

Allens > < Linklaters

Bulk Water Supply Agreement

Melbourne Water Corporation
and
Barwon Region Water Corporation

Allens
101 Collins Street
Melbourne VIC 3000 Australia
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

© Copyright Allens, Australia 2012

Table of Contents

| | |
|--|-----------|
| 1. Definitions and Interpretation | 2 |
| 1.1 Definitions | 2 |
| 1.2 Interpretation | 4 |
| 1.3 Inconsistency with Bulk Entitlement | 5 |
| 2. Term of Agreement | 5 |
| 3. Obligations of Melbourne Water | 5 |
| 3.1 To supply water | 5 |
| 3.2 To recover charges | 6 |
| 3.3 To provide a Customer Report | 6 |
| 4. Obligations of Barwon Water | 6 |
| 4.1 To receive water | 6 |
| 4.2 To pay charges | 6 |
| 5. Joint obligations | 6 |
| 5.1 To co-operate and liaise | 6 |
| 5.2 Examples of obligations | 6 |
| 5.3 Five yearly review | 7 |
| 6. Water supply volume | 7 |
| 7. Water flow | 7 |
| 7.1 Maximum Flow Rate | 7 |
| 8. Water pressure | 7 |
| 8.1 Water pressure for normal operation | 7 |
| 8.2 Failure to meet the Water Pressure Service Level | 7 |
| 8.3 Determining compliance | 8 |
| 9. Water quality | 8 |
| 9.1 Health related standards | 8 |
| 9.2 Aesthetic water quality standards | 9 |
| 9.3 Water quality standards beyond the Interface Point | 9 |
| 9.4 Limit on liability | 9 |
| 9.5 Water quality management | 10 |
| 10. Failure to comply with flow, pressure or quality requirements | 11 |
| 10.1 Failure by Melbourne Water | 11 |
| 10.2 Failure by Barwon Water | 11 |
| 11. Supply during metropolitan restrictions and forecasting | 11 |
| 11.1 Water Allocation during metropolitan restrictions | 11 |
| 11.2 Water Allocation notification | 12 |
| 11.3 Forecasting expected water usage | 12 |
| 12. Emergency supply | 12 |
| 12.1 Emergency supply | 12 |
| 12.2 Emergency operation | 13 |
| 13. Planned disruptions to supply | 13 |

| | |
|--|-----------|
| 14. Damage caused between Water Supply Systems | 14 |
| 15. Measurement | 15 |
| 15.1 Billing volume | 15 |
| 15.2 Meter reading | 15 |
| 16. Protocols | 15 |
| 17. Notification to take supply from Interface Point | 16 |
| 18. Charges for Water Supply Services | 16 |
| 18.1 Charges | 16 |
| 18.2 Invoicing of charges | 16 |
| 18.3 What an invoice must contain | 17 |
| 18.4 When invoice must be paid and method of payment | 17 |
| 18.5 Interest payable | 17 |
| 18.6 Adjustments to billed volumes | 17 |
| 18.7 Adjustments to charges incorrect registration | 18 |
| 18.8 Disputes about amounts payable | 18 |
| 19. Appointment and authority of Principal Representatives | 19 |
| 19.1 Appointment | 19 |
| 19.2 Authority | 19 |
| 20. Appointment and authority of Operating Representatives | 19 |
| 20.1 Appointment | 19 |
| 20.2 Authority | 19 |
| 21. Force Majeure | 20 |
| 21.1 Event of Force Majeure | 20 |
| 21.2 Suspension of obligations | 20 |
| 21.3 Remedy of an Event of Force Majeure | 20 |
| 21.4 Mitigation | 20 |
| 21.5 No requirement to settle labour dispute | 20 |
| 22. Confidentiality | 20 |
| 22.1 Confidentiality | 20 |
| 22.2 Permitted disclosures | 21 |
| 22.3 Permitted disclosure to an employee, contractor or consultant | 21 |
| 22.4 Permitted disclosure required by law or Relevant Minister | 21 |
| 22.5 Breach of confidentiality | 21 |
| 22.6 Disclosure to Melbourne's retailers | 22 |
| 22.7 Survival | 22 |
| 22.8 Definition of confidential information | 22 |
| 23. Dispute resolution | 22 |
| 23.1 Dispute under the Bulk Entitlement | 22 |
| 23.2 When a dispute arises | 22 |
| 23.3 Reference to the panel | 22 |
| 23.4 Mediation | 23 |
| 23.5 Arbitration | 23 |
| 23.6 Question of law | 24 |
| 23.7 Urgent injunctive relief | 24 |

| | | |
|------------|--|-----------|
| 23.8 | Continuation of rights and obligations | 24 |
| 24. | Termination | 24 |
| 25. | Notices | 24 |
| 25.1 | Notice by hand, post or fax | 24 |
| 25.2 | Notices sent by email | 25 |
| 25.3 | Receipt of Notices sent by email | 26 |
| 25.4 | Notices in accordance with Protocol | 26 |
| 26. | GST | 26 |
| 26.1 | GST to be added to amounts payable | 26 |
| 26.2 | Liability net of GST | 26 |
| 26.3 | Adjustment events | 26 |
| 26.4 | Cost exclusive of GST | 27 |
| 26.5 | GST obligations to survive termination | 27 |
| 26.6 | Definitions | 27 |
| 27. | Publicity | 27 |
| 28. | Governing law and jurisdiction | 27 |
| 29. | Amendments | 27 |
| 30. | Costs | 27 |
| 31. | Giving effect to this Agreement | 27 |
| 32. | Waiver of rights | 28 |
| 33. | No Merger | 28 |
| 34. | Operation of Agreement | 28 |
| 35. | Operation of Indemnities | 28 |
| 36. | Survival | 28 |
| 37. | Counterparts | 28 |
| | Schedule 1 | 30 |
| | Plan showing the location of the Interface Point, Monitoring Point, Billing Meter, Barwon Water Pumping Station and Cowies Hill Tank | 30 |
| | Schedule 2 | 31 |
| | Supply details | 31 |
| 1. | Item 1 Water volume | 31 |
| 2. | Item 2 Water flow | 31 |
| 3. | Item 3 Water Pressure Service Level | 31 |
| | Schedule 3 | 32 |
| | Water Quality Standards | 32 |
| 1. | Item 1 Description of water quality Monitoring Point | 32 |
| 2. | Item 2 Disinfection | 32 |
| 3. | Item 3 Health related standards | 32 |
| 4. | Item 4 Aesthetic water quality standards | 33 |
| 5. | Item 5 Testing frequency for health related standards | 34 |

| | |
|-----------------|---|
| Date | 27 JUNE 2013 |
| Parties | |
| 1. | Melbourne Water Corporation of 990 La Trobe Street, Docklands, Victoria (<i>Melbourne Water</i>) |
| 2. | Barwon Region Water Corporation of 61-67 Ryrie Street, Geelong, Victoria (<i>Barwon Water</i>) |
| Recitals | |
| A | Barwon Water is an Authority within the meaning of the Water Act and is empowered to carry out any functions under the Water Act in relation to water supply within the area of its authority. |
| B | Melbourne Water's functions under section 171B of the Water Act include functions in relation to the supply of water to holders of bulk entitlements to water in the works of Melbourne Water granted under Division 1 of Part 4 of the Water Act. |
| C | On 14 October 2010 the Bulk Entitlement (Melbourne Headworks System – Barwon Water) Order 2010 came into effect. The Bulk Entitlement is made under sections 42 and 43 of the Water Act and grants a bulk entitlement to Barwon Water to take and use water from the Melbourne headworks system, including water from the Victorian Desalination Project. |
| D | Clause 9 of the Bulk Entitlement requires Barwon Water and Melbourne Water (as the Bulk Transfer System Operator) to endeavour to agree on operational arrangements to enable Barwon Water to take water under the Bulk Entitlement. |
| E | The parties wish to: <ul style="list-style-type: none"> (a) set out the operational arrangements required under clause 9 of the Bulk Entitlement; (b) clarify their respective rights and obligations in relation to each other; (c) establish clear bulk water supply objectives from Melbourne Water and Barwon Water in relation to the supply of water under the Bulk Entitlement; and (d) establish the basis for future cooperation in ensuring that appropriate and sufficient measures are taken to achieve these objectives, and have agreed to do so in this Agreement. |

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Affected Party means, in the case of an Event of Force Majeure, the party affected by that Event of Force Majeure.

