the person authorised to take Stormwater in accordance with terms and conditions of this Agreement.

"Harvester's Customers" means a customer who has a contract to acquire Stormwater or Re-use Water from Harvester.

"Incident" includes an event which, in the reasonable opinion of Sydney Water, causes, or has the potential to cause, an immediate threat to or of (or an adverse impact on):

- (a) the life, health and safety of any persons;
- (b) the environment;
- (c) public or private property (including the Stormwater Networks and any other property of Sydney Water);
- (d) the availability and/or quality of services to Sydney Water's customers;
- (e) prosecution, or the imposition of fines, by an Authority;
- (f) a breach of the Trade Waste Consent;
- (g) requirements for urgent action under Law; or

- (h) the reputation or public image of Sydney Water.

"Insolvency Event" means:

- (a) a "controller" (as defined in section 9 of the *Corporations Act 2001* (Cth)), manager, trustee, 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 corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - i) appointing a person referred to in paragraphs (a) or (b);
 - ii) winding up a corporation; or
 - iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person;
- (e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or 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, is executed, ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable Law to be, insolvent or unable to pay its debts;
- (g) 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;
- (h) a person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth);
- (i) in respect of a body corporate not incorporated in Australia or any individual not resident in Australia, any other similar event occurs under any foreign Laws providing for the relief of debtors in adverse financial circumstances; or
- (j) the Commissioner of Taxation advises of an intention to issue or issues a notice under the *Taxation Administration Act 1953* (Cth) requiring any person who is taken under that Act to owe money to Harvester to instead pay such money to the Commissioner of Taxation in respect of any Tax or other amount required to be paid by Harvester to the Commissioner of Taxation (whether or not due and payable).

"Law" means any legislation, regulation, rule, by-law, policy, guideline or standard of any Authority or rule of common law or equity.

"Loss" means, in relation to any person, damage, fine, penalty, order, loss, cost, expense or liability whatsoever incurred by the person.

"Month" or **"Monthly"** mean respectively, calendar month and calendar monthly.

"Operator" means any person engaged by Harvester to operate the Facility or the Connection Points, including any employees, contractors, subcontractors, or agents of that person.

"Notice of Requirements Letter" means the letter entitled "Stormwater Harvesting Notice of Requirements Letter" issued to Harvester by Sydney Water that specifies the conditions for the construction of the Connection Points and any requirements Sydney Water may have including the requirement that Harvester enter into a Works Agreement and lodge any applicable Security with Sydney Water.

"Previous CPI" means the Consumer Price Index number for the quarter ending immediately before the most recent CPI Review Date (or if there has not been one, the date of this Agreement).

"Proposed Uses" means the uses of Re-use Water so specified in Schedule 1.

"Re-use Water" means water which is non-potable and which is processed from the Stormwater by physical, chemical and/or biological treatment processes at the Facility.

"Requirement" means any requirement, notice, order or direction received from or given by any Authority, and **"Requirements"** has a similar meaning.

"Residue" means all by-products of the treatment of the Stormwater other than the Re-use Water.

"Security" means an amount required to be paid by Harvester to Sydney Water prior to the construction of the Connection Points and to be returned by Sydney Water to Harvester, in accordance with the terms and conditions set out in the Notice of Requirements Letter, following the satisfactory construction of the Connection Points by Harvester in accordance with the Works Agreement.

"Sewer Discharge Point" means the point for the discharge of Trade Waste Material to sewer by Harvester and described in Schedule 1.

"Site" means the land, plant and buildings specified in Schedule 1 and shown in Appendix 1, on or in which Harvester undertakes Stormwater Harvesting.

"Stormwater" means all matter including waste matter that is found in Sydney Water's Stormwater Networks.

"Stormwater Discharge Point" means the point for the discharge of treated Stormwater or excess Stormwater to the Stormwater Network as described in Schedule 1.

"Stormwater Harvesting" means the process of extracting Stormwater from the Stormwater Network and treating it using physical, chemical and/or biological processes to produce Re-use Water suitable for a specific end use.

"Stormwater Harvesting Connection Fee" means the amount so specified in Schedule 2 (being an amount, determined by Sydney Water, to be equal to the costs reasonably incurred by Sydney Water in facilitating Harvester's Stormwater Harvesting connection to the Stormwater Network in accordance with this Agreement minus the savings made by Sydney Water in facilitating Harvester's Stormwater Harvesting connection to the Stormwater Network in accordance with this Agreement).

"Stormwater Harvesting Disconnection Fee" means the amount so specified in Schedule 2 (being an amount, determined by Sydney Water, representing the costs reasonably expected to be incurred by Sydney Water in removing the Connection Points and restoring the Stormwater Network to a condition equivalent to its condition prior to execution of this Agreement).

"Stormwater Harvesting Maintenance Fee" means the amount so specified in Schedule 2 (being an amount, determined by Sydney Water, to be equal to the costs reasonably incurred by Sydney Water in the maintenance of works in the Stormwater Network (where such costs are caused by or directly associated with the Stormwater Harvesting permitted by this Agreement) minus the savings made by Sydney Water in the maintenance of works in the Stormwater Network (where such savings are caused by or directly associated with the Stormwater Harvesting permitted by this Agreement)).

