Nomination Date) and prior to making their determination of the Charges, agree upon and nominate an Umpire to determine the Charges should the Experts fail to do so in accordance with this clause. If the Experts cannot agree on or fail to nominate an Umpire within 5 Business Days of the Nomination Date, then either Expert, the Supplier or the Committee may request the President of the Institute of Chartered Accountants to promptly nominate the Umpire.

(b) Subject to clauses 6 to 9 (inclusive), the nominated Experts must within 20 Business Days of the Nomination Date jointly determine the Charges and notify the Supplier and the Committee in writing of the amount determined.

6 Consequences of Committee's failure to nominate Expert

If:

(a) the Committee fails to nominate an Expert in accordance with clause 4 within the time referred to in that clause; and

(b) the Supplier does nominate an Expert in accordance with clause 4 within the time referred to in that clause,

then the Charges must be determined by the Supplier's Expert within 20 Business Days after being nominated, and his or her determination will be final and binding on the parties (except for manifest error) as if he or she had been appointed with the consent of the Committee.

7 Consequences of Supplier's failure to nominate Expert

If:

(a) the Supplier fails to nominate an Expert in accordance with clause 5 within the time referred to in that clause; and

(b) the Committee does nominate an Expert in accordance with clause 5 within the time referred to in that clause,

then the Charges must be determined by the Committee's Expert within 20 Business Days after being nominated, and his determination will be final and binding on the parties (except for manifest error) as if he or she had been appointed with the consent of the Supplier.

8 Consequences of neither party nominating Expert

If both the Supplier and the Committee fail to nominate an Expert in accordance with clause 4 within the time referred to in that clause, then the Charges to apply in the Capital Improvement Plan will be the amounts notified in the Supplier's Capital Improvement Plan.

9 Determination by umpire or sole Expert

(a) Where:

(i) 2 Experts have been nominated; and

(ii) the nominated Experts fail to determine the Charges (and notify the Supplier and the Committee in writing of the amount determined) within 20 Business Days of the Nomination Date,

then either Expert, the Supplier or the Committee may request the Umpire to determine the Charges and the Umpire must determine the Charges (and notify the Supplier and the Committee in writing of the amount determined) within 20 Business Days of such request.

(b) If the Umpire is requested to determine the Charges in accordance with sub-clause (a):

(i) the Umpire's determination is final and binding on the parties (except for manifest error);

(ii) in making his or her determination the Umpire shall have regard to any evidence submitted by the Experts as to their assessments of the Charges;

(iii) in making his or her determination, the Umpire shall have regard to any written submissions made to the Umpire by or on behalf of the parties (and each written submission must be copied to the other party); and

(iv) the Umpire must give his determination (and the reasons for it) in writing to the Supplier and the Committee within 20 Business Days of the request for the Umpire to make the determination.

(c) If:

(i) the sole Expert appointed fails to comply with clause 6 or 7 (as the case may be);

(ii) the Umpire instructed under clause 9(a) fails to comply with clause 9(b)(iv); or

(iii) any Umpire nominated under this sub-clause fails to comply with this sub-clause,

then either the Supplier or the Committee may request the President of the API to promptly nominate (on behalf of the Supplier and the Committee) an Umpire to determine the Charges within 20 Business Days of his nomination. The President of the API shall promptly notify the Supplier and the Committee of the Umpire's nomination and the nomination date. Clauses 9(b)(i) to 9(b)(iii) (inclusive) apply to any Umpire referred to in this sub-clause. The Umpire must give his determination (and the reasons for it) in writing to the Supplier and the Committee within 20 Business Days of the date of the Umpire's nomination.

10 Costs of Experts and Umpire

(a) Subject to clause 10(b), each party must pay all the costs, fees and expenses of the Expert appointed by it.

(b) The costs, fees and expenses of the Umpire and of any sole Expert appointed must be borne by the Supplier and the Committee in equal shares.

11 Criteria for determining the Charges

The amounts and rates constituting the Charges under a Capital Improvement Plan must be determined having regard to the Capital Improvement Financial Model Value as set out in Part D.

Part D – Capital Improvement Financial Model Value

Capital Improvement Financial Model Value shall mean that the net operating cashflow, following the inclusion of the Capital Improvement and inclusive of the Capital Improvement Costs and revised/new Charges with a resultant pre-tax 12% IRR.

Capital Improvement Costs include but are not limited to costs due to:

(a) design and technical consultant services;

(b) quantity surveying/cost planning services;

(c) project and construction management;

(d) procurement of all plant and equipment procurement of any augmentation or alteration to related infrastructure;

(e) utilisation of temporary services etc. during the period of Capital Improvement installation wether to the site address or other connected site address within Barangaroo South;

(f) authority permits and licences;

(g) statutory planning and other authority approval processes;

(h) legal costs;

(i) finance charges; and

(j) Committee third party consultants including legal or other reasonable costs.

The 12% pre-tax IRR hurdle is also to be used for alternative supply pricing review by the recipient of Supply Services where the Supplier's revised charges due to the Capital Improvement Expenses are under review.

Part E – Individual liability of each Member

The liability of each Member for Capital Improvements under clause 73 of this management statement is not joint but is several.

The proportions for which each Member is liable at any particular time is:

$$P = A \div B$$

Where:

P = a Member's proportionate liability from time to time;

A = the number listed in the table below with respect to that Member;

B = the aggregate of the numbers listed in the table below for each person who is at that time a Member.

Table

Member	Number
T1 Owner	117,968 sqm
T2 Owner	98,659 sqm
T3 Owner	90,019 sqm
Residential Owner	16,459 sqm

Barangaroo South – Building Management Statement

Schedule 11 – Residential Supply Agreements

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

Agreement

Barangaroo South – Residential

Thermal Energies Supply Agreement

Lend Lease Chilled Water (Barangaroo South) Pty Limited

The Owners – Strata Plan No. [•]

[For inclusion in the BMS]

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HERBERT SMITH FREEHILLS

Table of contents

1	**Conditions**	2
1.1	Conditions Precedent	2
1.2	Termination for non-satisfaction of Conditions Precedent	3
2	**Term of the Agreement**	3
3	**Supply of Thermal Energies**	3
3.1	Supply of Thermal Energies	3
3.2	Acceptance of Return Supply	3
3.3	Revenue and costs	4
3.4	Metering Services	4
3.5	Service Standards	4
4	**Access to Site Address**	4
5	**Operation and maintenance of the Plant**	5
5.1	Minimisation of Outages	5
5.2	Scheduled Outages	5
5.3	Unscheduled Outages	5
6	**Return Connection Point and Internal Infrastructure**	6
6.1	Installation and operation of the Return Connection Point and Internal Infrastructure	6
6.2	Maintenance of the Return Connection Point and Internal Infrastructure	6
7	**Supplier's obligations**	7
7.1	Plant	7
7.2	Generally	7
7.3	Energy and Environmental Rating	7
8	**Purchaser's obligations**	8
8.1	Compliance with Regulatory Requirements	8
8.2	Alteration or damage to Equipment, the Return Connection Point or the Internal Infrastructure	8
8.3	Redevelopment or replacement of Building	8
8.4	Exclusivity	9
9	**Metering**	9
9.1	Meters	9
9.2	Metering Data	9
9.3	Using estimated data to calculate Charges	10
10	**Charges**	10
11	**Change of Law**	10
12	**Payments**	11
12.1	Payments	11
12.2	No payment during initial period	12
13	**Risk and Liability Provisions**	12
13.1	Purchaser's indemnity	12
13.2	Exclusion of Consequential Loss	12
13.3	Exclusion of liability	12

13.4 If the Purchaser is a Consumer 13
13.5 No warranty 14

14 Priority of supply and step-in **14**

15 Force Majeure **14**

16 Suspension; Termination **15**

16.1 Supplier's notice to suspend 15
16.2 Purchaser's notice to terminate 16
16.3 Consequences of suspension; termination 16

17 Temporary Disconnection **17**

18 Terms of this Agreement **18**

19 Assignment **18**

20 Interest **18**

21 GST **19**

22 Dispute Resolution **20**

23 Confidentiality **20**

24 Privacy Statement **21**

25 Notices **21**

25.1 Form 21
25.2 Delivery 21
25.3 When effective 21
25.4 Receipt - post 22
25.5 Receipt - general 22

26 General **22**

26.1 Discretion in exercising rights 22
26.2 Failure to exercise rights 22
26.3 No liability for loss 22
26.4 Approvals and consents 22
26.5 Conflict of interest 22
26.6 Remedies cumulative 22
26.7 Rights and obligations are unaffected 22
26.8 Variation and waiver 23
26.9 Indemnities 23
26.10 Further steps 23
26.11 Prompt performance 23
26.12 Construction 23
26.13 Costs 23
26.14 Inconsistent law 23
26.15 Supervening legislation 23
26.16 Ombudsman 24

27 Governing law **24**

27.1 Governing law 24
27.2 Jurisdiction 24
27.3 Serving documents 24

28 Counterparts 24

29 Definitions and Interpretation 24

29.1 Definitions 24
29.2 Interpretations 31

Schedules

Reference Schedule* 34

Contact details for Notices 35

Connection Points and Return Connection Points 36

Charges 37

Service Standards 44

Maintenance Specification 52

Signing page 53

HERBERT SMITH FREEHILLS

Barangaroo South – Residential

Thermal Energies Supply Agreement

Date ▸

Between the parties

Supplier	**Lend Lease Chilled Water (Barangaroo South) Pty Limited** ABN 98 158 168 597 **(Supplier)**
Purchaser	**The Owners – Strata Plan No. [•]** ABN [•] of TBA **(Purchaser)**

Recitals

1 The Supplier intends to own and operate the Plant.

2 The Purchaser is the duly appointed owner's corporation for the Site Address.

3 The Purchaser agrees to connect the Site Address to the Plant via the Chilled Water Loop on the terms set out in this Agreement.

4 The Supplier agrees to supply the Purchaser with the Thermal Energies at the Site Address on the terms set out in this Agreement.

5 The Purchaser agrees to pay the Charges for the supply of the Thermal Energies at the Site Address.

The parties agree as follows:

HERBERT SMITH FREEHILLS

1 Conditions

1.1 Conditions Precedent

(a) This Agreement, other than this clause 1 (Conditions) and clauses 13 (Risk and Liability Provisions), 15 (Force Majeure), 18 (Terms of this Agreement), 19 (Assignment), 22 (Dispute Resolution), 23 (Confidentiality), 25 (Notices), 23 (General), 24 (Governing law) and 29 (Definitions and Interpretation), is subject to and conditional upon the conditions precedent specified in clause 1.1(b) (the **Conditions Precedent**).

(b) The Conditions Precedent are:

(1) the CCWP Lot Owner has leased or become entitled to the grant of a lease of the CCWP Lot from the BDA, whether or not that lease has actually been granted or registered;

(2) the Supplier has been granted Access Rights in respect of the CCWP Lot by the CCWP Lot Owner;

(3) the Supplier has obtained all Permits required in connection with the carrying out of the Supplier's obligations under this Agreement;

(4) the CCWP Lot has been built, certified for occupation and is suitable for the operation of the Plant;

(5) the Plant has been installed and commissioned at the CCWP Lot;

(6) the Site Address has been connected to the Chilled Water Loop in accordance with all applicable Regulatory Requirements;

(7) the Purchaser has built and commissioned the Internal Infrastructure and the Purchaser's Internal Infrastructure meets all applicable Regulatory Requirements; and

(8) Meters and metering equipment are installed in respect of the Site Address which comply with any applicable Regulatory Requirements and enable the Supplier to comply with its obligations under the applicable Regulatory Requirements.

(c) Each party must use all reasonable endeavours to satisfy the Conditions Precedent as soon as possible, and in any event by the date specified in Item 7 of Schedule 1 or such later date as agreed by the parties.

(d) If a party becomes aware that a Condition Precedent has been satisfied or that a Condition Precedent is not capable of being satisfied, that party must promptly notify the other party in writing.

(e) If a Condition Precedent has not been satisfied or waived by the date specified in Item 7 of Schedule 1 or such later date as agreed by the parties, then either party may, by notice in writing to the other party, terminate this Agreement.

(f) Except where otherwise provided in this Agreement, each Condition Precedent is for the benefit of the Supplier and the Purchaser, and may not be waived except by the written agreement of the parties.

1.2 Termination for non-satisfaction of Conditions Precedent

If this Agreement is terminated because a Condition Precedent is not satisfied or waived by the date specified in Item 7 of Schedule 1, or such later date as agreed between the parties, then:

(a) this Agreement has no further effect;

(b) the parties are released from their obligations under this Agreement; and

(c) neither party is under any obligation to the other party except in respect of a breach of this Agreement committed before termination.

2 Term of the Agreement

Subject to clause 1, this Agreement commences on and from the date it has been executed by each party and ends on the End Date.

3 Supply of Thermal Energies

3.1 Supply of Thermal Energies

Subject to the provisions of this Agreement:

(a) the Supplier must use its reasonable endeavours to make available to the Purchaser the Minimum Thermal Energy Demands under this Agreement during the Supply Period;

(b) all Thermal Energies supplied under this Agreement by the Supplier must be delivered by the Supplier to, and taken by the Purchaser at, the Connection Point; and

(c) title to and risk in all Thermal Energies supplied under this Agreement passes from the Supplier to the Purchaser at the Connection Point.

3.2 Acceptance of Return Supply

Subject to the provisions of this Agreement:

(a) where applicable, the Purchaser must use its reasonable endeavours to return to the Supplier and the Supplier must accept the Thermal Energies Supply Returns during the Supply Period;

(b) where applicable, all Thermal Energies Supply Returns returned under this Agreement must be returned by the Purchaser, and taken by the Supplier, at the Return Connection Point; and

(c) title to and risk in all Thermal Energies Supply Returns returned under this Agreement passes from the Purchaser to the Supplier at the Return Connection Point.

3.3 Revenue and costs

Subject to the provisions of this Agreement:

(a) the Supplier is entitled to all revenue, Environmental Attributes and other environmental advantages derived from the Supplier's ownership and operation of the Plant and the supply of the Thermal Energies under this Agreement; and

(b) the Supplier will be responsible for all costs associated with the operation and maintenance of the Plant incurred in the supply of the Thermal Energies supplied under this Agreement to the Purchaser for the Purchaser's use at the Site Address.

3.4 Metering Services

The Supplier agrees to provide or procure the provision of the Metering Services, subject to the provisions of this Agreement.