Agreement means this Bulk Water Supply Agreement, including all Schedules and Annexures.

Annual Volume means the actual volume of water available to Barwon Water to take in the relevant year pursuant to the Bulk Entitlement.

Barwon Water Pumping Station means the Barwon Water pumping station shown on the plan set out in Schedule 1.

Billing Meter means the meter located near the Interface Point used to measure billing volumes when Barwon Water is taking water supply from Melbourne Water, as shown on the plans set out in Schedule 1.

Bulk Entitlement means the Bulk Entitlement (Melbourne Headworks System - Barwon Water) Order 2010 made under sections 42 and 43 of the Water Act.

Business Day means any day except a Saturday, Sunday or a public holiday in Geelong or Melbourne.

Commencement Date means the date on which the last party executes this Agreement or such other date as agreed in writing by the parties.

Consideration has the meaning given by the GST Law.

Cowies Hill Tank means Melbourne Water's Cowies Hill tank, as shown on the plan set out in Schedule 1.

Customer Report means the report referred to in clause 3.3.

Emergency means any event that has or may have an adverse impact on a party and which:

- (a) is outside the normal operating arrangements of Barwon Water and Melbourne Water, including for the avoidance of doubt any event which results in Melbourne Water being unable, despite using reasonable endeavours, to replenish the water level in the Cowies Hill Tank to its full supply level at least once every 24 hours; or
- (b) could not reasonably be predicted.

Entitlement Volume has the meaning given in the Bulk Entitlement (and as set out in Item 1 of Schedule 2).

ESC's Melbourne Water Determination means the most recent final determination made by the Essential Services Commission under the *Essential Services Commission Act 2001* (Vic) to regulate prices charged by Melbourne Water for bulk water services.

Event of Force Majeure means an event or cause beyond the reasonable control of the Affected Party, including:

- (a) act of God, lightning, storm, flood, fire, earthquake or any other natural disaster, explosion or epidemic;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection or civil commotion;
- (d) the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
- (e) inability to obtain or delay in obtaining any necessary approval, permit or other authority from any Parliament or Government or Governmental agency.

Flow Allocation Point means a flow allocation point specified at Item 2(b) of Schedule 2 or installed in accordance with clause 8.3.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

HGL means hydraulic grade line.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Interface Point means the point in Melbourne Water's Water Supply System between the Cowies Hill Tank and the Barwon Water Pumping Station where asset ownership transfers from Melbourne Water to Barwon Water, as shown on the plan set out at Schedule 1.

Maximum Flow Rate means the maximum instantaneous flow rate at which Barwon Water is permitted to extract water at the Interface Point, as set out in Item 2(a) of Schedule 2.

Melbourne headworks system means Thomson, Upper Yarra, Maroondah, O'Shannassy, Sugarloaf, Silvan, Cardinia, Toorourrong, Yan Yean, Greenvale and Tarago Reservoirs and the associated weirs, tunnels, transfer conduits, treatment plants and associated water supply works owned by Melbourne Water, and includes the water harvested by the headworks and sourced from the Victorian Desalination Project.

Melbourne retailers means any or all of:

- (a) City West Corporation, ABN 70 066 902 467;
- (b) South East Water Corporation, ABN 89 066 902 547; and
- (c) Yarra Valley Water Corporation ABN 93 066 902 501.

Melbourne Supplied System means those parts of Barwon Water's water reticulation system connected to the Interface Point and capable of receiving water from the Interface Point.

ML means megalitre.

Monitoring Point means the monitoring point for water quality described in Item 1 of Schedule 3 and shown on the plan set out in Schedule 1.

Nominee has the meaning given in clause 25.2.

Operating Representative means a party's operating representative appointed in accordance with clause 20

Pressure Monitoring Point means the pressure monitoring point specified at Item 3(b) of Schedule 2 or installed in accordance with clause 8.3.

Principal Representative means a party's principal representative appointed in accordance with clause 19.

Statement of Obligations means the statement of obligations issued by the Minister in respect of the relevant party, pursuant to section 4I of the *Water Industry Act 1994* (Vic).

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Taxes means accommodation taxes, diesel fuel rebate, financial institutions duty, debits tax, sales taxes, excise duties, stamp duties and customs duties.

Totalised in relation to a Billing Meter reading means the total recorded volume of water that has passed through the relevant Billing Meter during the relevant time period.

UCL means upper confidence limit.

Victorian Desalination Project means the construction and carrying out of the works, facilities and services and all ancillary and incidental activities associated with the development and operation of a seawater desalination plant in the Bass Coast region.

Water Act means the *Water Act 1989* (Vic).

Water Allocation has the meaning given in the Bulk Entitlement.

Water Plan means a water plan to be submitted to the Essential Services Commission in accordance with the Statement of Obligations.

Water Pressure Service Level has the meaning set out in clause 8.1.

Water Supply Service means the obligation imposed on Melbourne Water in clause 3.1.

Water Supply System means the reservoirs (and associated weirs, tunnels, transfer conduits and treatment plants), water transfer systems and associated water supply works of a party.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (b) the singular includes the plural and conversely.
- (c) if a word or phrase is defined, its other grammatical forms have the corresponding meaning.
- (d) a reference to a person, corporation, trust, partnership an incorporated body or other entity includes any of them and any executor, administrator or successor in law of the person.
- (e) a reference to a clause or Schedule is a reference to a clause or a Schedule to this Agreement.
- (f) a reference to an agreement or document including, a reference to this Agreement is to the Agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Agreement or that other Agreement or document.
- (g) a reference to a party to this Agreement or another Agreement or document includes the party's successors and permitted substitutes or assigns and, where applicable, the party's legal personal representatives.
- (h) a reference to legislation or to a provision of legislation includes modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) a reference to a week is a reference to five Business Days.

1.3 Inconsistency with Bulk Entitlement

To the extent of any inconsistency between the parties' obligations under the Bulk Entitlement and this Agreement, the obligations under the Bulk Entitlement prevail.

2. Term of Agreement

This Agreement commences on the Commencement Date and continues until terminated in accordance with clause 24.

3. Obligations of Melbourne Water

3.1 To supply water

Melbourne Water must, in accordance with and subject to this Agreement, provide Barwon Water with a supply of water:

- (a) at the volume determined under clause 6;
- (b) at the pressure determined under clause 8; and
- (c) at the quality determined under clause 9.

3.2 To recover charges

Melbourne Water may recover from Barwon Water any charges or interest due to Melbourne Water under clause 4.2.