"Stormwater Network" means the channels and conduits, stormwater pumping stations, detention basins, stormwater quality improvement devices ("**SQIDS**"), wetlands and associated infrastructure for the carriage, retention or detention of Stormwater owned and operated by Sydney Water.

"Sydney Water" means Sydney Water Corporation.

"Termination Date" means the date specified in item 1 of Schedule 1.

"Trade Waste Consent" means the consent by Sydney Water that permits Harvester to discharge Trade Waste Material into the Sewer Discharge Point.

"Trade Waste Material" means any waste material created at the Facility and discharged into the Sewer Discharge Point in accordance with an applicable Trade Waste Consent but does not include Domestic Wastewater.

"Trade Waste Policy" means Sydney Water's policy detailing the conditions under which Sydney Water will agree to accept Trade Waste Material into the sewer network.

"Works Agreement" means the document entitled "Major Works Deed - Adjustment" which Harvester must enter into with Sydney Water for the construction of the Connection Points.

1.2 Interpretation

In this Agreement:

(a) Any definitions or standards referred to in this Agreement but not contained in it are deemed to form a part of this Agreement with necessary changes being made to accommodate their inclusion;

(b) Headings are for convenience only and do not affect interpretation; and

unless the context indicates a contrary intention:

- (c) A reference to party includes that party's executors, administrators, successors and permitted assignees including persons taking by way of novation; and
- (d) A reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) 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;
- (f) A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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 annexure to it;
- (h) 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;
- (i) **"includes"** in any form is not a word of limitation;
- (j) **"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;
- (k) A reference to "\$" or **"dollar"** is to Australian currency; and
- (l) No rule of construction applies to the disadvantage of a party on the basis that that party put forward or drafted this Agreement or any provision in it.

1.3 Sydney Water as State Owned Corporation

Harvester acknowledges and agrees that:

- (a) Sydney Water has an unfettered discretion to exercise any of its functions and powers pursuant to its operating licence or any Law;
- (b) Nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of Sydney Water to exercise any of its functions and powers pursuant to the *Sydney Water Act 1994* (NSW), its operating licence or any other Law; and
- (c) Without limiting clause 1.3(a), anything which Sydney Water does, fails to do or purports to do pursuant to its functions and powers under its operating licence or any Law will be deemed not to be, or to have caused or contributed to, an act or omission by Sydney Water under this Agreement and Harvester will have no Claim against Sydney Water arising out of the subject matter of this Agreement.

2. Entire, unique agreement

- (a) To the extent permitted by Law, in relation to its subject matter, this Agreement:

- (i) Embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
 - (ii) Supersedes any prior written or other agreement of the parties.
 - (b) Without limiting clause 2(a), the taking of Stormwater by Harvester is governed exclusively by this Agreement irrespective of the terms of any customer contract between the parties.
 - (c) If there is any ambiguity, discrepancy or inconsistency between the terms of the Notice of Requirements Letter or the Works Agreement and this Agreement, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, this Agreement will prevail.
 - (d) This Agreement sets no precedent for future arrangements between the parties.
-

3. Conditions precedent to Stormwater Harvesting

3.1 Connection to the Stormwater Network

Harvester must not connect to the Stormwater Network unless and until it has first:

- (a) Lodged an Application for Stormwater Harvesting Connection with Sydney Water and obtained a Notice of Requirements Letter in response to that application;
- (b) Complied with all conditions precedent to connection specified in the Notice of Requirements Letter including entering into a Works Agreement;
- (c) Obtained all Approvals, and any consents (including landowner's consents) required by Law, for construction of the Connection Points and the Facility, and extraction and use of the Stormwater;
- (d) Paid to Sydney Water the Stormwater Harvesting Connection Fee;
- (e) Lodged any Security required by Sydney Water specified in the Notice of Requirements Letter;
- (f) Provided Sydney Water with written confirmation that it has complied with all conditions precedent to connection specified in the Notice of Requirements Letter; and
- (g) Obtained Sydney Water's written confirmation that it has complied with all conditions precedent to connection specified in the Notice of Requirements Letter.

3.2 Taking Stormwater

Harvester must not take Stormwater from the Stormwater Network unless and until it has first:

- (a) Constructed the Connection Points in accordance with all of the requirements specified in the Notice of Requirements Letter and the Works Agreement;

- (b) Verified to the satisfaction of Sydney Water that each of Sydney Water's technical requirements regarding the Connection Points and the Facility as described in the Notice of Requirements Letter have been satisfied;
- (c) Obtained all Approvals necessary or desirable for:
 - (i) the taking of Stormwater from the Stormwater Network at the Extraction Point;
 - (ii) the operation of the Facility;
 - (iii) the use of the Re-use Water;
 - (iv) the disposal or other dealings with the Re-use Water, the Trade Waste Material, the Residue or any other by-products of Stormwater Harvesting; and
 - (v) the re-supply of Re-use Water (if applicable);
- (d) Demonstrated to the satisfaction of Sydney Water that it has obtained all insurances specified in clause 8.1;
- (e) Paid to Sydney Water the Stormwater Harvesting Connection Fee; and
- (f) Handed over ownership and control of the Connection Points to Sydney Water.