3.5 Service Standards

(a) The Supplier must use its reasonable endeavours to ensure that each of the Thermal Energies supplied under this Agreement complies with:

(1) Part A of the Service Standards;

(2) the applicable Regulatory Requirements; and

(3) the terms of this Agreement.

(b) The Purchaser must use its reasonable endeavours to ensure that each of the Thermal Energies Supply Returns under this Agreement complies with:

(1) Part B of the Service Standards;

(2) the applicable Regulatory Requirements; and

(3) the terms of this Agreement.

(c) Each party must notify the other promptly if it becomes aware that:

(1) any of the Thermal Energies supplied under this Agreement do not comply with Part A of the Service Standards; or

(2) any of the Thermal Energies Supply Returns under this Agreement do not comply with Part B of the Service Standards.

4 Access to Site Address

(a) The Purchaser must provide the Supplier, its representatives, agents or contractors, any Meter reader or Metering Provider (each an **Authorised Person**, and together **Authorised Persons**), during the Supply Period, all rights of access reasonably required by an Authorised Person for the purpose of and in connection with supplying the Thermal Energies under this Agreement, including safe, convenient and unhindered access to the Site Address using an access card provided by the Purchaser that enables access to the Site Address to inspect and test the Connection Point, the Meters, the Return Connection Point and the Internal Infrastructure and for the purpose of testing, calibrating or recalibrating the supply and metering of Thermal Energies and the receipt of the Thermal Energies Supply Return.

(b) The Supplier will use reasonable endeavours to give the Purchaser notice of the Supplier or another Authorised Person's intention to enter the Site Address unless:

(1) the Purchaser has granted permission to access the Site Address;

(2) entry is during Business Hours for the purpose of reading or inspecting a Meter; or

(3) there is an Emergency.

5 Operation and maintenance of the Plant

5.1 Minimisation of Outages

The Supplier must, during the Supply Period, use its reasonable endeavours to:

(a) minimise the occurrence of Outages; and

(b) maximise the availability of the Plant to meet the Minimum Thermal Energy Demands.

5.2 Scheduled Outages

Without limiting clause 5.1, at least 20 Business Days before the end of each Financial Year, the Supplier must deliver to the Purchaser the Supplier's best estimate at that time of the expected dates, nature and anticipated duration of any scheduled Outages in the next Financial Year.

5.3 Unscheduled Outages

(a) The Supplier will use all reasonable endeavours to minimise any unscheduled Outages.

(b) In the event of an unscheduled Outage or if the Supplier otherwise disconnects, curtails, interrupts or reduces the operation of the Plant, the Supplier will use its reasonable endeavours to make available the Thermal Energies as soon as possible after the commencement of the Outage, disconnection, curtailment, interruption or reduction in supply.

(c) Nothing in this Agreement will apply or be interpreted to limit or prevent the Supplier from using any other means to meet any or all of its obligations under this Agreement.

(d) At the Supplier's discretion, and without being liable to the Purchaser, the Supplier may disconnect, curtail, interrupt or reduce the supply of Thermal Energies to the Site Address without notice if the Supplier determines, acting reasonably, that:

(1) an Emergency or unscheduled preventative maintenance event occurs or exists, or is about to occur or exist, at the Plant, on the Chilled Water Loop, the Barangaroo Network or the External Distribution Network;

(2) the condition or state of repair of the Internal Infrastructure, the Connection Point, the Return Connection Point or other building system at or on the Site Address so requires; or

(3) disconnection, curtailment, interruption or reduction of supply of the Thermal Energies is otherwise required in accordance with Prudent Engineering Practice.

(e) If the Supplier needs to disconnect, curtail, interrupt or reduce supplies of Thermal Energies under clause 5.3(d), the Supplier must notify the Purchaser as soon as practicable (and preferably prior to) the occurrence of the disconnection, curtailment, interruption or reduction.

(f) To the extent the Supplier is able to do so having regard to the nature and extent of the event giving rise to the disconnection, curtailment, interruption or reduction, the Supplier must specify the following matters in the notice provided in accordance with clause 5.3(e):

(1) when the Thermal Energies are, or are expected to become, unavailable for supply;

(2) the extent to which the Thermal Energies are, or are expected to become, unavailable for supply; and

(3) the date and time at which the Thermal Energies are likely to become available for supply.

(g) If the Supplier needs to disconnect, curtail, interrupt or reduce the supply of Thermal Energies for any reason, the Supplier will use its reasonable endeavours to observe the load shedding regime set out in clause [66] of the BMS.

(h) The Supplier will not be in default of its obligations under this Agreement to supply the Thermal Energies as a result of any decision or action taken in accordance with this clause 5.3 to disconnect, curtail, interrupt or reduce the supply of Thermal Energies to the Site Address.

6 Return Connection Point and Internal Infrastructure

6.1 Installation and operation of the Return Connection Point and Internal Infrastructure

(a) The Purchaser must, at its cost, install, operate and maintain the Return Connection Point and the Internal Infrastructure, including by making any repairs, changes or additions to the Return Connection Point or the Internal Infrastructure, and do so in such manner as will ensure that the Supplier is at all times able to meet the Supplier's obligations under this Agreement.

(b) If the Purchaser is required to make a change or addition to the Return Connection Point or the Internal Infrastructure arising from a change in the Supplier's requirements or operating procedures, the Supplier must use its reasonable endeavours to ensure that any such change or addition is reasonable having regard to the circumstances of the change or addition except where the change or addition is required as a result of a Change of Law, an applicable Regulatory Requirement or Prudent Engineering Practice.

6.2 Maintenance of the Return Connection Point and Internal Infrastructure

(a) The Purchaser must, at its cost, operate and maintain the Return Connection Point and the Internal Infrastructure so that it is capable of accepting the supply

of Thermal Energies at the rates, in the quantities and of the quality provided for under this Agreement and otherwise in accordance with:

(1) Prudent Engineering Practice; and

(2) all applicable Regulatory Requirements.

(b) The Supplier will not be in default of its obligations under this Agreement to supply the Thermal Energies if it is not able to comply with its obligations by reason of a fault or other defect at the Return Connection Point or the Internal Infrastructure or the failure of the Purchaser to properly maintain the Return Connection Point or the Internal Infrastructure.

7 Supplier's obligations

7.1 Plant

The Supplier must:

(a) maintain the Plant in good condition in accordance with Prudent Engineering Practice and the Maintenance Specification;

(b) carry out or cause all repairs and maintenance to the Plant to be carried out in a workmanlike manner using appropriate materials and equipment within a reasonable time after becoming aware of the need for the repairs; and

(c) use reasonable endeavours to procure that the relevant authority repairs and maintains the water and electricity supplies and drainage and sewerage services to the Plant.

7.2 Generally

The Supplier must ensure that:

(a) it maintains all Permits necessary to supply the Thermal Energies to the Purchaser;

(b) it pays all fees, effects all insurances, provides any bonds and executes any undertakings or agreements reasonably required under the Regulatory Requirements in respect of any Permit. Without limiting the generality of the foregoing, the Supplier must effect industrial special risks insurance with responsible commercial insurers; and

(c) it complies with Prudent Engineering Practice and all applicable Regulatory Requirements in carrying out its obligations under this Agreement.

7.3 Energy and Environmental Rating

The Supplier agrees to provide the Purchaser (at the Purchaser's cost) with information from time to time, as reasonably requested by the Purchaser, to enable the Purchaser:

(a) to obtain or renew any energy or environmental rating in respect of the Site Address; and

(b) comply with its energy reporting requirements under Law, under the Barangaroo Management Plan, the Lease or as required by the BDA from time to time,

provided that the Supplier will not be required to provide any information if it would involve any breach of any obligation of confidence or any Law.

8 Purchaser's obligations

8.1 Compliance with Regulatory Requirements

(a) The Purchaser must comply with all applicable Regulatory Requirements, Prudent Engineering Practice, and obligations to third parties which relate to the maintenance and operation of the Return Connection Point and the Internal Infrastructure.

(b) The Purchaser must immediately notify the Supplier of any incident related to the provision of the Thermal Energies under this Agreement that threatens, or could threaten, public health or safety or could result in the Supplier being in breach of a Regulatory Requirement.

8.2 Alteration or damage to Equipment, the Return Connection Point or the Internal Infrastructure

(a) The Purchaser will not and will procure that its employees, agents and contractors do not:

(1) alter or reconfigure the Connection Point, the Return Connection Point or the Internal Infrastructure; or

(2) damage, tamper or interfere with any of the plant, equipment (including metering equipment), interconnections or Meters owned or installed by the Supplier or a Metering Provider for the purposes of this Agreement (Equipment),

without the prior written consent of the Supplier (which consent is not to be unreasonably withheld).

(b) The Purchaser must use its reasonable endeavours to prevent, and is liable for all damage to Equipment:

(1) caused by or as a result of the Purchaser's failure to comply with clause 8.2(a); and

(2) located or installed at the Site Address, unless caused by any of the Thermal Energies not being supplied in accordance with the Supplier's obligations under this Agreement.

(c) Despite clause 8.2(a), the Purchaser is not liable for damage to Equipment that occurs as a result of:

(1) normal wear and tear; or

(2) any act or omission of the Supplier or any of the Supplier's employees, agents or contractors.

8.3 Redevelopment or replacement of Building

(a) The Purchaser must give the Supplier no less than 12 months' notice of any intention to redevelop or replace the Building.

(b) Provided the Purchaser has notified the Supplier in accordance with clause 8.3(a), and subject to clause 8.3(c), the parties' obligations under clause 3 and corresponding Charges under clause 10 are suspended in accordance with, and to the extent set out in the notice given by the Purchaser under this clause 8.3, and so far as necessary to conduct the redevelopment and replacement, during the period of any redevelopment or replacement of the Building.

(c) Despite clause 8.3(b), the Purchaser must continue to pay the Chilled Water Maintenance Charge in full in accordance with Schedule 3 during any redevelopment or replacement of the Building.

(d) No later than 90 days prior to completion of any redevelopment or replacement of the Building, the Purchaser must ensure that the Site Address is connected to the Chilled Water Loop and the Purchaser and the Supplier must thereafter comply with all of their obligations under this Agreement.

(e) The Purchaser must provide the Supplier with reasonable notice of when it requires the Supplier to recommence the provision of Thermal Energies under this Agreement following any redevelopment or replacement of the Building.

8.4 Exclusivity

The Purchaser will not, at any time after the date of this Agreement and during the Term:

(a) enter into any agreement, understanding or any other arrangement with a third party for alternative supply of Thermal Energies to the Site Address; or

(b) install or operate any plant or equipment at the Site Address which has the effect of reducing the Purchaser's use of the Thermal Energies supplied under this Agreement

except with the Supplier's prior written consent.

9 Metering

9.1 Meters

(a) The Supplier will be responsible for the installation, maintenance and routine testing and auditing of Meters for the measurement of the quantity of Thermal Energies and the Thermal Energies Supply Returns to the Site Address and may use a Metering Provider for this purpose.

(b) Unless the parties agree otherwise, the Supplier will provide the Purchaser with Metering Data for each Billing Period sufficient for the Supplier to prepare and render an invoice in respect of the Site Address.

(c) The Supplier will ensure that all Meters used for the purposes of this Agreement comply with all applicable Regulatory Requirements.

(d) Subject to clause 9.3, in the absence of manifest error or negligence by the Supplier or the Metering Provider, all measurements as to quantity of Thermal Energies consumed made by the Meters are taken to be correct.

(e) The Meters remain the Supplier's property or in some cases, the property of the Supplier's Metering Provider.

9.2 Metering Data

Subject to clause 9.3, the quantity of Thermal Energies provided to the Purchaser under this Agreement is to be determined by the Supplier from Metering Data. The Metering Data is prima facie evidence of the amount of Thermal Energies provided to the Purchaser.

9.3 Using estimated data to calculate Charges

(a) The Charges in an invoice may be based upon estimated data where:

(1) access to the Meter(s) is denied for any reason;

(2) the Supplier considers that it is not reasonably practicable to obtain a reading of the Meter(s);

(3) the Meter(s) is providing incorrect readings for any reason;

(4) the Supplier is unable to obtain the Metering Data for any reason; or

(5) the Supplier discovers that any of the Thermal Energies or any electricity has been supplied to the Site Address without passing through the metering equipment.

(b) Where the Charges in an invoice are based on estimated data in accordance with clause 9.3(a), the amount payable will be determined by the Supplier in accordance with any applicable Regulatory Requirements and may be by reference to prior billing history or any other criteria the Supplier reasonably considers is relevant in consultation with the Purchaser and any Meter reading which the Supplier may subsequently take. If an invoice is based upon estimated data, and actual data subsequently becomes available, the Supplier will include an adjustment on a later invoice under clause 12.1(b).

(c) Where the Charges in an invoice are based on estimated data in accordance with clause 9.3(a), if the Purchaser subsequently requests an invoice based on an actual Meter reading and the Supplier is charged for the additional Meter reading, the Supplier may pass the cost of this additional Meter reading on to the Purchaser. The Purchaser will not be liable for such cost if the additional Meter read demonstrates that the Meter does not meet the required class of accuracy and permitted uncertainties as set out in the applicable Regulatory Requirements for the Meter.

(d) If any of the Charges are varied under this Agreement during a Billing Period the Thermal Energies supplied and measured by a Meter or estimated to have been supplied is to be assumed to have been supplied at a uniform daily charge for the whole of the Billing Period and the amount of that Charge is to be calculated on the basis of a pro-rata calculation of the relevant varied Charges over the Billing Period.

10 Charges

The Purchaser must pay to the Supplier:

(a) the Charges in accordance with Schedule 3; and

(b) the price of Services (other than the provision of the Thermal Energies and Metering Services) that the Purchaser receives from the Supplier,

in each case in accordance with clause 12.

11 Change of Law

(a) If a Change in Law:

(1) affects the Supplier's costs in respect of the goods, services or other things supplied or provided under or in connection with this Agreement or incurred by the Supplier to enable it to acquire or dispose of, or as a result of it acquiring of or disposing of, such goods or services or goods or services of that type, including costs in respect of production, creation, performance, acquisition, supply or sale of such goods, services or other things; or

(2) leads to a change in the benefits gained by it from the activities described in clause 11(a)(1) (except by operation of this clause),

and the change in those amounts or that change in benefit is not to be reimbursed under any other provision of this Agreement, the Charges may be adjusted to reflect the impact on the Supplier of the change in those amounts or the change in benefit, as the case may be, attributable to the Change of Law.