3.3 To provide a Customer Report

- (a) Subject to clause 3.3(b), each month (at a time agreed between the parties), Melbourne Water must give Barwon Water a report on Melbourne Water's performance of its obligations under this Agreement in the preceding month (including details of any failure to comply with clause 8 or clause 9 of this Agreement) and details of Melbourne Water's performance against the aesthetic water quality standards specification in Item 4 of Schedule 3 (a **Customer Report**).
- (b) Melbourne Water is only required to provide Barwon Water with a Customer Report for months during which Barwon Water receives water supplied by Melbourne Water under this Agreement.

4. Obligations of Barwon Water

4.1 To receive water

Barwon Water may, in accordance with and subject to this Agreement, receive water supplied by Melbourne Water.

4.2 To pay charges

Barwon Water must pay to Melbourne Water charges and interest determined, calculated and invoiced in accordance with clause 18.

5. Joint obligations

5.1 To co-operate and liaise

Each party must co-operate and liaise fully with the other to ensure that this Agreement is implemented effectively.

5.2 Examples of obligations

For example, the parties must co-operate and liaise fully:

- (a) to plan for emergency supplies from Barwon Water's system in the event of an Emergency in Melbourne Water's system;
- (b) to agree on and adopt any protocol referred to in clause 16;
- (c) to resolve any difficulties which may arise in implementing this Agreement because of any legal or regulatory right or obligation of a party which may conflict with a provision of this Agreement;
- (d) to allow each party to comply with its statutory and contractual rights and obligations to other persons;

- (e) to minimise any risks to persons, equipment or the environment which may arise in supplying water under this Agreement; and
- (f) to review and, if necessary to amend, this Agreement in accordance with clauses 5.3, 9.1(b) and 29.

5.3 Five yearly review

- (a) The parties will carry out a review of this Agreement including the Schedules, to consider consistency with existing and proposed operating arrangements and requirements and such other matters agreed by the parties, at least once every five years from the Commencement Date.
- (b) Where the parties are required to submit Water Plans, the parties will ensure that the review referred to in paragraph (a) commences at least 12 months before either party's draft Water Plan is due to be submitted

6. Water supply volume

Subject to this Agreement and the Bulk Entitlement:

- (a) Melbourne Water must make available for supply to Barwon Water; and
- (b) Barwon Water is entitled to take and use,

a volume of water sourced from the Melbourne headworks system, equivalent to the Annual Volume, each financial year.

7. Water flow

7.1 Maximum Flow Rate

The flow rates for water taken by Barwon Water at the Interface Point must not exceed the Maximum Flow Rate.

8. Water pressure

8.1 Water pressure for normal operation

Subject to clause 8.2, Melbourne Water will use reasonable endeavours to provide water to Barwon Water at the Interface Point at the water pressure level set out at Item 3 of Schedule 2 (the **Water Pressure Service Level**).

8.2 Failure to meet the Water Pressure Service Level

The parties acknowledge and agree that a failure by Melbourne Water to meet the Water Pressure Service Level is not a breach of this Agreement if the failure is due to:

- (a) an Emergency;

- (b) the aggregate demand from Melbourne retailers causing the HGL at the Cowies Hill Tank to reach 62.8m (Australian Height Datum) or below.¹

8.3 Determining compliance

- (a) Melbourne Water must install, maintain and operate each Pressure Monitoring Point.
- (b) Melbourne Water may install, maintain and operate a measuring device at any Flow Allocation Point.
- (c) Melbourne Water may, with the written consent of Barwon Water (which is not to be unreasonably withheld), install and have access to, a Pressure Monitoring Point or a Flow Allocation Point on assets belonging to Barwon Water, where the Point will measure the pressure or flow of water supplied to Barwon Water.
- (d) Melbourne Water must provide Barwon Water:
 - (i) with instantaneous access to data recorded by Melbourne Water; and
 - (ii) access to all accumulated data concerning measurements taken, at each Pressure Monitoring Point and Flow Allocation Point, through Melbourne Water's SCADA system, to the extent that such data is available to Melbourne Water.
- (e) Barwon Water may, with the written consent of Melbourne Water (which is not to be unreasonably withheld) and at Barwon Water's expense, install and have access to, measuring devices on assets belonging to Melbourne Water.
- (f) Barwon Water must not unreasonably withhold permission for Melbourne Water to have:
 - (i) instantaneous access to data recorded by Barwon Water's SCADA system; and
 - (ii) access to all accumulated data concerning measurements taken at Barwon Water's monitoring points,when Melbourne Water requests such access.

9. Water quality

9.1 Health related standards

- (a) Melbourne Water must supply water at the Interface Point which:
 - (i) meets the requirements of the health standards specified at Item 3 of Schedule 3; and

¹ During high demand periods (e.g. hot weather periods), Melbourne Water may be required to shut-off supply to Barwon Water to enable it to continue to meet its supply obligations to City West Water. If the HGL at the Cowies Hill Tank reaches 62.8 (AHD) or below, an 'interlock' between the Barwon Water Pumping Station and the Cowies Hill Tank will automatically restrict supply to Barwon Water.

- (ii) is disinfected to the standard specified at Item 2 of Schedule 3.
- (b) If the *Safe Drinking Water Regulations 2005 (Vic)* are revoked, amended or replaced the parties will, as soon as practicable, meet to review and endeavour to agree appropriate changes to Schedule 3.

9.2 Aesthetic water quality standards

- (a) Melbourne Water will use its best endeavours to supply water at the Interface Point in accordance with the aesthetic water quality standards specified at Item 4 of Schedule 3.
- (b) During an Emergency Melbourne Water and Barwon Water can, by mutual agreement, vary the aesthetic standards to optimise the operation of either party's Water Supply System.
- (c) During an Emergency, Melbourne Water will not have breached this Agreement if, despite its reasonable endeavours (taking into account the Emergency circumstances and its operational demands including to Melbourne retailers), it cannot supply water at the Interface Point at the aesthetic water quality standards referred to in clause 9.2(a) or as agreed under clause 9.2(b).

9.3 Water quality standards beyond the Interface Point

- (a) Subject to Melbourne Water complying with its water quality obligations at the Interface Point (in clauses 9.1 and 9.2), Barwon Water is responsible for the quality of water supplied by Barwon Water to its customers.
- (b) Melbourne Water is not responsible for water quality (including microbiological, physical, biological, chemical, taste or odour) beyond the Interface Point.
- (c) Barwon Water must indemnify and at all times keep Melbourne Water fully indemnified against all and any claims, losses, liabilities and expenses which Melbourne Water may suffer or incur directly arising out of, or related in any way to, a change in the quality of water beyond the Interface Point, that is caused or contributed to by a breach of this Agreement by Barwon Water or by Barwon Water's negligence or wilful misconduct, except to the extent that the loss, liability or expense was incurred as a result of the negligence of Melbourne Water.
- (d) Melbourne Water must indemnify and at all times keep Barwon Water fully indemnified against all and any claims, losses, liabilities and expenses which Barwon Water may suffer or incur directly arising out of, or related in any way to, the quality of water supplied by it to the Interface Point that is caused or contributed to by a breach of this Agreement by Melbourne Water or by Melbourne Water's negligence or wilful misconduct, except to the extent that the loss, liability or expense was incurred as a result of the negligence of Barwon Water.

9.4 Limit on liability

Notwithstanding any other provision of this Agreement, a party must not make a claim against the other party under this Agreement to the extent that the subject of the claim relates to the fact that the party making the claim or any other person has lost goodwill,

profits, income or possible business or is required to make payment of liquidated sums, penalties or damages under any agreement and neither party will be liable for any other indirect or consequential loss.