4. Nature of Connections

4.1 Commencement, Connections and Availability Period

- (a) Sydney Water consents to Harvester taking Stormwater and Harvester agrees only to take Stormwater in accordance with the terms and conditions of this Agreement.
- (b) This Agreement commences on the date of execution and continues until the earlier of:
 - (i) The Termination Date; or
 - (ii) The earlier termination of this Agreement in accordance with its terms,

unless the parties have negotiated an extension of this Agreement pursuant to clause 10.4.
- (c) Harvester may only connect to the Stormwater Network and take Stormwater during the Availability Period.

4.2 Availability

- (a) Harvester must not take more Stormwater through the Extraction Point than the peak flow rate approved in the Works Agreement.
- (b) Harvester acknowledges that:

- (i) Sydney Water has no control over the quantity of Stormwater entering the Stormwater Network;
 - (ii) Sydney Water has no control over the volume or flow of Stormwater through the Stormwater Network;
 - (iii) Sydney Water has no control over the extraction of Stormwater upstream where there are extraction points located on a stormwater network other than the Stormwater Networks owned by Sydney Water;
 - (iv) Sydney Water may have operational flow requirements for the Stormwater Network;
 - (v) without limiting clause 4.4(d)(ii), Sydney Water provides no guarantee to Harvester regarding the volume of Stormwater available for taking by Harvester.
- (c) Without limiting clause 4.5 during the Availability Period, Sydney Water has sole discretion to take action which is intended to permanently reduce or discontinue the Stormwater available for extraction by Harvester.

4.3 Risk and title

Title to and all risk in the Stormwater taken through the Extraction Point passes to Harvester at the Extraction Point.

4.4 Nature of Stormwater

- (a) Harvester acknowledges that:
- (i) Sydney Water has no control over the contents or quality of the Stormwater;
 - (ii) Sydney Water has no control over the volume or flow of Stormwater through the Stormwater Network;
 - (iii) The installation of various water conservation measures on public and private property could impact upon the flow of Stormwater through the Stormwater Network;
 - (iv) The contents and quality of the Stormwater will vary and may change over time;
 - (v) Overflows of sewage do occur from time to time into the Stormwater Networks which Sydney Water may not be able to control;
 - (vi) Stormwater could contain hazardous substances and Contamination;
 - (vii) Sydney Water's activities could cause flooding of Harvester's assets; and
 - (viii) Sydney Water may in its absolute discretion take action to temporarily or permanently reduce Stormwater flows.
- (b) Harvester acknowledges and warrants that it:

- (i) Has not relied on any information, statement or representation, written or oral, made or provided, given by or on behalf of Sydney Water as to, or in connection with, the condition of or the characteristics of the Stormwater;
 - (ii) Is satisfied as to the nature, quality and condition of the Stormwater;
 - (iii) Accepts the Stormwater as it is and subject to all defects (latent or patent);
 - (iv) Is satisfied about the purposes for which Stormwater may be used;
 - (v) Has independently examined samples of the Stormwater and satisfied itself and determined through its own investigations and tests:
 - A. the nature and characteristics of the Stormwater; and
 - B. the suitability of the purpose(s) for which Harvester proposes to use the Stormwater;
 - (vi) Is aware that other stormwater networks connect to Sydney Water's Stormwater Networks; and
 - (vii) Is aware that other stormwater networks and on-site retention systems could impact the flow rate and availability of Stormwater in Sydney Water's Stormwater Networks.
- (c) Harvester may not make any Claim against Sydney Water in relation to the nature, quality, availability or characteristics of the Stormwater.
- (d) Sydney Water makes no representations or warranties whatsoever to Harvester in relation to:
- (i) The quality of the Stormwater or its suitability for any purpose;
 - (ii) The availability or volume of any Stormwater available for taking;
 - (iii) The risks or hazards associated with the use of the Stormwater; and
 - (iv) The potential risks or consequences of the use of the Stormwater on human health or the environment.
- (e) Sydney Water makes no representation or warranty and provides no advice regarding the suitability of the Stormwater or the purposes for which Harvester or Harvester's Customers propose to use the Stormwater;
- (f) Harvester must obtain independent specialist advice with respect to the suitability of the Stormwater or the purposes for which Harvester, or Harvester's Customer(s) propose to use the Stormwater or Re-use Water;
- (g) Without limiting clause 5.5(a), Harvester must ensure that:
- (i) the Operator; and
 - (ii) any of Harvester's Customers,

are provided with adequate and appropriate information concerning the contents, properties and risks associated with the use of Stormwater and Re-use Water, including any information supplied by Sydney Water to Harvester for the purpose of provision to:

- (i) the Operator; or
 - (ii) any of Harvester's Customers.
- (h) Harvester must procure Harvester's Customers' acknowledgment and agreement to the acknowledgements and warranties contained in this clause 4 prior to making Re-Use Water available to Harvester's Customers.

4.5 Right to interrupt

- (a) Sydney Water may interrupt, postpone or limit the volume or rate at which Harvester may take Stormwater from the Stormwater Network at any time without notice.
- (b) Sydney Water is not required to provide an alternative supply of Stormwater to the Extraction Point if it takes action under clause 4.5(a).

5. Use and Management

5.1 Use of the Stormwater and Re-use Water

- (a) Harvester must not and must ensure that the Operator does not use or otherwise deal with the Stormwater other than for the purpose of treating it in the Facility to manufacture Re-use Water or for any other purpose permitted under this Agreement.
- (b) Harvester must not permit any third party, including Harvester's Customers, to take any Stormwater from Sydney Water's Stormwater Network without the prior written consent of Sydney Water.