(b) Any variation to the Charges under clause 11(a) will be effective as from the date of any Change of Law.

(c) The Supplier will:

(1) notify the Purchaser in writing of any variation to the Charges under clause 11(a), as soon as practicable after any variation takes effect under clause 11(b); and

(2) use reasonable endeavours to provide the Purchaser with a description of the Change of Law.

(d) To the extent that adoption of the new Change of Law regime is optional, the Supplier and the Purchaser will negotiate in good faith to determine an equitable method of implementing the new optional regime so that neither of those parties is adversely affected. If the matter cannot be resolved within 2 months after the Supplier and the Purchaser commence negotiations, either of those parties may refer the dispute to an independent expert (nominated in the event of dispute by the then current president of the Law Society of NSW) to determine an equitable method of implementing the new regime so that neither of those parties is adversely affected. The parties acknowledge and agree that the expert may determine that there is no equitable method of implementing the new optional regime so that neither the Supplier or the Purchaser is adversely affected, and in that event the new optional regime will not be implemented. The decision of the expert will be final and binding.

12 Payments

12.1 Payments

(a) The Supplier will issue an invoice for the Site Address to the Purchaser at the Purchaser's Address for Accounts.

(b) The invoice will include:

(1) the Charges as estimated for the most recent Billing Period including any adjusted amounts under clause 9.3(a);

(2) amounts charged under clause 10(b);

(3) amounts for GST under clause 21; and

(4) any outstanding amounts from previous invoices.

(c) The Supplier will use reasonable endeavours to ensure each Billing Period is approximately one month in length unless the Supplier and Purchaser agree otherwise.

(d) The Purchaser will pay each invoice in full no later than the Due Date.

(e) If the Purchaser fails to pay the invoice by the Due Date the Supplier may:

(1) apply any security the Supplier holds in relation to this Agreement towards payment of the invoice;

(2) take action under clause 17(a)(2);

(3) recover the Supplier's costs of collecting the amounts the subject of the invoice from the Purchaser; and

(4) charge interest and recover late payment costs under clause 20.

(f) The difference between the estimated Charges paid and the actual Charges payable by the Purchaser will be settled in accordance with Schedule 3.

12.2 No payment during initial period

(a) Despite any other provision in this Agreement, the Supplier must not issue an invoice under clause 12.1 during the initial period (as that term is defined in the Strata Schemes Management Act 1996 (NSW)) in relation to the Purchaser.

(b) Immediately following the end of the expiry of the initial period in relation to the Purchaser, the Supplier may issue an invoice for the Site Address to the Purchaser for all amounts owing by the Purchaser to the Supplier under this Agreement for the period commencing on the Commencement Date to the end of the month immediately preceding the date of the invoice.

13 Risk and Liability Provisions

13.1 Purchaser's indemnity

The Purchaser indemnifies the Supplier against all Liabilities which the Supplier incurs or suffers as a consequence of any negligence in the performance of its obligations under this Agreement, or breach of this Agreement by the Purchaser.

13.2 Exclusion of Consequential Loss

Notwithstanding any other provision of this Agreement and to the extent permitted by law, a party will not be liable for any liquidated damages, for construction delays or otherwise, or for any special loss, Consequential Loss or indirect loss or damage (including loss of opportunity, loss of credit rating or loss of business reputation) incurred or suffered by the other party or any third party whether under this Agreement or at law.

13.3 Exclusion of liability

(a) Notwithstanding any other provision of this Agreement, the Supplier will not be in default of its obligations under this Agreement to the extent that it is unable to supply the Minimum Thermal Energy Demands as a result of the termination of,

or the failure of any person to comply with any of their obligations, or the suspension of those obligations, under:

(1) the Lease;

(2) the lease of a Lot;

(3) any contractual arrangement between the Supplier and a third party in respect of the acquisition or maintenance of the Plant and its supply to the Site Address of the Thermal Energies,

unless that termination, suspension or failure arises due to the default of the Supplier.

(b) To the fullest extent permitted by law, all warranties implied by common law or statute are excluded from this Agreement unless expressly included. However, if any part of this Agreement is unlawful, unenforceable or invalid, that part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.

13.4 If the Purchaser is a Consumer

If the Purchaser is a Consumer:

(a) clauses 13.2 and 13.3 do not apply to any liability of the Supplier for failure to comply with a Consumer Guarantee;

(b) in respect of the goods supplied under this Agreement, subject to clause 13.4(d), unless the goods are Excluded Goods, the liability of the Supplier for Liability, however caused (including by the negligence of the Supplier), suffered or incurred by the Purchaser because of a failure to comply with a Consumer Guarantee is limited to the Supplier (at its election):

(1) replacing the goods or supplying equivalent goods;

(2) repairing the goods;

(3) paying the cost of replacing the goods or of acquiring equivalent goods; or

(4) paying the cost of having the goods repaired;

(c) in respect of the services supplied under this agreement, subject to clause 13.4(d), unless the services are Excluded Services, the liability of the Supplier for Liability, however caused (including by the negligence of the Supplier), suffered or incurred by the Purchaser because of a failure to comply with a Consumer Guarantee is limited to the Supplier (at its election):

(1) resupplying the services; or

(2) paying the cost of having the services supplied again;

(d) clauses 13.4(b) and 13.4(c) do not apply in relation to a Title Guarantee or if it is not Fair or Reasonable for the Supplier to rely on them; and

(e) in this clause 13.4:

(1) **Australian Consumer Law** or **ACL** means Schedule 2 to the *Competition and Consumer Act* 2010 (Cth) and the corresponding provisions of the Australian Consumer Law (New South Wales) as applicable;

(2) **Consumer** has the same meaning as in section 3 of the Australian Consumer Law;

(3) **Consumer Guarantee** means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty;

(4) **Excluded Goods** means 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law;

(5) **Excluded Services** means 'services of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law;

(6) **Express Warranty** has the same meaning as in section 2(1) of the Australian Consumer Law;

(7) **Fair or Reasonable** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law; and

(8) **Title Guarantee** means a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

13.5 No warranty

The Purchaser acknowledges and agrees that it has not relied on any representation or warranty that is not contained in this Agreement.

14 Priority of supply and step-in

(a) The Purchaser acknowledges that clause 66 of the BMS applies in relation to the priority of supply from the Plant to customers at Barangaroo South.

(b) The Purchaser acknowledges that the Supplier has granted step in rights pursuant to the BMS, and will not object to the valid exercise of step in rights in accordance with the BMS.

15 Force Majeure

(a) If any party is, by reason of a Force Majeure Event, prevented, wholly or in part, from or delayed in performing any obligation (other than any obligation to pay an amount, including the Charges, as and when due and payable) under this Agreement:

(1) that party will give the other party notice in writing as soon as reasonably possible of that fact including:

- reasonable particulars of the Force Majeure Event, the obligations affected by it and the extent of the effect of the Force Majeure Event on those obligations;
- an estimate of the period of time required to enable the party affected by the Force Majeure Event to resume full performance of their obligations under the Agreement;
- where possible, the steps taken or to be taken to remove, overcome or minimise the effects of the Force Majeure Event; and

(2) the obligations (other than any obligation to pay an amount, including the Charges, as and when due and payable) of the party giving the notice referred to in clause 15(a)(1) are suspended to the extent to which they are affected by the Force Majeure Event, for as long as the Force Majeure Event continues and will not give rise to any liability to the other party for any loss, cost, damage or expense including Consequential Loss arising out of, or in any way connected with, the non-performance of those obligations.

(b) A party claiming a Force Majeure Event will use reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure Event.

(c) A party claiming a Force Majeure Event will:

(1) notify the other party in writing when the Force Majeure Event has terminated or abated to the extent which permits resumption of performance to occur; and

(2) notify the other party in writing when resumption of performance of the affected obligations has occurred.

(d) If the effects of a Force Majeure Event are widespread, the Supplier will be deemed to have given the Purchaser notice under this clause 15 if the Supplier makes the information available to the Purchaser by way of a 24 hour telephone service as soon as reasonably practicable.

(e) If due performance of any obligation under this Agreement is prevented for more than 6 months in aggregate by reason of the Force Majeure Event, then either party may, after that period, provided it has complied with clauses 15(a) and 15(b), terminate this Agreement by giving not less than 30 days' notice in writing to the other party.

16 Suspension; Termination

16.1 Supplier's notice to suspend

Subject to the provisions of the BMS, the Supplier may by notice to the Purchaser suspend such of the rights and obligations of the Purchaser nominated in that notice if:

(a) An Insolvency Event occurs in respect of the Purchaser [which the Supplier believes on reasonable grounds will result in the Purchaser failing to comply with its obligations under this Agreement];

(b) any of the events in clause 17(a)(1), 17(a)(3), 17(a)(7) or 17(a)(8) occur and provided that in the case of the events described in clause 17(a)(1), 17(a)(3) or 17(a)(7), the event lasts for more than 30 days;

(c) a Permit Event occurs;

(d) any State or Federal government body or authority fails to perform or repudiates any of its obligations under any Permit;

(e) the Access Rights to the CCWP Lot are terminated;

(f) the Plant becomes a "Shared Facility" in accordance with the BMS; or

(g) the Purchaser is in breach of its material obligations under this Agreement and does not rectify such breach within 15 Business Days after receiving notice from the Supplier to do so.

(h) until such time as the event or circumstance giving rise to the suspension is remedied.

16.2 Purchaser's notice to terminate

Subject to the provisions of the BIIS, the Purchaser may by notice terminate this Agreement if:

(a) an Insolvency Event occurs in respect of the Supplier [which the Purchaser believes on reasonable grounds will result in the Supplier ceasing to supply the Thermal Energies in accordance with this Agreement];

(b) the Supplier abandons the Plant; or

(c) the Supplier is in breach of any other material obligation under this Agreement and does not rectify such breach within 45 Business Days after receiving notice from the Purchaser to do so.

16.3 Consequences of suspension; termination

(a) If this Agreement is suspended or terminated for any reason, except where:

(1) the Purchaser terminates this Agreement under clause 16.2; or

(2) the Supplier suspends or terminates this Agreement under:

- clause 16.1(b) if any of the events described in clause 17(a)(1), 17(a)(3) or 17(a)(7) occur;
- clause 16.1(d);
- clause 16.1(e) other than where the suspension or termination arises as a result of the act or omission of the Supplier; or
- clause 16.1(f),

the Purchaser will pay the Supplier the costs the Supplier incurs due to that suspension or termination within 10 Business Days of receipt of a request from the Supplier to do so.

(b) Notwithstanding clause 16.3(a), if this Agreement is suspended or terminated under:

(1) clause 16.1(c), the party responsible for that Permit Event must pay the costs the other party incurs due to that suspension or termination. If neither party is responsible for the Permit Event, each party must bear their own costs in relation to the suspension or termination;

(2) clause 16.1(a) or clause 16.2(a), the party the subject of the Insolvency Event must pay the costs the other party incurs due to that suspension or termination; or

(3) clause 16.1(g) or 16.2(c), the party in breach of its meterial obligations must pay the costs the other party incurs due to that suspension or termination.

(c) To the maximum extent permitted by law the Supplier is not liable to the Purchaser or any other person where the Supplier has disconnected the Site Address or suspended or terminated this Agreement in accordance with the terms of this Agreement.

(d) Suspension or termination of this Agreement will be without prejudice to any accrued or other rights of either party whether at law or otherwise, and does not affect the rights and obligations of the parties under the clauses of this

Agreement expressed to continue in force or are, by their nature, capable of enforcement against a party by the other party after suspension or termination of this Agreement.

(e) If, when this Agreement ends (whether by effluxion of time or otherwise), the Purchaser has accrued or incurred, but has not paid, Charges pursuant to this Agreement then, notwithstanding the end of this Agreement, the Purchaser's obligation to pay those Charges survives the termination of the Agreement.

17 Temporary Disconnection

(a) The Supplier may disconnect, curtail, interrupt or reduce the supply of Thermal Energies to the Site Address:

(1) on the Purchaser's request;

(2) if the Purchaser fails to pay on time any 3 consecutive invoices or 3 invoices in any 6 month period, and the Supplier has issued the Purchaser with a notice setting out that the Purchaser's supply will be disconnected after 5 Business Days unless the Purchaser pays the outstanding amount and the 5 Business Day period has expired and the Purchaser has not paid that amount;

(3) if the Purchaser or a person within the Purchaser's authority does not give an Authorised Person access to the Site Address in accordance with clause 4 and the Purchaser does not promptly rectify the obstruction following a request from the Supplier to do so;

(4) if the Purchaser breaches this Agreement and the Supplier has issued the Purchaser with a notice setting out that the Purchaser's supply will be disconnected within 15 Business Days if the breach is not remedied and that 15 Business Days has expired without the Purchaser remedying the breach;

(5) in an Emergency;

(6) for inspections, maintenance, or testing;

(7) if the Supplier or a Distributor is directed or permitted to do so under a Regulatory Requirement or the BMS; or

(8) if the Purchaser has used any of the Thermal Energies at the Site Address in a way that causes the Supplier to have committed an offence or breached a Permit condition.

(b) The Supplier will endeavour, where practicable, to ascertain and inform the Purchaser of the dates on which an event listed in clause 17(a)(5) to 17(a)(7) will occur and the extent to which the supply of Thermal Energies to the Purchaser under this Agreement will be affected.

(c) If the Site Address is disconnected pursuant to clause 14(a) the Purchaser and the Supplier:

(1) must use all reasonable endeavours to resume connection for the supply of the Thermal Energies as soon as reasonably practicable following the disconnection event(s) having regard to the nature of the disconnection event(s); and

(2) agree that all Charges [relating to the maintenance of the Plant] remain in effect during the period of disconnection.

(d) The Supplier is not liable for loss or damage arising from or in connection with the supply of Thermal Energies being disconnected, curtailed, interrupted or reduced in accordance with this clause 17 unless the disconnection, curtailment, interruption or reduction is due to, or as a result of, the Supplier's act or omission which is done or made through negligence.

(e) The Purchaser agrees to pay to the Supplier any costs that the Supplier incurs relating to disconnection and any subsequent reconnection in accordance with this clause 17.

18 Terms of this Agreement

(a) This Agreement applies to the exclusion of any Regulatory Requirements except where the Regulatory Requirements prohibit this.

(b) Where this Agreement contemplates the Purchaser or the Supplier exercising a right or performing an obligation, that right will be exercised or that obligation performed in accordance with the requirements of the relevant Regulatory Requirement should that Regulatory Requirement apply to this Agreement.