9.5 Water quality management

- (a) If Barwon Water measures a degradation in water quality which may originate from Melbourne Water's Water Supply System, Barwon Water must notify Melbourne Water of the problem immediately.
- (b) The parties must use their reasonable endeavours to work towards resolving matters notified under clause 9.5(a) or clause 10.1, to minimise the impact on customers of Barwon Water.
- (c) Melbourne Water will monitor:
 - (i) aesthetic water quality for the parameters and at the corresponding frequencies set out in Item 4 of Schedule 3 at the Monitoring Point and/or such other monitoring point or points representative of the quality of water supplied to Barwon Water; and
 - (ii) health related water quality for the parameters and at the corresponding frequencies set out in Item 5 of Schedule 3 at the Monitoring Point,and collect and provide to Barwon Water data for each of those parameters against the corresponding standards set out in Schedule 3.
- (d) Melbourne Water must provide Barwon Water:
 - (i) with instantaneous access to data recorded by Melbourne Water; and
 - (ii) access to all accumulated data concerning samples and analyses undertaken,at the Monitoring Point and other monitoring points and through Melbourne Water's SCADA System representative of the quality of water supplied to Barwon Water, to the extent that such data is available to Melbourne Water, in relation to the following indicators of water quality:
 - (A) Flow;
 - (B) Turbidity;
 - (C) pH;
 - (D) Chlorine residual; and
 - (E) Fluoride.
- (e) Melbourne Water must set out in each Customer Report, and in any other report which Barwon Water reasonably requests:
 - (i) results of sampling and analysis at monitoring points representative of the quality of water supplied to Barwon Water;

- (ii) the annual performance results at monitoring points representative of the quality of water supplied to Barwon Water for the preceding 12 months, for each of the water quality standards referred to in clauses 9.1 and 9.2; and
 - (iii) results of calibration tests for water quality monitoring instruments.
- (f) Melbourne Water must refer to Barwon Water any enquiry about water supplied by Barwon Water.

10. Failure to comply with flow, pressure or quality requirements

10.1 Failure by Melbourne Water

If:

- (a) Melbourne Water becomes aware of a failure to comply with its obligations under clause 8 or clause 9.1, Melbourne Water must give Barwon Water immediate notice of the failure; and
- (b) Barwon Water becomes aware of a failure by Melbourne Water to comply with its obligations under clause 8 or clause 9.1, Barwon Water must give Melbourne Water immediate notice of the failure,

and Melbourne Water must take all action necessary to comply with clauses 8 and 9.1 as soon as possible (having regard to its other operational demands including to Melbourne retailers).

10.2 Failure by Barwon Water

If:

- (a) Barwon Water becomes aware of a failure to comply with its obligations under clause 7, Barwon Water must give Melbourne Water immediate notice of that failure; and
- (b) Melbourne Water becomes aware of a failure by Barwon Water to comply with its obligations under clause 7, Melbourne Water must give Barwon Water immediate notice of the failure,

and Barwon Water must take all action necessary to comply with clause 7 as soon as possible and provide Melbourne Water with a report on the failure no later than one month from the date of the failure.

11. Supply during metropolitan restrictions and forecasting

11.1 Water Allocation during metropolitan restrictions

The parties acknowledge that pursuant to clause 8 of the Bulk Entitlement, if:

- (a) the customers of the Melbourne retailers are subject to water restrictions; and
- (b) as a consequence of the restrictions on Melbourne retailers' customers, the Melbourne retailers decide to reduce the supply of water to Barwon Water,

Barwon Water must accept a restriction in supply consistent with the Water Allocation policy set out in sub-clauses 8.2 to 8.4 of the Bulk Entitlement and the Annual Volume is thereby adjusted to correspond with the Water Allocation for the relevant year.

11.2 Water Allocation notification

The parties acknowledge and agree that the notification process set out in clause 11.3 applies at all times, whether or not the Melbourne retailers' customers are subject to water restrictions, and whether or not Barwon Water is subject to a restriction in supply pursuant to the Water Allocation policy set out in clause 8 of the Bulk Entitlement.

11.3 Forecasting expected water usage

- (a) By 1 August every year Barwon Water must provide to Melbourne Water written notification of:
 - (i) its forecast expected water usage for each month of the next financial year; and
 - (ii) its forecast expected water usage for each of the 5 financial years following the next financial year.
- (b) By 1 January every year Barwon Water must provide to Melbourne Water written notification of:
 - (i) an update of the forecast Barwon Water provided to Melbourne Water in accordance with clause 11.3(a)(i) in the previous calendar year;
 - (ii) an update of the forecast Barwon Water provided to Melbourne Water in accordance with clause 11.3(a)(ii) in the previous calendar year; and
 - (iii) planned assignments of its Annual Volume for the next financial year.

12. Emergency supply

12.1 Emergency supply

If, as the result of an Emergency, Barwon Water reasonably requires a supply or increase in supply of water urgently and cannot, despite using its best endeavours, comply with clause 17 or any other notification obligation to Melbourne Water:

- (a) Barwon Water:
 - (i) may commence to take the water immediately, subject to clauses 6 and 7.1; and
 - (ii) must inform Melbourne Water as soon as practicable of Barwon Water's intentions regarding the Emergency supply to enable Melbourne Water to make the necessary operational arrangements for Barwon Water to take water;
- (b) notwithstanding clause 12.1(a), Barwon Water must use all reasonable endeavours to notify Melbourne Water of its intention to start taking water as early as possible before it starts to take the water under clause 12.1(a), or if that is not possible,

notify Melbourne Water that it has commenced to take the water as soon as possible after doing so; and

- (c) Melbourne Water must make all reasonable efforts to meet the Water Pressure Service Level as quickly as reasonably practicable.

12.2 Emergency operation

- (a) Notwithstanding any other clause of this Agreement, in the event of an Emergency in Melbourne Water's Water Supply System, Melbourne Water may limit or cease the supply of water to Barwon Water, including by shutting down the Barwon Water Pumping Station.
- (b) Where practicable, Melbourne Water must notify Barwon Water before Melbourne Water exercises its right under clause 12.2(a).
- (c) Barwon Water must comply with any reasonable request from Melbourne Water to cooperate with Melbourne Water to enable water supply to be limited or ceased in Emergencies.
- (d) If Melbourne Water exercises its rights under clause 12.2(a), Melbourne Water must take reasonable steps to reinstate the supply of water as soon as reasonably practicable.

13. Planned disruptions to supply

- (a) A party may require a temporary alteration or interruption to the Water Supply Service where the alteration or interruption is required:
 - (i) to construct, repair, maintain or commission any part of that party's Water Supply System; and
 - (ii) in the case of Melbourne Water, to carry out flow tests.
- (b) Unless the parties agree otherwise, a party must give the other party at least 10 Business Days written notice of its intention to require a temporary alteration or interruption under clause 13(a).
- (c) On receiving notice from Melbourne Water under clause 13(b), Barwon Water may ask Melbourne Water to postpone any temporary alteration or interruption if:
 - (i) a particular customer of Barwon Water may be adversely affected by the proposed temporary alteration or interruption; or
 - (ii) an extreme or catastrophic fire warning has been issued.
- (d) Melbourne Water must use reasonable endeavours to comply with any request made under clause 13(c).
- (e) Where Melbourne Water requires a temporary alteration or interruption under clause 13(a) which is likely to:
 - (i) affect the volume or quality of water supplied to Barwon Water's customers - Barwon Water will advise and manage relations with those customers, unless the parties agree otherwise; or

- (ii) cause other public inconvenience - Melbourne Water will advise and manage relations with the public,
with respect to the temporary alteration or interruption.