5.2 Harvester must comply with all Laws

Harvester must at all times:

- (a) Comply with the terms of this Agreement;
- (b) Comply with all Laws, any Requirements and Guidelines; and
- (c) Obtain, maintain and comply with all Approvals;
- (d) Procure that Harvester's Customer(s):
 - (i) comply with all Laws, any Requirements and Guidelines; and
 - (ii) obtain, maintain and comply with all Approvals,

with respect to the taking, storage, use, treatment, transfer, sale and disposal of the Stormwater, the Re-use Water and any Residue.

5.3 Operation and maintenance of the Facility and the Connection Points

- (a) Harvester has sole responsibility for and control of all aspects of the construction, operation, maintenance, decommissioning and removal of the Extraction Point, the Facility, the Stormwater Discharge Point and the Sewer Discharge Point and associated infrastructure (other than the operation and maintenance of the Sydney Water Stormwater Networks and associated infrastructure, which is the responsibility of Sydney Water).
- (b) Harvester has sole responsibility for managing complaints from third parties about any flooding, odours or noise arising from Harvester's activities.
- (c) Harvester has sole responsibility for any Claims or Loss resulting from flooding, odours or noise arising from Harvester's activities.
- (d) Harvester has sole responsibility for any Claims or Loss resulting from flooding of its assets by Sydney Water.
- (e) Without limiting Sydney Water's rights under the Act, Harvester permits Sydney Water to access areas of land or infrastructure owned or controlled by Harvester for the purpose of constructing and maintaining the Stormwater Networks. Except in the case of an emergency (as determined by Sydney Water), Sydney Water will give Harvester at least [3] business days prior written notice of its intention to access such land or infrastructure.
- (f) Without limiting clause 8.5, when entering land or accessing property owned by the other party Harvester and Sydney Water must;
 - (i) Take all reasonable action to minimise interference; and
 - (ii) Make good any damage caused.

5.4 Alterations

- (a) Harvester must not make any alterations:
 - (i) To the Connection Points and associated infrastructure which would materially affect the design, construction or operation of the Sydney Water Stormwater Networks and associated infrastructure;
 - (ii) To any Sydney Water infrastructure.
 unless it:
 - (iii) Gives Sydney Water adequate prior notice of the proposed alteration; and
 - (iv) Obtains Sydney Water's prior consent; and
 - (v) Has obtained all Approvals, and any consents (including landowner's consents) required by Law, for any alterations; and
 - (vi) Complies with any conditions imposed on any such consent including those specified in any additional Stormwater Harvesting Notice of Requirements Letter issued to Harvester by Sydney Water in respect of the proposed alteration.
- (b) Harvester acknowledges and agrees that Sydney Water may require, acting

reasonably, amendments to be made to this Agreement before providing its consent to any alteration requested by Harvester under clause 5.4(a).

- (c) Except as provided by clause 5.4(a), if after it has satisfied the requirements of clause 3.2, Harvester proposes to make any alterations to the design, construction or operation of the Facility which could materially alter the volume or rate of Stormwater capable of being extracted or the quantity or composition of excess or treated Stormwater or Trade Waste Material capable of being discharged by the Facility, Harvester must give Sydney Water reasonable prior notice of the proposed alteration. Such notice must describe the technical details of the proposed alteration and its potential impacts on the capacity of the Facility in regards to the extraction of Stormwater, discharge of treated or excess Stormwater and discharge of Trade Waste Material.

5.5 Safety and environment

- (a) Harvester must:
 - (i) Ensure the safety, health and welfare of all persons who could be affected by the construction, operation or removal of the Connection Points or the Facility;
 - (ii) Independently identify, assess and control all safety and environmental risks associated with the construction, operation or removal of the Connection Points and the Facility;
 - (iii) If undertaking any work on or near the Connection Points or the Stormwater Networks ensure that that work is undertaken in compliance with all safety requirements imposed by Sydney Water;
 - (iv) Provide to Sydney Water appropriate information on the design and operation of the Connection Points to allow Sydney Water to assess the risks associated with working on or near those works;
 - (v) Ensure that all persons engaged in work on or near the Connection Points are appropriately qualified, skilled, trained and supervised;
 - (vi) Ensure that any activities it undertakes on or near the Connection Points, the Stormwater Networks or any land owned or occupied by Sydney Water are undertaken in a manner which protects the environment to the maximum extent possible;
 - (vii) Provide appropriate information on the nature and properties of the Stormwater and the risks associated with its use to any person likely to come into contact with the Stormwater as a result of Harvester's activities; and
 - (viii) Must conduct its activities under this Agreement in a good and workman-like manner and must not, by any act or omission, cause any damage to Sydney Water's property or the property of any third party.
- (b) Sydney Water and Harvester will jointly develop, agree on and implement an Emergency Management and Incident Reporting Plan (for the extraction of Stormwater, discharge of excess or treated Stormwater and discharge of Trade

Waste Material by Harvester) to identify each party's rights and responsibilities in the event of an incident or emergency arising from the extraction of Stormwater and discharges of excess or treated Stormwater or Trade Waste Material by Harvester. The Emergency Management and Incident Reporting Plan must:

- (i) Be finalised within **[90 days]** of the signing of this Agreement;
 - (ii) Be reviewed by both parties annually;
 - (iii) Be consistent with the provisions in this Agreement;
 - (iv) Specify that if an Incident occurs:
 - A. Sydney Water may take action to temporarily or permanently interrupt the flow of Stormwater in the Stormwater Networks;
 - B. Harvester must, as soon as it becomes aware, immediately notify Sydney Water and provide it with any details on the Incident which it requests; and
 - C. Sydney Water may, if it considers it necessary, issue instructions to Harvester or take other action to minimise the consequences of the Incident and Harvester must promptly comply with such instructions. Without limiting clause 8.5, to the extent that the Incident was caused or contributed to by Harvester, the Facility, the Connection Points, the Operator or their subcontractors, agents or employees or Harvester's Customers, Harvester must promptly comply with the instructions issued by Sydney Water at its own cost.
 - (v) Be developed as part of, consistent with, and incorporated into any system management plans that may be required for the Facility.
- (c) Sydney Water may at any time take any action in relation to the Connection Points or the supply of Stormwater that it considers necessary or desirable to protect its employees, contractors, members of the public or the environment (as determined in liaison with any relevant Authorities). Without limiting clause 5.7, to the extent that the requirement for action arises out of or as a consequence of an act or omission of Harvester, the Operator or their subcontractors, agents or employees or Harvester's Customers, the costs and expenses directly incurred by Sydney Water in the exercise of its rights under this clause 5.5(c) shall be paid by Harvester to Sydney Water on demand.

5.6 Stormwater Harvesting information and records

- (a) Harvester must provide Sydney Water with a notice that specifies the day on which it commences Stormwater extraction.
- (b) Harvester must keep a record of and annually supply information to Sydney Water regarding the volume of Re-use Water manufactured each year.

5.7 Sydney Water's rights

If Harvester fails to comply with any of its obligations under this Agreement within a reasonable time of being required to do so Sydney Water may take all reasonably required action itself and all costs associated with taking that action will be a debt due and payable by Harvester to Sydney Water on demand.

6. Trade Waste Consent and discharge to Stormwater Networks

6.1 Discharge to Stormwater Networks

- (a) Harvester must not deposit any Contamination or Residue into the Stormwater Networks or any other Sydney Water system.
- (b) Treated Stormwater may be discharged into the Stormwater Networks in accordance with:
 - (i) all Laws, including environmental Laws, Approvals, consents and Guidelines; and
 - (ii) the requirements specified in the Notice of Requirements Letter and Works Agreement.

6.2 Discharge of Trade Waste Material into the Sewer Network

- (a) Harvester may discharge Contamination, Residue or Trade Waste Material into the Sewer Network in accordance with the provisions of a Trade Waste Consent.
- (b) Harvester may undertake to enter into a Trade Waste Consent with Sydney Water on terms substantially the same as those set out in Appendix 2.

7. Fees, costs and expenses

7.1 Fees

- (a) Harvester must pay to Sydney Water:
 - (i) The Stormwater Harvesting Connection Fee, prior to the taking of any Stormwater;
 - (ii) The Stormwater Harvesting Maintenance Fee, each Month after the taking of Stormwater commences;
 - (iii) The Stormwater Harvesting Disconnection Fee upon termination of this Agreement;
 - (iv) Fees incurred in removal of the Extraction Point and Stormwater Discharge Point;
 - (v) Fees arising from the Trade Waste Consent in accordance with the Trade Waste Consent (if applicable), and
 - (vi) Any GST associated with any transactions contemplated by this Agreement as specified in clause 12.

- (b) Harvester is responsible for all costs associated with constructing, maintaining and removing the Connection Points and the Facility.

7.2 Payment Terms

Each of the Fees must be paid by Harvester within **[30 days]** of the date that Sydney Water renders a statement of account for that Fee.

7.3 Adjustment of the Fees

- (a) Subject to clause 7.3(b), the Fees from and including each CPI Review Date will be the Fee immediately before that CPI Review Date multiplied by the Current CPI and divided by the Previous CPI.
- (b) Despite any other provision of this Agreement, Sydney Water may by notice to Harvester vary any Fees specified in clause 7.1 if the NSW Independent Pricing and Regulatory Tribunal (“**IPART**”) makes a determination relevant to the means of calculation of that Fee.

7.4 Costs

Harvester is responsible for all costs associated with or arising out of its obligations contained in this Agreement.

8. Liability, risk and insurance

8.1 Insurance

- (a) During the Availability Period, Harvester must at its own cost, effect and maintain the following insurance:
 - (i) Public and products liability insurance for at least one hundred million dollars (\$100,000,000) as to any one occurrence in the period of insurance and in the annual aggregate for products liability or such other amount Sydney Water reasonably requires for each Claim;
 - (ii) before commencing the Stormwater Harvesting operation, Harvester must insure against its liability for death of or injury to persons employed or deemed to be employed by Harvester including all liabilities required to be insured by the *Workers Compensation Act 1987* (NSW). The insurance cover must be effected and maintained for a period ending when the Stormwater Harvesting operations (including rectification work) are completed. Harvester must ensure that Harvester and any contractors also insure themselves (and must require the contractors ensure that subcontractors or contractors engaged by them in connection with the works contemplated by this Agreement insure themselves) against all liabilities which the *Workers Compensation Act 1987* (NSW) requires them to insure against; and
 - (iii) other insurances required by Law or which Sydney Water reasonably requires.
- (b) Harvester must:

- (i) provide to Sydney Water all certificates of currency and any other information necessary to demonstrate the currency and adequacy of the insurance policies identified in 8.1(a);
- (ii) notify Sydney Water immediately if a policy is cancelled or if an event occurs which could prejudice any policy; and
- (iii) notify Sydney Water immediately if an event relating to this Agreement occurs which could give rise to a material Claim under:
 - A. the products liability policy; or
 - B. any other policy identified in 8.1(a) in connection with the Stormwater Harvesting operations or the performance of this Agreement.
- (c) The insurance specified in clauses 8.1(a)(i) and clause 8.1(a)(iii) must (to the extent permitted by Law):
 - (i) include Sydney Water as an insured, and also include:
 - A. a cross liability clause so that the cover applies to each insured party as though it was issued a separate policy;
 - B. a waiver of subrogation clause in which the insurer agrees to waive any rights of subrogation against any party insured by the policy;
 - (ii) Provide that the failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to the other insured;
 - (iii) Provide that any non-disclosure or misrepresentation by one insured does not prejudice the right of any other insured to claim on the policy.
- (d) Harvester shall ensure all insurance policies it is required to effect:
 - (i) are obtained from an insurer authorised by the Australian Prudential Regulatory Authority (“APRA”) or regulated by the Financial Services Authority in the United Kingdom or an insurer acceptable to Sydney Water; and
 - (ii) are on terms acceptable to Sydney Water and do not contain terms, conditions or exclusions detrimental to the cover required for the performance of the Agreement and contain provisions normally included in insurances for the performance of similar agreements.

8.2 Risk

All risk in respect of the design, construction, use and operation of, and of any Loss or damage to, the Connection Points and associated infrastructure and the Facility remains with Harvester.

8.3 Harvester's warranties

Harvester warrants that:

- (a) It is authorised to enter into and perform its obligations under this Agreement;
- (b) It has fully disclosed to Sydney Water all information which is material to the assessment by Sydney Water of the risks associated with permitting Harvester to extract the Stormwater and discharge Trade Waste Material;
- (c) It will ensure that the Connection Points and associated infrastructure and the Facility are designed, constructed, maintained and operated in a condition suitable for the treatment of the Stormwater, including the manufacture of Re-use Water and the disposal of excess or treated Stormwater or any by-products;
- (d) It has obtained and will comply with all Approvals, Laws including environmental Laws, consents and Guidelines required to undertake the activities contemplated by this Agreement; and
- (e) In entering into this Agreement, it has not relied on any representations by Sydney Water in respect of the subject matter of this Agreement (other than those contained in this Agreement).

8.4 Limitation of liability of Sydney Water

The methods and conditions of application and use of the Stormwater by Harvester are beyond the control of Sydney Water. Accordingly, the following limitations of liability apply:

- (a) All implied conditions and warranties except those which by Law cannot be excluded or modified are hereby excluded.
- (b) Pursuant to section 68A of the *Trade Practices Act 1974* (Cth), clause 8.4(c) applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that clause 8.4(c) does not apply if Harvester establishes that it is not fair or reasonable for Sydney Water to rely upon it.
- (c) Sydney Water's liability for breach of a condition or warranty implied into this Agreement by the *Trade Practices Act 1974* (other than a condition or warranty implied by section 69 of that Act) is limited:
 - (i) In the case of goods, to the replacement of the goods or the supply of equivalent goods; and
 - (ii) In the case of services, to any one of the following as determined by Sydney Water:
 - A. the supplying of the services again; or
 - B. the payment of the cost of having the services supplied again.

- (d) References in clauses 8.4(b) and 8.4(c) to sections of the *Trade Practices Act 1974* include all similar provisions in the relevant legislation of any State or Territory.
- (e) Sydney Water will not be liable to Harvester in respect of the commission of any tort, including negligence, other than to the extent that it causes:
 - (i) Damage to (but not loss of) property, in which case its liability is limited to the cost of repairing or replacing that property; or
 - (ii) Death or personal injury, in which case its liability is unlimited.
- (f) Other than as provided in clause 8.4(e), to the extent permitted by Law Sydney Water will not be liable to Harvester in any Claim for breach of contract, or the commission of any tort (including negligence) or otherwise for any Loss incurred or suffered, including:
 - (i) Any loss of profit, loss of revenue, loss of production, loss of use, loss of contract, loss of goodwill or credit, increased cost of working, loss of business reputation or future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, increased or wasted overhead costs, or any other economic or financial loss;
 - (ii) Any indirect or consequential loss;
 - (iii) Any loss of data; or
 - (iv) Any loss resulting from any liability (including for breach of contract or in negligence) of Harvester to any other person howsoever and whensoever arising.
- (g) Without limiting clause 8.4(a), the parties agree that the warranties provided by the *Sale of Goods Act 1923* (NSW) do not apply to this Agreement.
- (h) By reason of the matters acknowledged in clause 4.4(a) Sydney Water does not warrant the fitness of Stormwater for any particular purpose and Harvester shall not represent to any person that Sydney Water has made such a representation.