(c) The warranties, undertakings and indemnities in this Agreement do not merge on the termination of this Agreement.

(d) Except in relation to any Express Warranty (as defined in clause 13.4(e)(6)), this Agreement overrides all prior negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement. The Purchaser acknowledges that it has not relied on any predictions, forecasts, advice or statements of opinion by the Supplier, or any of the Supplier's employees or agents, as to the appropriateness or financial effect of this Agreement, market conditions, the likelihood or otherwise of price changes or events that may constitute a Change of Law.

19 Assignment

The Purchaser may not sell, assign or transfer or allow an Encumbrance to arise in respect of its interest under this Agreement to any other person except with the prior written consent of the Supplier.

20 Interest

If a party fails to pay an amount required to be paid under this Agreement by the due date for payment, the unpaid party due may charge interest on the unpaid amount from the due date and recover any costs the party due to be paid incurs as a result of the late payment.

21 GST

(a) In this clause 21, all italicised and emboldened terms, have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 and in the ***GST law***.

In addition:

"**Agreement Price**" means the ***consideration*** to be provided under this Agreement for the Supply (other than under this clause);

"**Principal**" means Owners' Corporation;

"**Recipient**" means the party that receives the Supply from the Supplier;

"**Supplier**" means the party that provides the Supply to the Recipient and includes the ***representative member*** of the ***GST Group*** if the Supplier is a member of a ***GST Group***;

"**Supply**" means any ***supply*** to the Recipient by the Supplier pursuant to this Agreement. However, if the ***GST law*** treats part of a ***supply*** as a separate ***supply*** for the purpose of determining whether ***GST*** is payable on that part of the ***supply*** or for the purpose of determining the tax period to which that part of the ***supply*** will be attributable, such part of the ***supply*** will be treated as a separate ***supply*** for the purposes of this clause.

(b) Unless expressly stated otherwise in this Agreement, all amounts payable or consideration to be provided under this Agreement are exclusive of GST.

(c) Notwithstanding any other provision in this Agreement, if a **Supplier** is or becomes liable to pay ***GST*** in connection with any Supply:

(1) the Recipient will pay to the Supplier, in addition to the Agreement Price, an additional amount equal to the amount of that ***GST***;

(2) the Recipient will pay the Agreement Price plus the additional amount on account of ***GST*** within the Payment Term upon receiving a ***tax invoice*** from the Supplier for that Supply or as otherwise provided in this Agreement.

(d) If the ***GST*** payable in relation to a Supply made under or in connection with this Agreement varies from the additional amount paid or payable by the Recipient under 21(c)(1) 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 21(d) is deemed to be a payment, credit or refund of the additional amount payable under 21(c)(1). If an ***adjustment event*** occurs in relation to a Supply, the Supplier will issue an ***adjustment note*** to the Purchaser in relation to that Supply within 10 Business Days after becoming aware of the adjustment;

(e) Where a party reimburses the other party for an expense or other amount incurred in connection with any wholly or partly ***creditable acquisition*** or any wholly or partly ***creditable importation*** made by that other party, the amount reimbursed shall be net of any ***input tax credit*** claimable in respect of that acquisition or importation (as the case may be).

22 Dispute Resolution

(a) Except when an alternative dispute resolution process is expressly set out in this Agreement, if an issue between the Supplier and the Purchaser arises out of or in connection with this Agreement, then either party may give to the other party a notice of issue in writing adequately identifying and providing details of the issue and the contractual provisions relied upon. Notwithstanding the existence of an issue, but subject to clauses 16 and 17, the Supplier and the Purchaser must continue to perform and comply with the Agreement.

(b) Neither party may commence any court proceedings or arbitration in respect of any issue notified under this clause 22 until that party has complied with the requirements of this clause 22(b). Within 5 Business Days after service of a notice of issue, senior executives of each Party must confer at least once to attempt to resolve the issue and failing resolution of the issue must consider and if possible agree on methods of resolving the issue by other means. If the senior executives of each party cannot agree on the method of resolving the issue as contemplated by this clause 22(b) within 15 Business Days following the service of a notice of issue under clause 22(a), either Party may after giving notice in writing to the other Party commence litigation in respect of that issue.

23 Confidentiality

(a) Except as otherwise provided in this Agreement, all information obtained by a party orally, or in writing or in disk or electronic form relating in any way, directly or indirectly, to this Agreement and the provision of Services under this Agreement (including the terms of this Agreement), which is not in the public domain (or which is in the public domain, but only as a consequence of a breach of this clause 23) (**Confidential Information**) will be kept confidential. Neither party will disclose Confidential Information to third persons without the prior written consent of the other party, provided that each party will be entitled to disclose:

(1) to the Barangaroo Distributor information that relates to the Barangaroo Network operational or pricing matters;

(2) if required by law, the Regulatory Requirements or the rules of a stock exchange on which a party's shares are listed;

(3) to the receiving party's Related Bodies Corporate or to the employees of the receiving party of a Related Bodies Corporate whose duties in either such case reasonably require such disclosure;

(4) to independent consultants, advisers and contractors of the receiving party whose duties in relation to the receiving party reasonably require such disclosure (subject to those persons agreeing to be bound by the confidentiality obligations of the receiving party under this clause 23(a));

(5) a potential purchaser or mortgagee of the Lease;

(6) any Occupant; or

(7) as expressly permitted under this Agreement.

(b) The Purchaser authorises the Supplier to disclose Metering Data relating to the Purchaser's Site Address.

(1) to any counterparty of agreements the Supplier enter into to manage any arrangements in providing the Thermal Energies; or

(2) for the purpose of the Supplier achieving, maintaining or promoting a performance and/or environmental impact rating of the Barangaroo Stage 1 development;

(3) for the purpose of meeting obligations in relation to greenhouse gas reporting.

(c) The Supplier authorises the Purchaser to disclose anything other than sensitive information to third parties who reasonably require such disclosure for the purpose of the Purchaser achieving, maintaining or promoting a building performance and/or environmental impact rating of the Site Address, its energy usage or environmental profile (subject to those persons agreeing to be bound by the confidentiality obligations of the receiving party under clause 23(a)).

(d) The provisions of this clause 23 continue to bind a party, notwithstanding that it may have ceased to be a party to this Agreement, and will continue to apply for a period of three years after the termination of this Agreement.

24 Privacy Statement

Both parties will comply with the provisions of the Privacy Act 1988 (Cth).

25 Notices

25.1 Form

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the person identified in Schedule 1 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

25.2 Delivery

They must be:

(a) left at the address set out or referred to in Schedule 1;

(b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in Schedule 1;

(c) given in any other way permitted by law.

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

25.3 When effective

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

25.4 Receipt - post

If sent by post, they are taken to be received 3 days after posting (or 7 days after posting if sent to or from a place outside Australia).

25.5 Receipt - general

Despite clause 25.4 if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

26 General

26.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

26.2 Failure to exercise rights

Except as otherwise set out in this Agreement, any partial exercise, failure to exercise, or delay in exercising, a right or remedy provided under this Agreement or by law does not operate as a waiver or prevent or restrict any further or other exercise of that or any other right or remedy in accordance with this Agreement.

26.3 No liability for loss

Except as otherwise set out in this Agreement, a party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy that is available to it under this Agreement.

26.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

26.5 Conflict of interest

The parties' rights and remedies under this Agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

26.6 Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

26.7 Rights and obligations are unaffected

Rights given to the parties under this Agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

26.8 Variation and waiver

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

26.9 Indemnities

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

26.10 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

(a) to bind the party and any other person intended to be bound under this Agreement;

(b) to show whether the party is complying with this Agreement.

26.11 Prompt performance

If this Agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

26.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

26.13 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation except for stamp duty. The Purchaser agrees to pay any stamp duty chargeable, payable or assessed in relation to this Agreement.

26.14 Inconsistent law

To the extent permitted by law, this Agreement prevails to the extent it is inconsistent with any Law.

26.15 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this Agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

26.16 Ombudsman

The Purchaser may apply to an industry Ombudsman for a review of a decision by the Supplier relating to the supply of the Thermal Energies under this Agreement.

27 Governing law

27.1 Governing law

This Agreement is governed by the law in force in New South Wales.

27.2 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

27.3 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address shown in Schedule 1.

28 Counterparts

This Agreement may consist of a number of copies each signed by one or more parties to the Agreement. If so, the signed copies are treated as making up the one document.

29 Definitions and Interpretation

29.1 Definitions

In this Agreement, a term defined in Schedule 3 when used in this Agreement has the meaning given to it in that Schedule and:

Term	Meaning
Access Rights	rights granted by the CCWP Lot Owner for the benefit of the Supplier under the Sub-lease or the BMS or otherwise for the construction and operation of the Plant and the provision of Thermal Energies to the Connection Point including all rights of access to the CCWP Lot to facilitate construction, operating, maintenance, repair and replacement of the Plant.

Address for Accounts	the address specified in Item 1 of Schedule 1 as the Address for Accounts.
Agreement	this agreement, including the Schedules.
Authorised Person	has the meaning given in clause 4(a).
Barangaroo Distributor	the operator of the Barangaroo Network, which as at the date of this Agreement is the person identified as such in Item 2 of Schedule 1.
Barangaroo Management Plan	has the meaning given in the Lease.
Barangaroo Network	the embedded electricity distribution network servicing Barangaroo South, connected to the External Distribution Network at [•] and operated by the Barangaroo Distributor.
Barangaroo South	the land being Barangaroo Stage 1 being the subject of the Project Delivery Agreement between Lend Lease (Millers Point) Pty Ltd (ABN 15 127 727 502) and the BDA dated [•].
BDA	the Barangaroo Delivery Authority, a corporation constituted by the Barangaroo Delivery Authority Act 2009.
Billing Period	any period for which an invoice is or may be issued.
BMS	the Building Management Statement for the Barangaroo South registered with deposited plan [•].
Building	the building and any improvements at the Site Address.
Business Day	a day that is not a Saturday, Sunday or a state wide public holiday in NSW.
Business Hours	between 9am and 5pm on Business Days.
CCWP Lot	[lot [ ] in DP[ ]] being the lot within which the main part of the Plant is located, and being the lot the subject of the Sub lease.
CCWP Lot Owner	the entity or entities identified as the lessor under the Sub lease from time to time.

Change of Law	means: 1 any law, regulation, rules, code or sub code being introduced, amended or repealed in whole or in part; 2 the imposition of any Tax which was not in force as at the date of this Agreement; 3 the rate at which any Tax is levied being varied from the rate prevailing as at the date of the Agreement; 4 the basis on which any Tax is levied or calculated being varied from the basis which it is levied or calculated as at the date of this Agreement; 5 a variation in the interpretation or administration of a law or regulation by a governmental agency or body or a court tribunal; or 6 a scheme being introduced by any governmental agency providing for the Supplier to gain or hold any licence, permit or authorisation or providing for the Supplier to purchase, hold or surrender any certificate, permit or instrument or any such scheme being varied, except to the extent that such imposition, amendment, repeal, variation or introduction relates to income tax or GST.
Charges	has the meaning given in Schedule 3.
Chilled Water	has the meaning given in Schedule 4.
Chilled Water Loop	the chilled water reticulation system component of the Plant which connects the Site Address to the Plant as indicated in Part B of Schedule 2.
Chilled Water Maintenance Charge	has the meaning given in Schedule 3.
Commencement Date	the date on which the last of the Conditions Precedent has been satisfied or waived in accordance with this Agreement.
Conditions Precedent	has the meaning given in clause 1.1(b).
Confidential Information	has the meaning given in clause 20(a).
Connection Point	the physical point of connection indicated in Part A of Schedule 2 between the Chilled Water Loop and the relevant Internal Water Infrastructure.
Consequential Loss	any loss of revenue or profit, loss of business opportunity or goodwill and any claims for indirect, special or punitive damages and includes any other indirect or consequential losses, costs, damages, liabilities

	or expenses.
CPI Adjustment Factor	has the meaning given in Schedule 3.
Due Date	the date by which the Purchaser must pay the Purchaser's invoice as specified on the invoice which will be no less than the period after the date of the invoice as specified as the Payment Term in Item 6 of Schedule 1.
Emergency	means: 1 the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages or threatens to destroy or damage any property; or 2 any emergency under the Regulatory Requirements.
Encumbrance	an interest or power: 1 reserved in, or over, an interest in any asset, including any retention of title; or 2 created or otherwise arising in, or over, any interest in any asset, under a bill of sale, mortgage, charge, lien, pledge, trust or power, by way of security for the payment of a debt or any other monetary obligation, or the performance of any other obligation, and includes any agreement to grant or create any of the above and Encumber has a corresponding meaning.
End Date	the date specified in Item 4 of Schedule 1 unless this Agreement is terminated earlier in accordance with its terms, in which case, the date this Agreement is terminated.
Environmental Attributes	any: 1 labelling or other promotional rights in respect of the Plant; and 2 future right, instrument, credit, mechanism, off set or benefit in respect of or in connection with a central chilled water plant using similar technology to the Plant that is related to emissions (including abatement or avoidance of emissions) or other matters affecting the environment.
Equipment	has the meaning given in clause 8.2(a)(2).
Financial Year	a period of 12 consecutive months, starting on 1 July and ending on 30 June.
Force Majeure Event	means: 1 a failure of the power grid to provide electricity supplies to the

Plant, the Site Address or any premises at the Site Address or the failure of third parties to supply utility services (including water, gas and electricity) to the Plant, the Site Address or any premises at the Site Address except where the failure is due to the default or wrongful or negligent act or wrongful or negligent act or omission of the Supplier;

2 terrorism, act of war (whether declared or not), civil commotion, explosion, earthquake, aircraft or other aerial device, fire, flood, lightning, storm, tempest, machinery or equipment failure or breakdown or act of God, except in the case of machinery or equipment failure or breakdown, where the failure or breakdown is due to the default or wrongful or negligent act or wrongful or negligent act or omission of the Supplier;

3 the provisions of any Laws or the direction of any authority with respect to the operation of the Plant or the Chilled Water Loop, except where due to any non-compliance by the Supplier with its obligations under this Agreement; or

4 in the case of the Plant, if the original basis of design in respect of the Plant is exceeded by the Purchaser or other purchasers of services similar to those being supplied under a Supply Agreement or by both.

Insolvency Event the occurrence of any of the following events:

1 an application is made to the court for an order that a party may be wound up;

2 an order is made that a body corporate be wound up;

3 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a party; or

4 a liquidator or provisional liquidator is appointed in respect of a body corporate, whether or not under an order.