14. Damage caused between Water Supply Systems

- (a) The parties acknowledge that as their Water Supply Systems are interconnected there is the potential for the operation of one party's Water Supply System to adversely affect the other party's Water Supply System irrespective of compliance with this Agreement.
- (b) Each party agrees that where the operation of its Water Supply System directly causes damage to the Water Supply System of the other party (the **affected party**), the parties will, in good faith, negotiate and agree a reasonable sum to compensate the affected party for the pecuniary losses and expenses the affected party has incurred to rectify the damage to its Water Supply System as a direct, natural and reasonable consequence of the operation by the other party of its Water Supply System.
- (c) An affected party may only require the other party to compensate it for such pecuniary losses and expenses under clause 14(b):
 - (i) as have, on the balance of probabilities, been caused by the other party's operation of its Water Supply System; and
 - (ii) which could not reasonably have been mitigated by the affected party.
- (d) For the avoidance of doubt:
 - (i) the compensation for damage referred to in clause 14(b) is limited as set out in that clause and excludes any other kind of compensation (including for indirect or consequential losses);
 - (ii) clause 14(b) applies whether or not the cause of the damage is a breach of this Agreement, although where the cause of the damage does constitute a breach of this Agreement, clause 14(b) does not preclude any other enforcement action available to the parties; and
 - (iii) where the parties are unable to agree a reasonable sum under clause 14(b) the matter constitutes a dispute, and will be resolved in accordance with clause 23.
- (e) Any failure by Melbourne Water to comply with this Agreement which is directly attributable to damage to its Water Supply System caused by Barwon Water is not a breach of this Agreement.
- (f) Any failure by Barwon Water to comply with this Agreement which is directly attributable to damage to its Water Supply System caused by Melbourne Water is not a breach of this Agreement.

15. Measurement

15.1 Billing volume

- (a) During withdrawals from the Interface Point, all measurement for compliance with this Agreement must be made at the designated Interface Point.
- (b) Melbourne Water must, at its expense, install, test and maintain the Billing Meter in accordance with the meter manufacturer's specification.
- (c) The Billing Meters must be telemetered to facilitate remote reading of the meter.
- (d) Melbourne Water must conduct calibration tests on the Billing Meters every six months.
- (e) Within two weeks of completing the calibration tests, Melbourne Water must provide Barwon Water with results from the calibration tests.

15.2 Meter reading

- (a) After Barwon Water has notified Melbourne Water of its intention to take supply of water from the Interface Point under this Agreement, and prior to commencement of the water supply, Melbourne Water and Barwon Water must separately record the Totalised, on-site Billing Meter reading using the smallest unit increment on the gauge.
- (b) Melbourne Water must make all necessary arrangements to provide access to the site for Barwon Water for this purpose.
- (c) Melbourne Water must record flow information from the Billing Meters for billing purposes.

16. Protocols

- (a) The parties may, from time to time, through their Principal Representatives, agree on and adopt one or more written protocol(s) regarding the performance by either or both parties of any obligation under this Agreement.
- (b) The parties must agree on and adopt the following protocols within 12 months from the Commencement Date:
 - (i) operation and notification of supply limitations during periods of high water demand;
 - (ii) shared site arrangements;
 - (iii) emergency and incident response (including Emergency supply arrangements); and
 - (iv) water quality standards and management practices, including operation of secondary chlorination and notification of 'set-point' changes. This protocol must include:
 - (A) Arrangements for notification of changes to water sources which may have a noticeable, negative impact on aesthetic water quality;

- (B) Arrangements for notification of breaches of Schedule 3; and
 - (C) Information sharing regarding chemical specifications.
- (c) A protocol will be adopted by its execution by the Principal Representatives or Directors of both parties.
- (d) Other protocols may include:
 - (i) water usage forecasting and notification;
 - (ii) communications (including between the parties, notifications to third parties and media and public communications);
 - (iii) scheduling and co-operative planning for new works and renewals; and
 - (iv) billing.
- (e) A protocol adopted under this clause:
 - (i) may be amended or terminated in writing and executed by the Principal Representatives or Directors of both parties; and
 - (ii) takes effect as if it were part of this Agreement.
- (f) This Agreement prevails over any protocol adopted under this clause to the extent of any inconsistency between them.

17. Notification to take supply from Interface Point

In relation to water supply taken from Melbourne Water, Barwon Water must give Melbourne Water five Business Days notice of Barwon Water's intention to start taking water from the Interface Point.

18. Charges for Water Supply Services

18.1 Charges

- (a) Barwon Water must pay Melbourne Water:
 - (i) service charges; and
 - (ii) usage charges;for storage operator and bulk water services, as invoiced by Melbourne Water in accordance with the ESC's Melbourne Water Determination.
- (b) Service and usage charges are to be indexed each year in accordance with the ESC's Melbourne Water Determination.

18.2 Invoicing of charges

Melbourne Water must invoice Barwon Water in arrears for the service and usage charges on the first Business Day of each month.

18.3 What an invoice must contain

Each invoice for the usage charge must contain:

- (a) the measured volume delivered to Barwon Water since the last invoice;
- (b) details of any malfunctioning or out-of-service Billing Meter;
- (c) any volume of water estimated, rather than measured, by Melbourne Water using historical information and a process agreed by both parties; and
- (d) the amount payable by Barwon Water.

18.4 When invoice must be paid and method of payment

- (a) Barwon Water must pay any invoice within 10 Business Days of the date of receipt of the invoice.
- (b) The payment referred to in clause 18.4(a) must be made by electronic transfer to such bank account as Melbourne Water may, from time to time, advise Barwon Water in writing.

18.5 Interest payable

- (a) Barwon Water must pay interest at the interest rate on any amount not paid in accordance with clause 18.4, calculated daily on the amount outstanding from the date on which the amount is due until the amount is paid in full.
- (b) For the purposes of clause 18.5(a), the interest rate is the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on the date on which the amount is due.
- (c) On payment of the outstanding amount in full, Melbourne Water must invoice Barwon Water separately for the interest outstanding. This payment must be made within five Business Days of receipt of the invoice by Barwon Water.

18.6 Adjustments to billed volumes

- (a) If the Billing Meter is, for any part of a billing period out of service or the data obtained from the Billing Meter is inaccurate, corrupt or cannot be corrected, Melbourne Water must calculate the volume of water delivered to Barwon Water for the relevant period by one of the following methods as agreed by the parties on each occasion:
 - (i) by comparison with the volume of water supplied under similar conditions during some other period;
 - (ii) by comparison with the volume of water supplied after the Billing Meter has been restored to proper order;
 - (iii) by comparison with other meters;
 - (iv) by making a calculation based on available pumping station data; or
 - (v) some other method agreed between the parties.

- (b) If the Billing Meter is found to be registering incorrectly by an error greater than 1%, Melbourne Water must:
 - (i) re-calibrate the Billing Meter; and
 - (ii) adjust the invoice in accordance with clause 18.7.