8.5 Indemnity and make good

- (a) Harvester indemnifies Sydney Water against:
 - (i) Injury (including death) or harm to any person; or
 - (ii) Any Loss, damage to property (including to the Stormwater Networks, other works of Sydney Water, or substances under the control of Sydney Water, or Stormwater treatment processes carried out by Sydney Water); or
 - (iii) Any Claims by third parties, including for economic loss (including Claims and demands made by a customer of Sydney Water),
 arising out of or as a consequence of:

- (iv) Any act or omission of Harvester, the Operator, Harvester's Customers or their sub-contractors, agents or employees;
- (v) The design, construction, maintenance or operation of the Connection Points and associated infrastructure or the Facility;
- (vi) The taking of Stormwater;
- (vii) The discharge of treated or excess Stormwater into the Stormwater Networks; or
- (viii) Any unauthorised discharge of Trade Waste Material, Residue or treatment by products to the Stormwater Networks by Harvester,

except to the extent that such Loss or Claim is caused by the wilful or negligent act or omission of Sydney Water, its agents, contractors or employees.

- (b) To the maximum extent permissible by Law, Harvester releases and indemnifies Sydney Water against any breaches of any Laws, Approvals or Requirements applicable to the Connection Points and associated infrastructure, the Facility or Harvester's or Harvester's Customers' use of the Stormwater.
- (c) Harvester is liable for and indemnifies Sydney Water against any Loss or Claim, to the extent it arises from:
 - (i) Sydney Water exercising its rights under clause 5.7; and
 - (ii) Harvester's default under this Agreement.
- (d) Any approval of, or input into, design of any of the Connection Points or the Facility or any inspection or approval given by Sydney Water in respect of the construction or operation of the Connection Points and associated infrastructure or the Facility, will not relieve Harvester of its obligations or responsibilities under this Agreement.

8.6 Release

Harvester releases Sydney Water from and agrees that Sydney Water is not liable for any liability, Loss, Claim, damages, costs and expenses arising from or incurred in connection with:

- (a) damage, Loss, injury or death unless it is caused by the negligent act or omission of Sydney Water; and
- (b) Sydney Water doing anything Sydney Water is permitted or obliged to do under this Agreement.

9. Disclosure of Information

The parties acknowledge and agree that the terms of this Agreement may be disclosed to any person.

10. Termination

10.1 Date of termination

Unless terminated earlier by Sydney Water or by Harvester in accordance with clause 10.2 this Agreement will terminate on the Termination Date.

10.2 Termination

- (a) Sydney Water may by notice to Harvester terminate this Agreement if:
 - (i) Harvester breaches this Agreement and does not remedy that breach within **[30 days]** of receiving a notice from Sydney Water to do so;
 - (ii) There is a material change in circumstances such that the further taking of Stormwater from the Stormwater Networks or discharging of Trade Waste Material into the sewer network or discharging excess or treated Stormwater into the Stormwater Networks presents a risk to:
 - A. human health or the environment, (as determined by Sydney Water in liaison with relevant Authorities);
 - B. Sydney Water's operations;or could give rise to a breach by Sydney Water of any Law or any Approval;
 - (iii) The Stormwater Network is damaged or otherwise becomes unsuitable for the taking of Stormwater by Harvester and Sydney Water does not consider it economical to reconstruct or upgrade that portion of the Stormwater Network to permit Harvester to continue to take the Stormwater;
 - (iv) Harvester suffers an Insolvency Event;
 - (v) Harvester:
 - A. Does not commence taking Stormwater from the Stormwater Network within **[2 years]** of the date of this Agreement; or
 - B. Does not take Stormwater from the Stormwater Network for a continuous period of more than **[2 years]**.
- (b) Harvester may terminate this Agreement by giving **[two months]** prior written notice to Sydney Water without providing reasons for such termination.

10.3 Consequences of termination

- (a) On the termination of this Agreement, Harvester must at its cost immediately:
 - (i) Remove the Connection Points and associated infrastructure;

- (ii) Restore the relevant portions of the Stormwater Networks to a condition which is satisfactory to Sydney Water and equivalent to its condition prior to the date of this Agreement; and
 - (iii) Pay all amounts due to Sydney Water under clause 7 of this Agreement.
- (b) Where Sydney Water terminates this Agreement pursuant to clause 10.2(a)(i) or 10.2(a)(iv) the parties' remedies, rights and liabilities will be the same as they would have been at Law had Harvester repudiated the Agreement and Sydney Water elected to treat the Agreement as at an end and recover damages.

10.4 Extension

If this Agreement has not been terminated prior to the end of the Availability Period, the parties will negotiate in good faith for an extension of this Agreement.

11. General

11.1 Disputes

- (a) The parties to this Agreement will co-operate, so far as is reasonably practicable, to avoid a dispute.
- (b) If a dispute arises under this Agreement, the representatives of Sydney Water and Harvester nominated in Schedule 1 will negotiate to resolve it.
- (c) If a dispute remains unresolved it will be referred, in the case of Sydney Water, to the General Manager and then the Chief Executive Officer and, in the case of Harvester, to a senior management representative that must be notified for this purpose.
- (d) If, after referral of a dispute to the chief executive officers, senior management representative or their delegates (as the case may be) of the parties, one chief executive officer is of the opinion that the dispute cannot be resolved, then:
 - (i) the chief executive officers may appoint or arrange for the appointment of a mediator to assist the parties to resolve the dispute, and, if unresolved,
 - (ii) Harvester will be advised to refer the matter to the Energy and Water Ombudsmen ("EWON") for independent resolution.