Interest on any day, the average bid rate (expressed as a percentage yield to maturity per annum rounded upwards, if necessary, to the nearest 0.01%) displayed on the page of the Reuters Monitor System, designated "BBSY" at or about 10.30am on that day (or if that day is not a Business Day then on the Business Day which immediately precedes that day) for the purchase of bills of exchange (as defined in the Banking Act 1959 (Cth)) bearing the acceptance of a bank licensed under sections 8 or 9 of the Banking Act and for a term to maturity of 90 days, or if there is manifest error in the calculation of that average rate, or that average rate is not displayed at or about 10.30am on that day, or if that average rate becomes clearly inappropriate, unfair or incapable of application, then the "Bank Bill Rate" for that day is as agreed between the parties in good faith to be representative of the rate at which such bills are being purchased by such banks at or about 10.30am on that day plus a margin of 3.00%.

Internal Infrastructure means chilled water reticulation system located at the Site Address and connected to the Connection Point, used to transmit/transport the Thermal Energies throughout the Site Address.

Laws	all statutes (including the Barangaroo Delivery Authority Act but not including the Barangaroo Management Plan), rules, regulations, proclamations, ordinances, by laws or the common law, present or future and includes an any rules, regulations, proclamations, ordinances or by laws other than the Barangaroo Management Plan made by the BDA in its statutory capacity but not in its capacity as head lessor.
Lease	lease registered number [•]. *[Note- this is the lease of the Purchaser's lot]*
Liability	any loss, damage, liability, costs, charges and expenses.
Maintenance Specification	the specification attached as Schedule 5.
Meter	a meter or monitor to be installed and maintained for the purpose of measuring the supply and temperature of Thermal Energies at the Connection Point and Primary Energy Returns at the Return Connection Point at the Site Address.
Metering Data	information obtained from a Meter installed at the Site Address sufficient for the Supplier to determine the Charges.
Metering Provider	a person engaged by the Supplier and accredited to provide Metering Services, including the provision and maintenance of the Meters.
Metering Services	includes the installation, maintenance or testing of Meters and other metering equipment at the Site Address, including meters for each Lot, and the reading and generation of metering data from those meters sufficient for the individual invoicing of each Lot.
Minimum Thermal Energy Demands	the amounts set out at Item 11 of Schedule 1.
Outage	an interruption to or a reduction in the capacity of the Supplier to supply the Thermal Energies to the Site Address as measured at the Connection Point.
Payment Term	the period specified in Item 6 of Schedule 1 from the date of an invoice.
Permit	any permit, licence, approval, consent, waiver, authorisation or other requirement required in connection with this Agreement or the operation of the Plant, the Chilled Water Loop or the Internal Infrastructure from any State or Federal government body or agency under the Regulatory Requirements.

Permit Event	the occurrence of any of the following: 1 any Permit not being granted upon application having been duly made; 2 any Permit ceasing to remain in full force and effect, or not being renewed upon application having been duly made or being renewed upon terms and conditions which are less favourable to the Supplier than those originally imposed; 3 the attachment to any Permit subsequent to its grant of any terms or conditions which adversely affect any of the Supplier's rights or the performance by the Supplier of any of its obligations; or 4 the requirement of any Permit not required as of the date of this Agreement.
Plant	the facility located at the CCWP Lot comprising the central chilled and heat rejection plant and equipment servicing Barangaroo South, the Chilled Water Loop and the Connection Point owned by the Supplier.
Prudent Engineering Practice	means: 1 those laws, statutory regulations, orders and standards of best practice stipulated by any applicable State or Federal body or agency or other relevant body duly authorised in respect of the supply of any or all of the Thermal Energies or other related matters; or 2 in the absence of any such laws, statutory regulations, orders or standards of best practice, those practices that are generally accepted and commonly used in the industries involved in the supply of any or all of the Thermal Energies.
Regulatory Requirements	all legislation, rules, regulations, codes, and orders in council, licences, proclamations, directions or standards that are relevant to the supply, sale or purchase of the Thermal Energies in New South Wales.
Return Connection Point	the physical point of connection at which the Thermal Energies Supply Returns are delivered from the Site Address as indicated in Part B of Schedule 2.
Return Temperature	the temperature of the water measured at the Return Connection Point at the secondary inlet of the heat exchanger at the Return Connection Point.
Schedule	a Schedule to this Agreement.
Service Standards	the service levels set out in Schedule 4.
Services	means:

	1 the provision of Thermal Energies at the Site Address; 2 Metering Services at the Site Address; and 3 any other services (including goods) which the Purchaser agrees in writing to purchase from the Supplier.
Site Address	the address described in Schedule 1.
Sub-lease	lease registered number [insert]. *[Note – this is Supplier's lease of the CCWF Lot]*
Supply Agreement	one or more agreements by the Supplier to supply Thermal Energies from the Plant to a third party.
Supply Period	the period commencing on the Commencement Date and ending on the End Date.
Tax	1 any tax (including a goods and services tax and any valued added tax), levy, charge, impost, duty (including import and customs), tariff, excise, fee, deduction, compulsory loan or withholding; or 2 any income, stamp, indirect or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any governmental agency, or other body authorised by law to impose that Tax and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.
Thermal Energies	Chilled Water.
Thermal Energies Supply Returns	the return supply of each of the Thermal Energies after the Thermal Energies have been utilised at the Site Address.
Term	the term of this Agreement as defined in clause 2.

29.2 Interpretations

(a) This Agreement includes any Schedule.

(b) In this Agreement, unless the contrary intention appears an obligation or a liability assumed by 2 or more persons binds them jointly and severally and a right conferred on 2 or more persons benefits them jointly and severally.

(c) If there is any inconsistency between the provisions of this Agreement and the provisions of the BMS, the provisions of the BMS will prevail.

(d) Unless otherwise stated:

(1) a reference to this Agreement or another document includes any variation or replacement of any of it;

(2) the singular includes the plural and vice versa;

(3) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(4) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated without including that day;

(5) a day is the period of time commencing at midnight and ending 24 hours later;

(6) a month is a calendar month;

(7) a person includes any type of entity or body, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

(8) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(9) if an example is given of any thing (including a right, obligation or concept), the scope is not limited to the example.

(e) Except as specifically provided in this Agreement, if a day on or by which a person will do something under this Agreement is not a Business Day:

(1) if the act involves payment that is due on demand, the person will do it on or by the next Business Day; and

(2) in any other case, the person will do it on or by the previous Business Day.

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Schedules

Table of contents

Reference Schedule	**34**
Contact details for Notices	**35**
Connection Points and Return Connection Points	**36**
Charges	**37**
Service Standards	**44**
Maintenance Specification	**52**

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Schedule 1

Reference Schedule*

Details in schedule to be updated prior to the signing date for this agreement

Item	Description	Clause Reference	Details
1	Address for Accounts	Defined terms	[●]
2	Barangaroo Distributor	Defined terms	[●]
3	External Distributor	Defined terms	Ausgrid, a statutory State owned corporation constituted by the Energy Services Corporations Act 1989 (NSW)
4	End Date	Defined terms	[●] [***being the fiftieth anniversary of the Commencement Date of the first Supply Agreement***]
5	Site Address	Defined terms	[●]
6	Payment Term	Defined terms	30 days
7	Conditions Precedent	Defined terms, clause 1	31 December 2019
8	Connection Point	Defined terms, Schedule 2	[#]
9	Thermal Energy Specifications	Schedule 4	Chilled Water
10	Return Temperature	Schedule 4	[●]
11	Minimum Thermal Energy Demand	3.1(a)	[●] Kwh(r)

Contact details for Notices

Supplier	
Nominated Agent	TBA
Purchaser	
Nominated Agent	TBA

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Schedule 2

Connection Points and Return Connection Points

Note: the diagrams to be contained in Part A and Part B below will be provided closer to the date of signing of this agreement.

Part A – Connection Points

Part B – Return Connection Points

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Schedule 3

Charges

1 Purchaser must pay the Charges

1.1 What are the Charges?

(a) The Charges are:

(1) the **Charges**; and

(2) any other charge agreed in writing between the Supplier and the Purchaser for Services provided by the Supplier under this Agreement including the charges detailed in clause 3 of this Schedule 3.

(b) The Charges consist of the aggregate of the following:

(1) the **Chilled Water Usage Charges**;

(2) the **Chilled Water Maintenance Charge**;

(3) the **Chilled Water Capacity Charge**; and

(4) the **Chilled Water Capital Replacement Charge.**

(c) Residential Charges relate to charges in connection with the consumption at the Site Address of Chilled Water for cooling purposes and relevant capacity charges.

(d) Clause 3 of this Schedule 3 contains the definitions which set out how the Charges and their respective constituent components are calculated.

(e) The Charges are exclusive of any GST or other relevant taxes that may be imposed from time to time.

(f) If any rate set out in this Schedule 3 is subject to government regulation or approval (including by IPART) and the application of the relevant government regulation or approval results in the relevant rate being varied, then this Schedule must be applied as if it referred to the relevant rate as varied by the application of the relevant government regulation or approval.

1.2 Purchaser must pay estimated Charges

(a) The Purchaser must pay instalments of the Charges as estimated and notified by the Supplier or the relevant energy provider to the Purchaser under clause 2 of this Schedule 3 in advance on the first day of the Supply Period and on the first Business Day of every month during the Supply Period.

(b) The Supplier and the Purchaser must make any necessary adjustments between the estimated Charges paid by the Purchaser and the actual Charges payable by the Purchaser in accordance with clause 2 of this Schedule 3 at least once each year and upon the End Date.

(c) The Supplier will estimate the Charges referred to in clause 2 of this Schedule 3 in accordance with any applicable Regulatory Requirements and the Charges may also be estimated by reference to prior billing history or any other criteria the Supplier reasonably considers is relevant in consultation with the Purchaser.

1.3 Purchaser to provide information

The Purchaser must provide the Supplier and the Retail Provider on demand with all information the Supplier or the Retail Provider reasonably requires the Purchaser to provide in order to assist the Supplier and the relevant energy provider to calculate the Charges (including online access to the Purchaser's Meters as may be required).

2 Estimates of Charges, statements and adjustments

(a) At least one (1) month before the start of each Financial Year during the Supply Period and one month before the start of the Supply Period during the first year of this Agreement, the Supplier must notify the Purchaser of the Supplier's estimate in good faith of the Charges for that Financial Year or balance of that Financial Year.

(b) Within three (3) months after the end of each Financial Year, the Supplier must give the Purchaser a statement of the actual Charges for the preceding Financial Year (**Preceding Year**) (**Annual Reconciliation Statement**). The Annual Reconciliation Statement must contain or indicate:

(1) the amount paid by the Purchaser by way of estimated Charges for Thermal Energies consumed and other Services provided during the Preceding Year;

(2) the amount of the Charges for Thermal Energies consumed and other Services provided for the Preceding Year, calculated in accordance with this Schedule 3; and

(3) the balance of the Charges payable by the Purchaser (or any over payment to be credited or refunded to the Purchaser).

(c) Unless the Supplier or the Purchaser gives the other notice detailing a numerical or other error in the Annual Reconciliation Statement within one (1) month of its service, then (subject to clause 2(d) of this Schedule 3) within twenty (20) Business Days after the Purchaser receives a statement under clause 2(b) of this Schedule 3:

(1) the Purchaser must pay the Supplier the balance (if any) of the Charges shown as payable by the Purchaser in the Annual Reconciliation Statement; or

(2) the Supplier must credit the overpayment (if any) of the Charges to the Purchaser's account (or refund the overpayment if no other money is payable to the Supplier) as shown in the Annual Reconciliation Statement.

(d) If the Supplier or the Purchaser gives notice under clause 2(c) of this Schedule 3, a further Annual Reconciliation Statement (complying with clause 2(b) of this Schedule 3) must be given. Clause 2(c) of this Schedule 3 applies to the further Annual Reconciliation Statement.

3 Defined terms and interpretation

3.1 Defined terms

In this Schedule 3 the following terms have the meanings set out below:

(a) **Adjustment Factor (Electricity)** means the amount calculated as follows:

A = B/C

where:

A = the relevant Adjustment Factor (Electricity);

B = the Average Market Electricity Price for electricity (in $/kWh(e)) for the relevant Financial Year or period in relation to which the relevant calculation is being made; and

C = $0.137 per kWh(e).

(b) **AEMO** means the Australian Energy Market Operator Limited ACN 072 010 327.

(c) **Average Market Electricity Price** means the amount calculated as follows with respect of the relevant Financial Year:

A = B + C + D + E + F + G

where:

A = the Average Market Electricity Price in respect of the relevant Financial Year;

B = 69% multiplied by the Loss Factor multiplied by the peak and shoulder retail electricity charge of $0.0785 per kWh(e) for the Baseline Financial Year, such amount adjusted and compounded annually by the Retail Electricity Adjustment Factor for each Financial Year from the Baseline Financial Year to the relevant Financial Year;

C = 31% multiplied by the Loss Factor multiplied by the off peak retail electricity charge of $0.0293 per kWh(e) for the Baseline Financial Year, such amount adjusted and compounded annually by the Retail Electricity Adjustment Factor for each Financial Year from the Baseline Financial Year to the relevant Financial Year;

D = 27% multiplied by the average Ausgrid EA310 peak network rate in $/kWh(e) over the relevant Financial Year;

E = 42% multiplied by the average Ausgrid EA310 shoulder network rate in $/kWh(e) over the relevant Financial Year;

F = 31% multiplied by the average Ausgrid EA310 off peak network rate in $/kWh(e) over the relevant Financial Year; and

G = the average of each of the Other Industry Charges in $/kWh(e) multiplied by the Loss Factor over the relevant Financial Year.

The percentages above reflect the projected kWh(e) utilisation during the relevant peak, shoulder and off-peak times for both retail and network charges. If actual utilisation percentages are different or the definitions of peak, shoulder and off-peak times used by Ausgrid change (from the definitions used by Ausgrid as at 1 July 2011), then the percentages and definitions of peak, shoulder and off-peak hours will be adjusted by the Supplier acting reasonably.

If Ausgrid ceases to exist then comparable published network rates used by other network providers (as selected by the Supplier, acting reasonably) will be used for the purpose of this definition.

(d) **Baseline Financial Year** means the Financial Year ending 30 June 2010.

(e) **Capacity Charge** means a capacity charge in cents per day in the relevant billing period calculated using the published Ausgrid E310 daily capacity rate in cents/KVA for the relevant Financial Year applied to the maximum aggregated half hourly KVA power readings that occurred at the Site Address (including cooling) over the twelve (12) months prior to an invoice being calculated during peak times which are from 2pm to 8pm on working weekdays.