18.7 Adjustments to charges incorrect registration

- (a) Adjustments to billing volumes will be calculated when one party notifies the other party in writing of a suspected incorrect Billing Meter registration.
- (b) If a third party is also affected by the adjustment then Melbourne Water must immediately notify that other party.
- (c) Adjustments will be calculated back to a date, agreed between all parties affected, on which the leak or Billing Meter error started. This applies in cases where it is possible to determine such a date (such as events caused by recorded operational activities or distinct flow changes evident in SCADA) otherwise clause 18.7(e) applies.
- (d) Adjustments made in accordance with clause 18.7(c) will not be back-dated further than 1 July of the financial year that notification was given under clause 18.7(a).
- (e) If it is not possible to determine an agreed starting date for the Billing Meter error (such as where there has been a gradual shift to Billing Meter accuracy), then the billing adjustment will be made back to the date of written notification given under clause 18.7(a).
- (f) Adjustments made in accordance with this clause 18.7 must be resolved between the affected parties by the earlier of:
 - (i) the day four weeks after the date of written notification given under clause 18.7(a); and
 - (ii) 30 June of the financial year in which the written notification was given.
- (g) In the event that agreement cannot be reached on an adjustment to the billing then the dispute must be determined in accordance with clause 23.

18.8 Disputes about amounts payable

- (a) Barwon Water may give Melbourne Water written notice if it disputes any invoice given under this clause 18.
- (b) If Barwon Water so requests, Melbourne Water must, within 10 Business Days, give Barwon Water further information about the volume of water referred to in the invoice and how any estimate of volume was made.
- (c) Notwithstanding any dispute, Barwon Water must, on the relevant due date, pay:
 - (i) the service charge;
 - (ii) the greater of:
 - (A) the amount of the usage charge not in dispute; and
 - (B) the average usage charge for the preceding three months.

- (d) Subject to this clause any dispute under this clause 18 must be determined in accordance with clause 23.
- (e) A party required to make a payment by a determination under clause 18.8(d) must do so within ten Business Days of the date of the determination.

19. Appointment and authority of Principal Representatives

19.1 Appointment

- (a) Within five Business Days of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, a Principal Representative to administer this Agreement on behalf of the party appointing the Principal Representative.
- (b) Each party must advise the other party in writing of the name of the nominated Principal Representative and that person's contact details including that person's postal address, e-mail address, telephone number, facsimile number and after-hours contact details, and promptly notify the other party of any change to any of those contact details.

19.2 Authority

Each party must confer on its Principal Representative, and warrants to the other party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance to enter any agreement, or to do any other thing which a party may do under this Agreement, on behalf of the party appointing that Principal Representative.

20. Appointment and authority of Operating Representatives

20.1 Appointment

- (a) Within one week of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, an Operating Representative to be responsible for the day to day operation of this Agreement on behalf of the party appointing that Operating Representative.
- (b) Each party must advise the other party in writing the name of the nominated Operating Representative and that person's contact details including that person's postal address, e-mail address, telephone number, facsimile number and after-hours contact details, and promptly notify the other party of any change to any of those contact details.

20.2 Authority

Each party must confer on its Operating Representative, and warrants to the other party that it has so conferred, all necessary power to be responsible for the day-to-day operation of this Agreement on behalf of the party appointing that Operating Representative.

21. Force Majeure

21.1 Event of Force Majeure

If the Affected Party is prevented in whole or in part from carrying out any obligation (other than an obligation to pay money) under this Agreement as a result of an Event of Force Majeure, it must promptly notify the other party accordingly. The notice must:

- (a) specify the obligations it cannot perform;
- (b) fully describe the Event of Force Majeure;
- (c) estimate the time during which the Event of Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Event of Force Majeure.

The Affected Party must keep the other party informed of the above at regular intervals or promptly on request of the other party.

21.2 Suspension of obligations

Following this notice, any obligation (other than an obligation to pay money) which cannot be performed will be suspended as far as it is affected by the Event of Force Majeure and while that Event of Force Majeure continues.

21.3 Remedy of an Event of Force Majeure

The Affected Party must remedy the Event of Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

21.4 Mitigation

The Affected Party must take all action reasonably practicable to mitigate any loss suffered by the other party or a third party as a result of its failure to carry out its obligations under this Agreement.

21.5 No requirement to settle labour dispute

The Affected Party is not required, under clause 21.3 or 21.4, to settle any labour dispute against the reasonable wishes of the Affected Party.

22. Confidentiality

22.1 Confidentiality

Except as provided in clauses 22.2 and 22.6, a party must:

- (a) not disclose any confidential information of the other party, without the prior written approval of the other party (which may be given or withheld at that party's absolute discretion);
- (b) not require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party; and

- (c) take reasonable steps to enforce obligations imposed under this clause 22.

22.2 Permitted disclosures

Despite clause 22.1, a party may disclose confidential information of the other party:

- (a) to any employee, contractor or consultant of the party who reasonably needs to know the confidential information for that party to exercise its rights or perform its obligations under this Agreement; and
- (b) if it is:
 - (i) required by any Act; or
 - (ii) compelled by law or a court order, to disclose it; or
 - (iii) demanded by the Relevant Minister.
- (c) In this clause 22.2, **Relevant Minister** means a Minister responsible for administering an Act which confers functions or powers or imposes duties on a party that are necessary for that party to enter into and perform this Agreement.

22.3 Permitted disclosure to an employee, contractor or consultant

A party may only disclose confidential information under clause 22.2(a) if it imposes on the person to whom the confidential information is disclosed, an obligation:

- (a) only to use the confidential information; and
- (b) not to disclose that confidential information to any other person, except, for the sole purpose for which the confidential information is disclosed.

22.4 Permitted disclosure required by law or Relevant Minister

If a party is required or compelled to disclose confidential information of the other party under clause 22.2(b), it must:

- (a) immediately give written notice of that fact to the other party; and
- (b) use its best efforts only to disclose that confidential information of the other party on terms which preserve the strictest confidentiality.

22.5 Breach of confidentiality

The parties agree and acknowledge that:

- (a) a party may bring proceedings to restrain any breach or threatened breach by the other party of this clause 22; and
- (b) the unauthorised use, disclosure or divulgence of, or dealing with, the confidential information of a party by the other party will cause irreparable harm to that party, for which damages will not be an adequate remedy.

22.6 Disclosure to Melbourne retailers

The parties do not intend this clause 22 to prevent Melbourne Water disclosing to any Melbourne retailer information about Melbourne Water's operation and management of, and plans for improving, Melbourne Water's Water Supply System, for the purposes of any bulk water supply agreement between Melbourne Water and that retailer.

22.7 Survival

This clause 22 survives the termination of this Agreement.

22.8 Definition of confidential information

For the purposes of this clause 22, "confidential information" means any knowledge, information or know-how relating to a party's business, systems, customers, property, assets or affairs which:

- (a) has been or is disclosed, communicated or delivered to the other party under or in connection with this Agreement; and
- (b) has come or comes to the knowledge, or into the possession, of the other party under or in connection with this Agreement,

but does not include the provisions of this Agreement.

23. Dispute resolution

23.1 Dispute under the Bulk Entitlement

If a difference or dispute arises between Barwon Water and Melbourne Water in its capacity as Storage Manager, Bulk Transfer System Operator or Resource Manager under the Bulk Entitlement, and to which clause 11 of the Bulk Entitlement applies, that difference or dispute will be determined in accordance with clause 11 of the Bulk Entitlement. All other disputes will be determined in accordance with the following provisions of this clause.

23.2 When a dispute arises

- (a) If any difference or dispute arises between the parties under or in relation to this Agreement or its subject matter (a *Dispute*), they agree to seek, in good faith, to resolve the matter by negotiations between the Principal Representatives.
- (b) A Dispute arises at the time when one party notifies the other party in writing that there is a difference or dispute about a matter specified in the notice.

23.3 Reference to the panel

- (a) If the Principal Representatives do not resolve the dispute within five Business Days of it being notified, either party may give written notice to the other party, requiring the Dispute to be resolved by the panel. The panel consists of:
 - (i) the Managing Director of Melbourne Water; and
 - (ii) the Managing Director of Barwon Water.