11.2 Notices

All communications (including notices, consents, Approvals, requests and demands) under or in connection with this Agreement:

- (a) Must be in writing;
- (b) Must be addressed as set out in Schedule 1 (or as otherwise notified by that party to each other party from time to time)

- (c) Must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) Must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 11.2(b); and
- (e) Are taken to be received by the addressee:
 - (i) In the case of prepaid post sent in Australia to an address in Australia, on the third working day after the date of posting;
 - (ii) In the case of prepaid post sent in Australia to an address outside Australia or sent from outside Australia to an address in Australia, on the fifth working day after the date of posting by airmail;
 - (iii) In the case of fax, at the local time in the place to which that communication is sent equivalent to the transmission time shown on the transmission confirmation report produced by the fax machine from which that communication is sent, unless that local time is outside working hours, when that communication is taken to be received at 9.00 am on the next working day; and
 - (iv) In the case of delivery by hand, on delivery at the address of the addressee as provided in clause 11.2(b), unless that delivery is made outside working hours, when that communication is taken to be received at 9.00 am on the next working day, and where "working day" means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered and "working hours" means between 9.00 am and 5.00 pm on a working day.

11.3 Governing law, jurisdiction

- (a) This Agreement is governed by and must be construed according to the Law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) 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
 - (ii) 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 11.3(b)(i).

11.4 Amendments

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

11.5 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.

11.6 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.

11.7 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.

11.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of each other party.

11.9 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

11.10 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.

11.11 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.

11.12 Stamp duties

Harvester:

- (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;
- (b) Indemnifies Sydney Water against any liability arising from failure to comply with clause 11.12(a); and
- (c) Is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

11.13 Indemnities

- (a) Each indemnity in this deed 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.

11.14 No Partnership

Nothing in this Agreement will be construed or interpreted as constituting the relationship between Sydney Water on the one hand and Harvester on the other hand as that of partners, joint venturers or any other fiduciary relationship.

11.15 Survival

Without limiting clause 11.13, clauses 5.7, 7, 10.3 and 12 survive termination, completion or expiration of this Agreement.

12. GST

12.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.

12.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

12.3 GST payable

If GST is payable in relation to a supply made under or in connection with this Agreement then:

- (a) Any consideration to be provided for that supply under this Agreement is exclusive of GST;
- (b) 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 other consideration is to be first provided for that supply; and
- (c) The Supplier must provide a tax invoice to the Recipient no later than 7 days after the day on which the Supplier receives the additional amount.

12.4 Variation of GST

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 12.3 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the 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. Any payment, credit or refund under this clause 12.4 is deemed to be a payment, credit or refund of the additional amount payable under clause 12.3. If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply no later than 7 days after becoming aware of the adjustment.

Schedule 1 – Particulars

ITEM		
1	Termination Date	[date]
2	Site for which Stormwater Harvesting and any Trade Waste Consent is granted.	Description of site including name, location and ownership. Drawings as attached in Appendix 1.
3	Property Number:	[Insert]
4	Extraction Point	Description of extraction point location and physical configuration. Drawings as attached in Appendix 1.
5	Maximum Metered Extraction Volume per annum from the Stormwater Network	A maximum extraction volume of __ML/year]
6	Maximum Extraction Rate based on physical geometry of offtake configuration	A maximum extraction rate of __L/s]
7	Proposed Uses	[Insert Proposed uses eg. municipal irrigation of XYZ Golf Club with uncontrolled public access as described in [guidelines], specify if sale to third parties is proposed]
8	Stormwater Discharge Point	Description of discharge point location and physical configuration. Drawings as attached in Appendix 1.
9	Sewer Discharge Point	As specified in the Trade Waste Consent Number:]
10	Maximum Daily Returns to the Sewer Network	As specified in the Trade Waste Consent Number:]
11	Representative of Harvester	[Position, name and contact details]
12	Representative of Sydney Water	[Position, name and contact details]
13	Harvester's address for notices	[Address details]
14	Sydney Water's address for notices	[Address details]

End of Schedule 1

Schedule 2 – Fees

The following fees except as adjusted under clause 7.3 are payable by Harvester to Sydney Water:

Item	Fee	Amount	Comments
1	Stormwater Harvesting Connection Fee	[\$ insert]	Payment of the Connection Fee is condition precedent to the Agreement
3	Stormwater Harvesting Maintenance Fee	[\$ insert]	Payable monthly for each month of the Availability Period
4	Stormwater Harvesting Disconnection Fee	[\$ insert]	Payable upon termination of this Agreement.
5	Trade Waste Material Fees	As specified in Trade Waste Consent Number: _____	

Note: All fees may be subject to IPART determination.

END OF SCHEDULE 2

Appendix 1 - Drawings

Appendix 2 – Trade Waste Consent

Execution

Executed as an agreement.

Date:

Signed for and on behalf of **Sydney Water Corporation** in the presence of:

.....
Signature of witness

.....
Signature

.....
Name of witness (print)

.....
Name and position (print)

Signed for and on behalf of **Harvester** in the presence of:

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Name of authorised person (print)