(f) **Charges** has the meaning given in clause 1.1(a) of this Schedule 3.

(g) **Chilled Water Capacity Charge** means the following, being the Chilled Water Capacity Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis):

(1) the amount calculated as follows at the Site Address in respect of all or part of the relevant Financial Year:

$A = B / C \times D$

where:

A = Chilled Water Capacity Charge

B = means the peak cooling demand measured in kW(r) at the Site Address in the relevant billing period;

C = the Nominated COP; and

D = the Capacity Charge

(h) **Chilled Water Maintenance Charge** means the following, being the Chilled Water Maintenance Charge for the relevant Financial Year (calculated on a full year basis):

(1) the amount calculated as follows at the Site Address in respect of all or part of the relevant Financial Year:

$A = B \times C$

where:

A = means the Chilled Water Maintenance Charge in respect of all or part of the relevant Financial Year;

B = $0.110 per kWh(r) for the Baseline Financial Year, adjusted and compounded annually by the relevant CPI Adjustment Factor for each Financial Year from the Baseline Financial Year to the relevant Financial Year in respect of which this definition applies;

C = the actual metered chilled water usage by the Site Address per square metre of the Net Area of the Site Address for the relevant Financial Year.

(i) **Chilled Water Usage Charge** means (in respect of each Financial Year) the aggregate of the amount calculated as follows:

$A = (B1 \times C1) + (B2 \times C2)$

where:

A = the Chilled Water Usage Charge payable by the Purchaser for the relevant Financial Year;

B1 = the actual metered chilled water usage in kWh(r) by the Site Address (between the hours of 7am and 10pm on Business Days being the peak and shoulder Network Periods) for the relevant Financial Year;

B2 = the actual metered chilled water usage in kWh(r) by the Site Address from (outside the hours referred to in the definition of B1, being the off-peak Network Period) for the relevant Financial Year;

C1 = $0.035 per kWh(r) for the Baseline Financial Year multiplied by the relevant Adjustment Factor (Electricity); and

C2 = $0.023 per kWh(r) for the Baseline Financial Year multiplied by the relevant Adjustment Factor (Electricity).

(j) **Chilled Water Capital Replacement Charge** means for the relevant Financial Year (calculated on a full year basis):

the aggregate amount calculated as follows at the Site Address in respect of all or part of the relevant Financial Year:

A = B x C

where:

A = means the Chilled Water Capital Replacement Charge in respect of all or part of the relevant Financial Year;

B = $0.068 per kWh(r) for the Baseline Financial Year, adjusted and compounded annually by the relevant CPI Adjustment Factor for each Financial Year from the Baseline Financial Year to the relevant Financial Year in respect of which this definition applies;

C = the actual metered chilled water usage by the Site Address per square metre of the Net Area of the Site Address for the relevant Financial Year.

(k) **CPI Adjustment Factor** means the greater of 1 and the amount calculated as follows in respect of the relevant Financial Year:

A = B/C

where:

A = the CPI Adjustment Factor for the relevant Financial Year;

B = the Consumer Price Index (All Groups) for Sydney last published prior to the beginning of the relevant Financial Year;

C = the Consumer Price Index (All Groups) for Sydney last published prior to the beginning of the previous Financial Year.

The Consumer Price Index (All Groups) for Sydney last published immediately prior to the beginning of the Baseline Financial Year is 165.6.

If the Consumer Price Index (All Groups) ceases to be published for Sydney, the parties must agree on a replacement index.

(l) **Financial Year** has the meaning given in clause 29.1 of this Agreement.

(m) **IPART** means the Independent Pricing and Regulatory Tribunal of New South Wales, or such other body as replaces it from time to time.

(n) **Loss Factor** means the current 'Distribution Loss Factor' as published by Ausgrid under EA310 rates from time to time multiplied by the relevant 'Marginal Loss Factor' published by the AEMO for electricity supply for the relevant Financial Year

(o) **National Electricity Rules** means the rules made under the National Electricity Law, being Schedule 1 to the National Electricity (South Australia) Act 1996 (SA) as implemented in New South Wales, as amended from time to time.

(p) **Net Area** means the aggregate of the areas of all lots and common property comprising the strata scheme.

(q) **Network Periods**

Definitions of peak, shoulder and off-peak times are as defined by Ausgrid. If the definitions used by Ausgrid change (from the definitions used by Ausgrid as at 1 July 2011), then definitions of peak, shoulder and off-peak hours will be adjusted by the Supplier acting reasonably.

If Ausgrid ceases to exist then comparable published network periods used by other network providers (as selected by the Supplier, acting reasonably) will be used for the purpose of this definition.

(r) **Nominated COP** means 3.0 being the relevant coefficient of performance (COP) for the building use at the Site Address

(s) **Other Industry Charges** means the rates expressed in $/kWh(e) related to the following charges and fees: AEMO Charges, AEMO Pool Fees, Large Scale Renewable Energy Target administered by the Federal Office of Renewable Energy ("LRET"), New South Wales Greenhouse Gas Abatement Scheme Charge ("NGAC Charge"), New South Wales Energy Savings Scheme Charge ("NSW ESS"), Small Scale Renewable Energy Certificate Charge administered by the Federal Office of Renewable Energy ("SREC") and any other charges introduced from time to time by government or regulatory bodies.

(t) **Retail Electricity Adjustment Factor** means the amount calculated as follows in respect of the relevant Financial Year:

$A = B / C$

where:

A = the Retail Electricity Factor;

B = the average of the Wholesale Electricity Price Index (WEPI) for New South Wales over the relevant Financial Year; and

C = the average of the Wholesale Electricity Price Index (WEPI) for New South Wales over the previous Financial Year.

The average of the Wholesale Electricity Price Index (WEPI) for New South Wales over the Baseline Financial Year is 41.8694.

Should the WEPI cease to exist then the Retail Electricity Adjustment Factor will be the greater of 1 and such other adjustment factor selected by the Supplier as the Supplier believes (acting reasonably) will reflect annual increases in the retail component of electricity.

Should WEPI and the resulting Retail Electricity Adjustment Factor in the opinion of the Supplier and/or the Purchaser not reflect accurately the current retail component of the electricity charge in the Average Market Electricity Price then either party may seek a market review of electricity rates for supply to the Site Address by licensed retail suppliers and request a change in the Retail Electricity Adjustment Factor to reflect the then current market electricity rates

for supply of electricity to the Site Address by licensed retail suppliers (the **Market Retail Rate**). If either party seeks a review of the Market Retail Rate under this paragraph, the parties must endeavour to agree the Market Retail Rate acting reasonably. If the parties do not agree the Market Retail Rate within ten (10) Business Days then either party may give notice to the other requiring the determination of the Market Retail Rate to be referred to the decision of a single expert acceptable to the parties (**Independent Expert**). If the parties do not agree on an Independent Expert within five (5) Business Days of notice of the dispute, either party may request the President of the Institute of Arbitrators and Mediators Australia (IAMA) to nominate an appropriate person to determine the Market Retail Rate. The person so nominated will be the Independent Expert for the purpose of this clause and will be deemed to be acceptable to the parties. The Independent Expert acts as an expert and not as an arbitrator and his or her determination will be final and binding on the parties except in the case of manifest error.

(u) **Retail Provider** means the person primarily responsible from time to time for the sale of electricity to the Plant and the Site Address.

(v) **WPI** means the Wholesale Electricity Price Index provided by d-cypha Trade and developed in consultation with the Federal Department of Industry Tourism and Resources.

4 Overriding clause

(a) Notwithstanding anything else set out in this Schedule 3:

(1) any reference to a charge in this Schedule which is based on or incorporates amounts payable as a result of electricity usage will be increased as reasonably required by the Supplier to include all retail market, network and ancillary charges and any other additional charges that may be introduced into electricity prices from time to time, including any 'carbon tax' or other charge imposed with respect to carbon consumption; and

(2) the Supplier may vary any charge referred to in this Schedule 3 to reflect any additional charges which may affect utility prices from time to time.

(b) In this clause 4 of this Schedule 3, "charge" includes assessments, charges, costs, duties, expenses, fees, levies, rates, taxes and outgoings.

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Schedule 4

Service Standards

DEFINITIONS

"Plant Supply Temperature" is the temperature of the chilled water provided to the Supplier side of the heat exchanger at the Connection Point.

"Chilled Water Demand" means the chilled water cooling capacity measured in kW(r) that the Supplier is obliged to provide at the Connection Point in accordance with Schedule 4A.

"Flow Temperature" means the temperature of the chilled water leaving the heat exchanger(s) and entering the Purchaser's Internal Water Infrastructure, as measured at the Purchaser side of the heat exchanger at the Connection Point, or the design temperature of the Internal Water Infrastructure as nominated in Schedule 4A, whichever is the higher.

"Harbour Heat Rejection" means the sea water system used to reject the heat absorbed by the water chillers into Sydney Harbour.

"Energy Transfer Station" is the room that houses the heat exchangers at the Connection Point.

"High Rise facility" means the highest point in the Internal Water Infrastructure is between 120 metres and 210 metres higher than the Energy Transfer Station (

"Low Rise facility" means the highest point in the Internal Water Infrastructure is less than 60 metres above the Energy Transfer Station

"Medium Rise facility" means the highest point in the Internal Water Infrastructure is between 60 metres and 120 metres above the Energy Transfer Station

"Nominal Supplier Flow Rate" in respect of any Connection Point means the flow rate of chilled water on the Plant side of the heat exchanger(s) located at the Connection Point corresponding to the contracted Chilled Water Demand for the Purchaser.

"Nominal Purchaser Flow Rate" in respect of any Connection Point means the flow rate of chilled water on the Internal Water Infrastructure side of the heat exchanger(s) located at the Connection Point corresponding to the contracted Chilled Water Demand, Flow Temperature and Return Temperature for the Purchaser.

"Normal Operating Conditions" at any time means the following:

(i) The Purchaser demand for the Plant cooling service is within the contracted Chilled Water Demand and Nominal Supplier Flow Rate to the Connection Point.

(ii) The Nominal Purchaser Flow Rate on the Internal Water Infrastructure side of the Connection Point is greater than 5%, but not more than 100%, of the Nominal Purchaser Flow Rate at the Connection Point.

"Primary Chilled Water Distribution System" is the pipework system that connects the Plant to the Energy Transfer Station

"Supplementary Chilled Water Circuit" means that part of the Internal Water Infrastructure that provides chilled water for cooling to dedicated areas, in addition to or in lieu of Base Building Chilled Water:

"Thermal Meter" means a chilled water heat meter complying with EN1434

PART A GENERAL OBLIGATIONS OF SUPPLIER

Flow Temperature
The maximum Plant Supply Temperature will be as nominated in Schedule 4A. Subject to:

(i) Normal Operating Conditions being met

(ii) The Purchaser cooling load does not vary by a rate of change greater than 10% load in 10 minutes.

(iii) Loss of power to the Plant: Chilled water will only be provided to the Supplementary Tenant Chilled Water Secondary Circuit in commercial office buildings once back-up power generators have started and are operating.

(iv) Force Majeure Events that may result in the Plant being partially or wholly shut down.

(v) Harbour Heat Rejection intake sea water temperature is below 14°C or above 26.0°C

(vi) The Purchaser's chilled water demand not being greater than the contracted value.

Right to Vary Flow Temperature:
When the Purchaser's cooling demand is below the contracted Chilled Water Demand, and:

–

(i) The outdoor dew point temperature is below 20°C, or

–

(ii) The Purchaser cooling load is below 80% of the contracted Chilled Water Demand,

The Supplier may at its discretion increase the Plant Supply Temperature from a nominal 5°C± 1°C up to 10°C± 1°C This will result in an equivalent change in the Flow Temperature.

Purchaser Demand
The Supplier will provide to the Purchaser the contracted Chilled Water Demand.

Any additional future cooling capacity requirements must be requested by the Purchaser in writing to the Supplier. The information provided must include:

(i) Additional cooling demand and flow rate.

–

(ii) Cooling load profile for the additional demand. The profile must be on an hourly basis for a whole year.

(iii) Any other information that may be requested by the Supplier.

Connection Point
The Supplier will own and maintain the heat exchanger(s) at the Connection Point to ensure the service provided is within tolerances stated in Schedule 4A. The maintenance regime will include periodic sampling and testing of the water in the Chilled Water Loops and the water in the Internal Water Infrastructure, and heat exchanger(s) cleaning.
Cleaning will be scheduled to ensure that the Purchaser's Flow Temperature is maintained.

The Supplier will notify the Purchaser should the periodic water sampling and testing show that the water condition in the Internal Water Infrastructure is not within the limits nominated in Schedule 4A.

Thermal Meters
The Supplier will own and maintain the Thermal Meters installed within the Internal Water Infrastructure.

PART B GENERAL OBLIGATIONS OF THE PURCHASER

Design Obligations
The Purchaser is to ensure that competent experienced mechanical services engineers and contractors are used for the design and installation of the Internal Water Infrastructure connected to the Connection Point.

The purchaser must advise the Supplier of the required operating pressure rating of the heat exchangers at the Connection Point.

The design is required to operate within the parameters nominated in Schedule 4A.

The Internal Water Infrastructure must incorporate these minimum requirements:

(i) The system controls must use a variable flow chilled water system, including variable pump pressure strategies, or otherwise, to maintain the minimum Return Temperature as nominated in Schedule 4A;
(ii) The system controls must be capable of mixing the Return Water with the Flow Water to maintain Flow Temperature and the Return Temperatures nominated in Schedule 4A
(iii) Chilled water by pass control must be avoided at all times unless not doing so would cause the chilled water pumps to operate below their minimum acceptable operating flow rate. The Purchaser is to nominate this flow rate in Schedule 4A.
(iv) A filtration system for the return water to the Connection Point with the minimum filtration performance nominated in Schedule 4A.
(v) A pressure relief device at the Connection Point set to operate at the pressure nominated in Schedule 4A
(vi) A proportionally balanced chilled water system with suitably sized and selected plant to meet the intended cooling requirements within the operating parameters of Schedule 4A. Internal Water Infrastructure or Plant not meeting this condition must be excluded from any control signal that may affect the operation of the district cooling system.
(vii) The Purchaser is responsible for maintaining the ETS room containing the connection point inclusive of the building structure, Internal Water Infrastructure, mechanical, electrical, hydraulic, fire, and any other engineering services within the room.