- (b) The panel must meet to consider any Dispute within 5 Business Days of it being referred to the panel.
- (c) A decision of the panel may only be made by the unanimous agreement of the members of the panel.

23.4 Mediation

- (a) If the panel is unable to reach a decision regarding the Dispute within 10 Business Days of it being referred to the panel, or either party disagrees with the decision of the panel, the parties will, if mutually agreed, submit the matter to mediation administered by Lawyers Engaged in Alternative Dispute Resolution (**LEADR**).
- (b) The mediator will be an independent person agreed between the parties or, failing that, as nominated by the Chair or CEO of LEADR.
- (c) Any mediation meetings and proceedings under this clause must be held in Melbourne and be conducted in accordance with the rules or code determined by the mediator or as otherwise agreed by the parties.
- (d) Mediation must commence within 10 Business Days of the appointment of a mediator, or as otherwise agreed by the parties.
- (e) Each party will bear its own costs of the mediation, and meet the mediators costs in equal shares.

23.5 Arbitration

- (a) If:
 - (i) within 15 Business Days (or any other period agreed to in writing between the parties) after the Dispute was referred to the panel no agreement is reached to refer the Dispute to mediation under clause 23.4; or
 - (ii) within 20 Business Days (or any other period agreed to in writing between the parties) after the appointment of a mediator under clause 23.4 the Dispute is not settled by mediation under clause 23.4,either party may, by written notice to the other party, refer the Dispute to arbitration.
- (b) The arbitrator will be an independent person agreed between the parties from a panel suggested by the President of the Institute of Arbitrators and Mediators Australia or, failing agreement, an arbitrator will be appointed by the President of the Institute of Arbitrators and Mediators Australia. The arbitrator may not be the same person as the mediator appointed under clause 23.4
- (c) Subject to clause 23.5(a), the arbitration will be conducted and held in accordance with the laws of Victoria.
- (d) Any arbitration meetings and proceedings under this clause must be held in Melbourne.

23.6 Question of law

The parties agree that either party may make an application to the Supreme Court of Victoria to determine a question of law arising in the course of the arbitration proceedings pursuant to section 27J of the *Commercial Arbitration Act 2011* (Vic) and that either party may appeal an award on a question of law pursuant to section 34A of the *Commercial Arbitration Act 2011* (Vic).

23.7 Urgent injunctive relief

Nothing in this clause 23 or otherwise in this Agreement prevents a party from seeking urgent injunctive or declaratory relief from a court of competent jurisdiction.

23.8 Continuation of rights and obligations

Despite the existence of a Dispute each party must continue to perform this Agreement. This obligation ends on the expiry or termination of this Agreement.

24. Termination

This Agreement will terminate if:

- (a) the parties so agree in writing; or
- (b) Melbourne Water ceases to have the statutory power to provide the Water Supply Service to Barwon Water.

25. Notices

25.1 Notice by hand, post or fax

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post or by hand or fax or to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

(i) **Melbourne Water Corporation**

PO Box 4342
MELBOURNE VIC 3001

Principal Representative: Mr Tony Antoniou
General Manager – Operations and
Maintenance

Telephone No: (03) 9235 2659

Fax No: (03) 9235 2692

E-mail address: tony.antoniou@melbournewater.com.au

- (ii) **Barwon Water**
PO Box 659
GEELONG VIC 3220

Principal Representative: Paul Northey
General Manager Infrastructure Services

Telephone No: (03) 5226 9201
Fax No: (03) 5221 6064

E-mail address: paul.northey@barwonwater.vic.gov.au

- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting; and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

25.2 Notices sent by email

Any Notice which may be given or made under this Agreement, other than a notice under clause 21 (force majeure), clause 23 (dispute resolution), clause 29 (amendments) or clause 32 (waiver) may instead be sent by email if:

- (a) the Notice is signed by a person clearly authorised by the sender in a manner which complies with the electronic signature guidelines agreed by the parties;
- (b) the Notice is sent to the email address of the Principal Representative in clause 25.1(b) or his or her Nominee or the email address last notified by the intended recipient to the sender; and
- (c) the sender keeps a copy of the Notice sent.

For the purposes of clause 25.2(b), a Nominee of a Principal Representative is a person who the relevant Principal Representative (but not his/her Nominee) has nominated to receive email notices under this clause 25.2 by the provision of a Notice to the other party's Principal Representative of the name, address and email address of that Nominee, and any conditions on the type of Notices that the Nominee can or cannot be sent. That Nominee is then able to receive such email Notices until the Principal Representative advises the other party's Principal Representative that the Nominee's nomination is revoked.

25.3 Receipt of Notices sent by email

A Notice sent under clause 25.2 will be taken to be duly given or made on the first to occur of:

- (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
- (b) the time that the Notice enters an information system which is under the control of the recipient; and
- (c) the time that the Notice is first opened or read by the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

25.4 Notices in accordance with Protocol

Notwithstanding the other provisions of this clause, a Notice may also be given in accordance with a protocol adopted by the parties in accordance with clause 16.

26. GST

26.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to, or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the Consideration for the Taxable Supply is provided. This clause 26 does not apply to the extent that the Consideration for a Taxable Supply is expressly stated to be GST inclusive.

26.2 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

26.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

26.4 Cost exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration) to a charge, cost, expense, payment or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

26.5 GST obligations to survive termination

This clause 26 will continue to apply after expiration or termination of this Agreement.

26.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST Law will have the same meaning in this clause.

27. Publicity

A party must not make any public statement relating to this Agreement or the supply or acceptance of water pursuant to it, unless:

- (a) the other party has previously agreed to the form and content of the statement; or
- (b) the statement is required to be made by law or a stock exchange.

28. Governing law and jurisdiction

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

29. Amendments

- (a) No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the Principal Representatives or the Directors of both parties.
- (b) For the avoidance of doubt, no amendment or variation of this Agreement can be made by email.

30. Costs

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

31. Giving effect to this Agreement

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this Agreement.

32. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver (through its Principal Representative) and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
- (b) a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

33. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

34. Operation of Agreement

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty related to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

35. Operation of Indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes any payment in respect of which the indemnity is given.

36. Survival

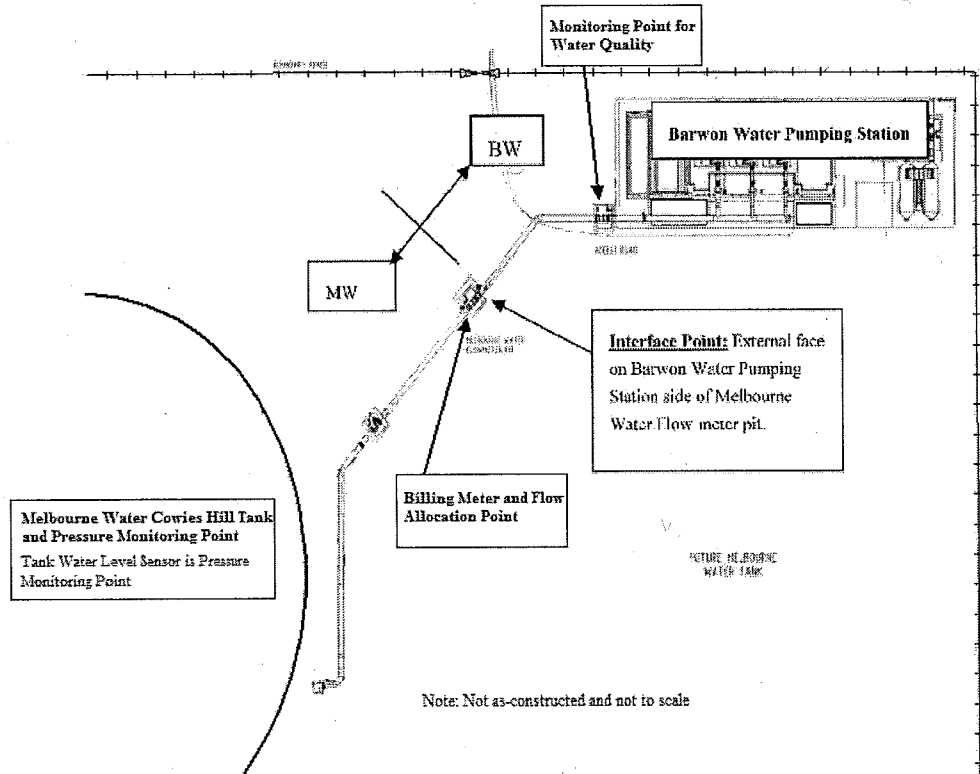
The termination of this Agreement does not release a party from any obligation relating to this Agreement that, by its nature, survives completion of the Agreement, including any obligation of indemnity or confidentiality.