Refer to Schedule 4B Energy Transfer Station Diagram.

The Purchaser is to control plant and systems connected to its internal Water Infrastructure to ensure that the Return Temperature is in accordance with Schedule 4A:

This includes the design, installation, commissioning, operation, etc. of any cooling equipment connected to the Internal water Infrastructure to ensure that conditions of Schedule 4A are achieved.

The design and control strategies must be submitted to the Supplier for review and comment prior to commencement of construction, and incorporate any required design change requests.

Any proposed modifications to the original design must be submitted to the Supplier for review and comment.

Water Quality
The Purchaser must ensure that the Internal Water Infrastructure is cleaned and maintained to the satisfaction of the Supplier. Should the periodic water testing conducted by the Supplier indicate that water quality is not within the values nominated in Schedule 4A, the Purchaser is obliged to reinstate the water to an acceptable condition in accordance with Schedule 4A.

The Supplier is not obliged to provide the contracted Chilled Water Demand or Flow Temperature until the Purchaser had restored the water quality to the required condition nominated in Schedule 4A.

Cost of Repair
The Purchaser is to pay for any costs for repairs or replacement of the heat exchanger due to improper maintenance and operation of the Internal Water Infrastructure. This is includes reduced efficiency or lifespan of the heat exchanger(s).

Control System Interface
The Purchaser's building control system is to provide to the Supplier's control system via a high level interface all the information necessary, in accordance with the times nominated in Schedule 4A, to:

(i) Control and operate the Plant

–

(ii) Permit the Plant Supply Temperatures to be reset, including but not limited to:

a. Control valve positions,
b. Space and outdoor temperatures,
c. Internal Water Infrastructure flow rate
d. Internal Water Infrastructure VFD speed
e. Flow Temperature
f. Return Temperature
g. Any other information requested by the Supplier.

–

(iii) Control the staging of the chiller plant, including but not limited to:

a. Equipment shutdown time-schedules
b. Projected load that will be removed at the requested time of shutdown

c. Equipment start-up time-schedules
d. Projected load required at the requested time of start-up
e. Required chilled water demand and temperatures
f. Any critical alarms that may affect the operation of the Plant
g. Any other alarms that may affect the operation of the Plant
h. Any other information requested by the Supplier.

The Purchaser's building control system must be tuned to facilitate the optimal operation of the Plant. Any modifications proposed must be provided to and agreed with the Supplier prior to any such modification taking place.

The Purchaser must modify control strategies at the request of the Supplier if the operation of the Internal Water Infrastructure impacts the optimal operation of the Plant.

Maintenance Access

The Purchaser must provide the Supplier with continuous uninterrupted access to the Connection Points and Supplier owned equipment within the Energy Transfer Station in order to carry out any necessary operational checks, maintenance, repairs and replacement of controls, pipework, equipment, etc.

SCHEDULE 4A

		Purchaser Connected System	
	Unit of Measurement	Base Building Circuit	
		Value	Tolerance
[2] Contracted Cooling Demand	kW Cooling		±5%
Flow Temperature	°C	7	±1
Return Temperature	°C	16	±0.5
[2] Maximum Nominal Purchaser Flow Rate	Litres per second		±2.5%
[2] Minimum Nominal Purchaser Flow Rate	Litres per second		±2.5%
Internal Water Infrastructure return water filter screen	microns	200	minimum
Plant Supply Temperature	°C	5	±1
Nominal Supplier Flow Rate	Litres per second		±2.5%
[1] Internal Water Infrastructure Relief valve setting	bar		Maximum
Plant shutdown notification information	Minutes prior	30	minimum
Plant start-up notification information	Minutes prior	30	minimum
Critical Alarm notification Time	Seconds	1	maximum
Non Critical information Time	Seconds	5	maximum
Internal Water Infrastructure water quality limits			
pH	N/A	9	±1.0
Total Dissolved Solids	parts per million	1500	maximum
Total Suspended Solids	parts per million	10	maximum
Total Hardness	parts per million	400	maximum
Iron	parts per million	1	maximum
Chlorides	parts per million	100	maximum
Sulphates	parts per million	35	maximum
Time to restore water quality	Weeks after notification	3	maximum

Notes

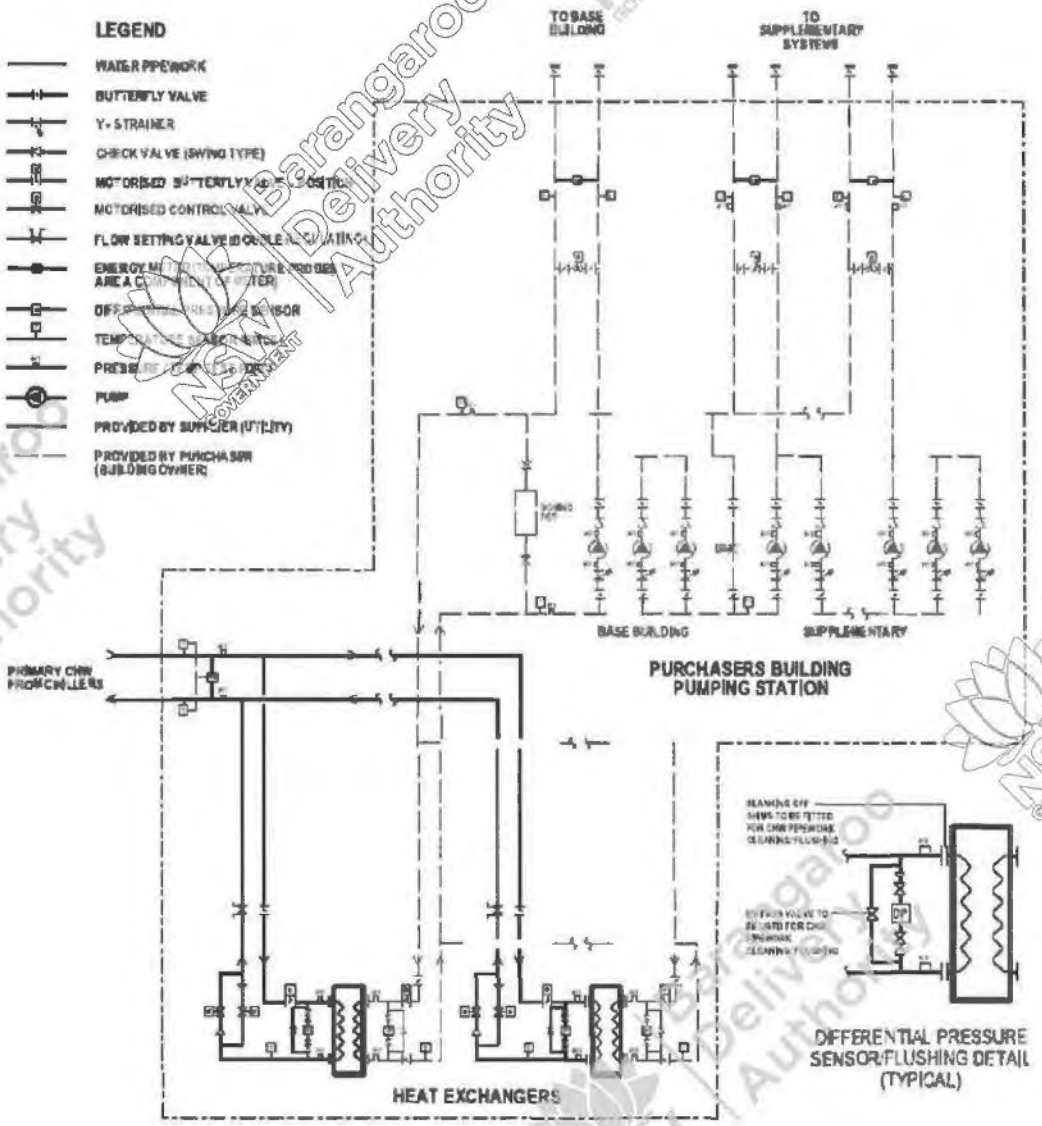
1 Low Rise Building: 10 bar
Medium Rise Building: 16 bar
High Rise Building: 25 bar

2 This design data is to be nominated by the Purchaser to ensure the Supplier provides suitable heat exchangers at the Connection Point.

Barangaroo Delivery Authority NSW GOVERNMENT

SCHEDULE 4B

Typical Heat Exchanger Station Diagram



ENERGY TRANSFER STATION INDICATIVE LAYOUT

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Schedule 5

Maintenance Specification

Barangaroo Delivery Authority NSW GOVERNMENT

Plant – Chilled Water

Plant performance and maintenance service scope inclusions

The Supplier will engage the services of a specialist mechanical services provider to control the operation of the Plant and perform all Programmed Preventative Maintenance (PPM) and Reactive Maintenance on the Plant & infrastructure serving the Purchaser. The systems will be managed in a way to maximise operational efficiencies whilst minimising cause for Purchaser complaint, irregular operation, failures, unscheduled down time and deterioration or loss of performance of the equipment. PPM schedules will be implemented with reference to manufacturer's recommendation and relevant Australian and accepted Industry Standards. The Supplier reserves the right to change, amend and or modify any works associated with the asset management plan at its sole discretion.

Sufficient spare parts will be held in stock to ensure efficient maintenance and timely repair of any worn or failed components, relating to the Plant.

All thermal meters used for billing and tenant bill apportionment will remain the property of Supplier. These meters will be maintained in accordance with BS EN 1434:2007.

Routine condition monitoring will be performed as deemed necessary to ensure a proactive and predictive methodology is employed in the maintenance of each of the assets owned and operated by the Supplier.

Asset Management Plan

The Supplier and its specialised operators will implement a maintenance system specific to the equipment in the Plant which will include an annual maintenance plan indicating when the maintenance activities will occur and nominating the maintenance tasks to be performed. The maintenance system will be developed with reference to manufacturers recommendations, Australian Standards and industry standards such as AIRAH DA19.

An example of equipment and task frequency in contained in the below table.

Mechanical Equipment Maintained under Scope of Services	Frequency of Service			
	Monthly	Quarterly	6 Monthly	Annually
SCADA Systems	X	X	X	X
Chillers	X	X	X	X
HHR Systems	X	X	X	X
Water Treatment	X	X	X	X
Sea Water Filtration	X	X	X	X
Heat Exchangers		X		X
Insulation & Pipework	X		X	X
Other Protection Systems	X		X	X
Plant Rooms	X			X
Pumps	X	X	X	X
Smoke & Heat Vents				X
Storage Vessels	X	X	X	X
Vibration Isolation			X	X

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Signing page

Executed as an agreement

Supplier

Signed for
Lend Lease Chilled Water (Barangaroo South) Pty Limited
by their attorney

sign here ▸ _____
Attorney

print name _____

sign here ▸ _____
Witness

print name _____

Purchaser

Signed for
The Owners – Strata Plan No. [•]
by their attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

Agreement

Barangaroo South- Residential Building Water Services Supply Agreement

Lend Lease Recycled Water (Barangaroo South) Pty Limited

The Owners – Strata Plan No. [•]

[For inclusion in the BMS]

ANZ Tower, 161 Castlereagh Street Sydney NSW 2000 Australia
GPO Box 4236 Sydney NSW 2001 Australia
Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.herbertsmithfreehills.com DX 361 Sydney

HERBERT SMITH FREEHILLS

Contents

Table of contents

1	**Conditions**	**2**
	1.1 Conditions Precedent	2
	1.2 Termination for non-satisfaction of Conditions Precedent	3
2	**Term**	**3**
3	**Supply of Water Services**	**3**
	3.1 Supply of Recycled Water	3
	3.2 Acceptance of Wastewater	3
	3.3 Revenue and costs	4
	3.4 Metered Services	4
	3.5 Service Standards	4
	3.6 Purposes for which Recycled Water may be used	4
	3.7 Technical details	4
4	**Access to Site Address**	**5**
5	**Delivery Rates**	**5**
	5.1 Supply Rates	5
	5.2 Acknowledgement by Purchaser	5
	5.3 Limitation on supply	6
	5.4 Variation to Maximum Daily Allocation	6
6	**Operation and maintenance of Plant**	**6**
	6.1 Minimisation of Outages	6
	6.2 Scheduled Outages	6
	6.3 Unscheduled Outages	6
	6.4 Prohibited Substances	7
7	**Purchaser's Plant**	**8**
	7.1 Installation and operation of Purchaser's Plant	8
	7.2 Maintenance of Purchaser's Plant	8
8	**Supplier's obligations**	**8**
	8.1 Plant	8
	8.2 Generally	9
	8.3 Energy and Environmental Rating	9
9	**Purchaser's obligations**	**9**
	9.1 Compliance with Regulatory Requirements	9
	9.2 Alteration or damage to Equipment and Purchaser's Plant	9
	9.3 Redevelopment or replacement of Building	10
	9.4 Exclusivity	10
10	**Metering**	**11**
	10.1 Meters	11
	10.2 Metering Data	11
	10.3 Using estimated data to calculate Charges	11

HERBERT SMITH FREEHILLS

Contents

11	**Charges**	**12**
12	**Change of Law**	**12**
13	**Payments**	**13**
	13.1 Payments	13
	13.2 No payment during interruption	14
14	**Risk and Liability Provisions**	**14**
	14.1 Purchaser's indemnity	14
	14.2 Exclusion of Consequential Loss	14
	14.3 Exclusion of liability	14
	14.4 If the Purchaser is a Consumer	15
	14.5 No warranty	16
15	**Priority of supply and step-in**	**16**
16	**Force Majeure**	**16**
17	**Suspension; Termination**	**17**
	17.1 Supplier's notice to suspend	17
	17.2 Purchaser's notice to terminate	17
	17.3 Consequences of suspension; termination	18
18	**Temporary Disconnection**	**19**
19	**Terms of this Agreement**	**20**
20	**Assignment**	**20**
21	**Interest**	**20**
22	**GST**	**20**
23	**Dispute Resolution**	**21**
24	**Confidentiality**	**22**
25	**Privacy Statement**	**23**
26	**Notices**	**23**
	26.1 Form	23
	26.2 Delivery	23
	26.3 When effective	23
	26.4 Receipt - post	23
	26.5 Receipt - general	23
27	**General**	**24**
	27.1 Discretion in exercising rights	24
	27.2 Failure to exercise rights	24
	27.3 No liability for loss	24
	27.4 Approvals and consents	24
	27.5 Conflict of interest	24
	27.6 Remedies cumulative	24
	27.7 Rights and obligations are unaffected	24
	27.8 Variation and waiver	24
	27.9 Indemnities	24

HERBERT SMITH FREEHILLS

Contents

27.10 Further steps 25
27.11 Prompt performance 25
27.12 Construction 25
27.13 Costs 25
27.14 Inconsistent law 25
27.15 Supervening legislation 25
27.16 Ombudsman 25

28 Governing Law 25

28.1 Governing law 25
28.2 Jurisdiction 26
28.3 Serving documents 26

29 Counterparts 26

30 Definitions and Interpretation 26

Schedules

Reference Schedule 37

Delivery Point and Collection Point 39

Charges 40

Service Standards 44

Power Purchase Agreement and Licence Deed 45

Maintenance Specification 46

Signing page 47

HERBERT SMITH FREEHILLS

Barangaroo South – Residential Building Water Services Supply Agreement

Date ▸

Between the parties

Supplier	**Lend Lease Recycled Water (Barangaroo South) Pty Limited** ABN 30 158 168 686 **(Supplier)**
Purchaser	**The Owners – Strata Plan No. [•]** ABN [•] **(Purchaser)**
Recitals	The Supplier intends to construct, own and operate the Plant. The Purchaser is the duly appointed owner's corporation for the Site Address. The Purchaser agrees to connect the Site Address to the Plant via the Barangaroo Water Network on the terms set out in this Agreement. The Supplier agrees to supply the Purchaser with Recycled Water at the Site Address and collect Wastewater from the Purchaser at the Site Address in consideration for the Purchaser paying the Charges to the Supplier, on the terms set out in this Agreement.