37. Counterparts

This document may be executed in counterparts.

Schedule 1.

Plan showing the location of the Interface Point, Monitoring Point, Billing Meter, Barwon Water Pumping Station and Cowies Hill Tank



Schedule 2.**Supply details****1. Item 1 Water volume**

At the Commencement Date, the Annual Volume is 16,000 ML.

2. Item 2 Water flow

- (a) Maximum Flow Rate
48 ML/day
- (b) Flow Allocation Points
The Billing Meter.

3. Item 3 Water Pressure Service Level

- (a) Water pressure for normal operation²

| Minimum HGL (metres AHD) | Maximum HGL (metres AHD) |
|--------------------------|--------------------------|
| 62.8 | 67.3 |

- (b) Pressure Monitoring Point
The Cowies Hill Tank.

² If Melbourne Water is unable, despite using reasonable endeavours, to replenish the water level in the Cowies Hill Tank to its full supply level at least once every 24 hours, Melbourne Water may be required to shut-off supply to Barwon Water to enable it to continue to meet its supply obligations to City West Water. If the HGL at the Cowies Hill Tank reaches 62.8 (Australian Height Datum) or below, an 'interlock' between the Barwon Water Pumping Station and the Cowies Hill Tank will automatically restrict supply to Barwon Water.

Schedule 3.**Water Quality Standards**

1. Item 1 Description of water quality Monitoring Point

Barwon Water Detention Point (site code: MBARWDTP) located on the suction side of the Barwon Water Pumping Station as shown in Schedule 1.

2. Item 2 Disinfection

- (a) Melbourne Water must ensure that the 'chlorine contact time' (**Ct**) for water between the 'primary chlorinators' and the Interface Point is ≥ 15.0 mg/L.min.³
- (b) In this Schedule 3, Ct has the meaning determined by the formula $Ct = C \times 0.7 \times T$, where:
- C = the free chlorine residual (mg/L) measured at a chlorination plant.
- T = the time taken for water to travel from the primary chlorinator to the first consumer (minutes).
- 0.7 is an adjustment factor that allows for the decay characteristics of chlorine.
- (c) Melbourne Water must also ensure:
- (i) the turbidity of unfiltered, chlorinated water sourced from protected catchments does not exceed 15 NTU for more than 3 consecutive hours⁴; and
- (ii) the pH of unfiltered, chlorinated water sourced from protected catchments does not exceed 8.0 for more than 60 consecutive minutes⁵.

3. Item 3 Health related standards

- (a) The *Safe Drinking Water Regulations 2005* (Vic) for E. Coli, Tri-halo-methanes, chloroacetic acids; and
- (b) The *Health (Fluoridation) Act 1973* (Vic).

³ Note: This standard is based on the recommendation in the Australian Drinking Water Guidelines of at least 0.5 mg/L and 30 minutes contact time for effective disinfection.

⁴ Note: This standard has been determined following a quantitative microbial risk assessment and scientific experiments.

⁵ Note: This standard has been set by reference to the USEPA Ct Tables for 4 log virus inactivation across a temperature range of 0.5 – 25°C.

4. Item 4 Aesthetic water quality standards

| Water Quality Parameters | Unit of Measurement | Standard | Compliance Criteria | Minimum frequency of testing |
|---------------------------------|----------------------------|-----------------|---|-------------------------------------|
| Apparent Colour | Pt.Co units | 10 | 95% UCL of the annual mean of samples \leq the standard | Weekly |
| Aluminium (Acid Soluble) | mg/l | 0.20 | Maximum of any sample \leq the standard | Monthly |
| Iron | mg/l | 0.15 | 95% UCL of the annual mean of samples \leq the standard | Weekly |
| Manganese | mg/l | 0.05 | 95% UCL of the annual mean of samples \leq the standard | Monthly |
| Boron | mg/l | 1.0 | Maximum of any sample \leq the standard | Monthly ⁶ |
| Total Dissolved Solids | mg/l | 140 | Maximum of any sample \leq the standard | Monthly |
| Bromide | mg/l | 0.1 | Maximum of any sample \leq the standard | Monthly ⁷ |
| Turbidity | NTU | 2.0 | 95% UCL of the annual mean of samples \leq the standard | Weekly |

⁶ Only if Melbourne Water supplies water from the Wonthaggi Desalination Plant to Barwon Water.

⁷ Only if Melbourne Water supplies water from the Wonthaggi Desalination Plant to Barwon Water.

5. Item 5 Testing frequency for health related standards

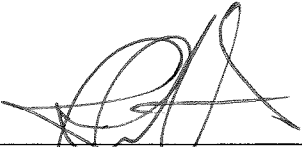
| Water Quality Parameters | Minimum frequency of testing⁸ |
|---------------------------------|---|
| <i>E-Coli</i> | Weekly |
| <i>Tri-halo methanes</i> | Quarterly |
| <i>Chloroacetic Acids</i> | Quarterly |

⁸ The monitoring frequency for tri-halo methanes and chloroacetic acids set out in this table is different to the monitoring frequency specified in the health related standards set out in Item 3 of this Schedule 3, however for the avoidance of doubt nothing in Item 5 of this Schedule 3 affects Melbourne Water's obligation to comply with clause 9.1(a) of this Agreement.


Executed in Melbourne.

Executed by **Melbourne Water Corporation**
by affixing its official seal in the presence of:



Acting


Managing Director



Corporate Secretary

PAUL PRETTO

Print Name (block letters)

JANE DENTON

Print Name (block letters) 27.6.13

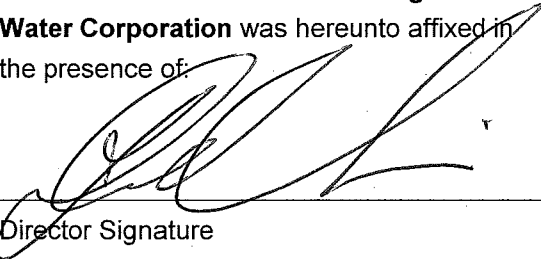
26 JUNE 2013

Date


Date

**The Common Seal of Barwon Region
Water Corporation** was hereunto affixed in
the presence of:





Director Signature



Secretary Signature

Joe Adamski

Print Name Managing Director

Michael Watson

Print Name Secretary

17 JUNE 2013

Date

17 JUNE 2013

Date