The parties agree as follows:

HERBERT SMITH FREEHILLS

1 Conditions

1.1 Conditions Precedent

(a) This Agreement (other than this clause 1 (*Conditions*), clauses 12 (*Change in Law*), 14 (*Risks and Liability Provisions*), 16 (*Force Majeure*), 17 (*Termination*), 19 (*Terms of this Agreement*), 23 (*Dispute Resolution*) 24, (*Confidentiality*) and 30 (*Definitions and Interpretation*)) is subject to and conditional upon the satisfaction or waiver of the conditions precedent specified in clause 1.1(b) (the **Conditions Precedent**).

(b) The Conditions Precedent are:

(1) the RWP Lot Owner has leased or become entitled to the grant of a lease of the RWP Lot from the BDA, whether or not that lease has actually been granted or registered;

(2) the Supplier has been granted Access Rights in respect of the RWP Lot by the RWP Lot Owner;

(3) the Supplier has obtained all Permits required in connection with the carrying out of the Supplier's obligations under this Agreement;

(4) the RWP Lot has been built, certified for occupation and is suitable for operation of the Plant;

(5) the Plant has been installed and commissioned at the RWP Lot;

(6) the Site Address has been connected to the Barangaroo Water Network at the Delivery Point and the Collection Point in accordance with all applicable Regulatory Requirements;

(7) the Purchaser has built and commissioned the Purchaser's Plant and the Purchaser's Plant meets all applicable Regulatory Requirements;

(8) Meters and metering equipment are installed in respect of the Site Address that comply with any applicable Regulatory Requirements and enable the Supplier to comply with its obligations under the applicable Regulatory Requirements; and

(9) the parties enter into the Power Purchase Agreement and the Licence Deed on the terms set out in Schedule 4.

(c) Each party must use all reasonable endeavours to satisfy the Conditions Precedent as soon as possible, and in any event by the date specified in Item 7 of Schedule 1 or such later date as agreed by the parties.

(d) If a party becomes aware that a Condition Precedent has been satisfied or that a Condition Precedent is not capable of being satisfied, that party must promptly notify the other party in writing.

(e) If a Condition Precedent has not been satisfied or waived by the date specified in Item 7 of Schedule 1 or such later date as agreed by the parties, then either party may, by notice in writing to the other party, terminate this Agreement.

(f) Except where otherwise provided in this Agreement, each Condition Precedent is for the benefit of the Supplier and the Purchaser, and may not be waived except by the written agreement of the parties.

1.2 Termination for non-satisfaction of Conditions Precedent

If this Agreement is terminated because a Condition Precedent is not satisfied or waived by the date specified in Item 7 of Schedule 1 or such later date as agreed by the parties, then:

(a) this Agreement has no further effect;

(b) the parties are released from their respective obligations under this Agreement; and

(c) neither party has any obligation to the other party except in respect of a breach of this Agreement committed before termination.

2 Term

Subject to clause 1, this Agreement commences on and from the date that it has been executed by each party and ends on the End Date.

3 Supply of Water Services

3.1 Supply of Recycled Water

Subject to the provisions of this Agreement:

(a) the Supplier must use its reasonable endeavours to supply Recycled Water to the Purchaser at the rates, quantities and qualities required under this Agreement during the Supply Period;

(b) all Recycled Water supplied under this Agreement by the Supplier must be delivered by the Supplier to, and taken by the Purchaser at, the Delivery Point; and

(c) title to and risk in all Recycled Water supplied under this Agreement passes from the Supplier to the Purchaser at the Delivery Point.

3.2 Acceptance of Wastewater

Subject to the provisions of this Agreement:

(a) the Purchaser must use reasonable endeavours to supply Wastewater to the Supplier, at the rates, quantities and qualities required under this Agreement during the Supply Period;

(b) all Wastewater supplied under this Agreement by the Purchaser must be delivered to, and collected by the Supplier at, the Collection Point;

(c) title to and risk in all Wastewater collected under this Agreement passes from the Purchaser to the Supplier at the Collection Point; and

(d) the Purchaser must ensure no Prohibited Substance is part of the Wastewater it makes available for collection by the Supplier at the Collection Point.

3.3 Revenue and costs

Subject to the provisions of this Agreement:

(a) the Supplier is entitled to all revenue, Environmental Attributes and other environmental advantages derived from the Supplier's ownership and operation of the Plant and the provision of Water Services at the Site Address; and

(b) the Supplier will be responsible for all costs associated with the operation and maintenance of the Plant incurred in the provision of Water Services at the Site Address.

3.4 Metering Services

The Supplier agrees to provide or procure the provision of the Metering Services, subject to the provisions of this Agreement.

3.5 Service Standards

(a) The Supplier must use its reasonable endeavours to ensure the Recycled Water supplied under this Agreement at the Delivery Point complies with the Service Standards.

(b) The Purchaser must use its reasonable endeavours to ensure the Wastewater delivered under this Agreement by the Purchaser to the Supplier at the Collection Point complies with the Service Standards.

(c) Each party must notify the other immediately if it becomes aware that either the Recycled Water or the Wastewater does not comply with the Service Standards.

3.6 Purposes for which Recycled Water may be used

The Purchaser acknowledges that Recycled Water supplied under this Agreement:

(a) is not drinking water and must not be used for human or animal consumption under any circumstances; and

(b) may only be used for irrigating gardens, flushing toilets and such other use as may be authorised by the Supplier's Network Licence and notified to the Purchaser from time to time.

3.7 Technical details

The parties acknowledge the following information is set out in item 8 of Schedule 1:

(a) the water sources from which the Supplier derives Recycled Water;

(b) the rate at which Recycled Water is to be available for supply to the Site Address;

(c) the minimum pressure at which Recycled Water is to be supplied; and

(d) the rate at which Wastewater may be discharged into the Barangaroo Water Network from the Site Address.

4 Access to Site Address

(a) The Purchaser must provide the Supplier, its representatives, agents or contractors, any Meter reader or Metering Provider and Sydney Water Corporation (each an **Authorised Person**, and together **Authorised Persons**), during the Supply Period, all rights of access reasonably required by an Authorised Person for the purpose of and in connection with providing the Water Services under this Agreement, including safe, convenient and unhindered access to the Site Address using an access card provided by the Purchaser that enables access to the Site Address to inspect and test the Delivery Point, the Collection Point, the Meters and the Purchaser's Plant and for the purpose of testing, calibrating or re-calibrating the supply and metering of Recycled Water and the collection and metering of Wastewater.

(b) The Supplier will use reasonable endeavours to give the Purchaser notice of the Supplier or another Authorised Person's intention to enter the Site Address unless:

(1) the Purchaser has granted permission to access the Site Address;

entry is during Business Hours for the purpose of reading or inspecting a Meter; or

(3) there is an Emergency.

5 Delivery Rates

5.1 Supply Rates

(a) The Supplier must supply Recycled Water at a daily quantity which is at least equal to the Minimum Daily Entitlement.

(b) The Supplier must use reasonable endeavours, in accordance with Prudent Engineering Practice, to supply Recycled Water on any day at a daily quantity up to the Maximum Daily Allocation, if such quantities are required by the Purchaser.

5.2 Acknowledgement by Purchaser

The Purchaser acknowledges and agrees that:

(a) the Supplier will not be in default of its obligation under clause 5.1(a) or 5.1(b) whenever the quantity of Recycled Water supplied to the Purchaser is restricted due to insufficient quantities of Wastewater being available to the Supplier; and

(b) if the Supplier cannot supply the Purchaser with the quantity of Recycled Water that the Purchaser requires in accordance with clause 5.1(a) or 5.1(b), the Purchaser:

(1) must not use Recycled Water obtained from any other source;

(2) may, at its cost and risk, use Potable Water to supplement its Recycled Water requirements; and

(3) is responsible for making all necessary arrangements regarding the use of Potable Water to supplement its Recycled Water requirements,

including taking out any relevant supply contracts and installing and maintaining relevant equipment and pipe work.

5.3 Limitation on supply

Subject to clause 5.4, the Purchaser must not, on any day, take a quantity of Recycled Water that is greater than its Maximum Daily Allocation.

5.4 Variation to Maximum Daily Allocation

The Maximum Daily Allocation may be varied from time to time by:

(a) the Supplier, having regard to Recycled Water resource availability and other factors as the Supplier determines, acting reasonably;

(b) the Supplier following any reduction or suspension in any entitlement that the Supplier may have to Recycled Water under any applicable Regulatory Requirement; or

(c) agreement between the parties.

6 Operation and maintenance of Plant

6.1 Minimisation of Outages

The Supplier must, during the Supply Period, use reasonable endeavours to:

(a) minimise the occurrence of Outages; and

(b) maximise the availability of the Plant to meet the Minimum Daily Entitlement.

6.2 Scheduled Outages

Without limiting clause 6.1, at least 20 Business Days before the end of each Financial Year, the Supplier must deliver to the Purchaser the Supplier's best estimate at that time of the expected dates, nature and anticipated duration of any scheduled Outages in the next Financial Year.

6.3 Unscheduled Outages

(a) The Supplier will use all reasonable endeavours to minimise any unscheduled Outages.

(b) In the event of an unscheduled Outage or if the Supplier otherwise disconnects, curtails, interrupts or reduces the operation of the Plant, the Supplier will use its reasonable endeavours to make the Recycled Water supply and Wastewater collection available as soon as possible after the commencement of the Outage, disconnection, curtailment, interruption, or reduction in supply.

(c) Nothing in this Agreement will apply or be interpreted to limit or prevent the Supplier from using any other means to meet any or all of its obligations under this Agreement.

(d) At the Supplier's discretion, and without being liable to the Purchaser, the Supplier may disconnect, curtail, interrupt or reduce the supply of Recycled

Water to, and the collection of Wastewater from, the Site Address without notice, if the Supplier determines, acting reasonably, that:

(1) an Emergency or unscheduled preventative maintenance event occurs or exists, or is about to occur or exist, at the Plant, on the Barangaroo Water Network or on any other water, drainage and sewerage infrastructure connected to the Plant;

(2) the condition or state of repair of the Purchaser's Plant, the Delivery Point, the Collection Point or other building system at or on the Site Address so requires; or

(3) disconnection, curtailment, interruption or reduction of supply of the Recycled Water or collection of Wastewater is otherwise required in accordance with Prudent Engineering Practice.

(e) If the Supplier needs to disconnect, curtail, interrupt or reduce supplies of Recycled Water or the collection of Wastewater under clause 6.3(d), the Supplier must notify the Purchaser as soon as practicable (and preferably prior to the occurrence of the disconnection, curtailment, interruption or reduction.

(f) To the extent that the Supplier is able to do so having regard to the nature and extent of the event giving rise to the disconnection, curtailment, interruption or reduction, the Supplier must specify the following matters in the notice provided in accordance with clause 6.3(e):

(1) when the supply of Recycled Water or collection of Wastewater is expected to become or is unavailable;

(2) the extent to which the supply of Recycled Water or collection of Wastewater is expected to become or is unavailable; and

(3) the date and time at which the supply of Recycled Water or collection of Wastewater is likely to become available.

(g) If the Supplier needs to disconnect, curtail, interrupt or reduce the supply of Recycled Water or the collection of Wastewater for any reason, the Supplier will use its reasonable endeavours to observe the load shedding regime set out in clause [66] of the BMS.

(h) The Supplier will not be in default of its obligations under this Agreement to supply the Recycled Water or collect the Wastewater as a result of any decision or action taken under this clause 6.3 to disconnect, curtail, interrupt or reduce the supply of Recycled Water to, or the collection of Wastewater from, the Site Address.

6.4 Prohibited Substances

(a) If maintenance to the Purchaser's Plant is required because of the discharge of a Prohibited Substance into the Purchaser's Plant:

(1) the Supplier may, by notice, require the Purchaser to carry out such maintenance within a reasonable time; and

(2) if the Purchaser does not comply with the notice, the Supplier may carry out the maintenance and may recover its reasonable costs incurred in undertaking such maintenance as a Charge.

(b) If maintenance (including the replacement of parts and materials) to the Barangaroo Water Network is required because of the discharge of a Prohibited Substance into the Purchaser's Plant, the Supplier may recover its reasonable costs incurred in undertaking such maintenance as a Charge.

7 Purchaser's Plant

7.1 Installation and operation of Purchaser's Plant

(a) The Purchaser must, at its cost, install, operate and maintain the Purchaser's Plant, including by making any repairs, changes or additions to the Purchaser's Plant and do so in such a manner as will ensure that the Supplier is at all times able to meet the Supplier's obligations under this Agreement.

(b) If the Purchaser is required to make a change or addition to the Purchaser's Plant arising from a change in the Supplier's requirements or operating procedures, the Supplier must use its reasonable endeavours to ensure that any such change or addition is reasonable having regard to the circumstances of the change or addition except where the change or addition is required as a result of a Change of Law, an applicable Regulatory Requirement or Prudent Engineering Practice.

7.2 Maintenance of Purchaser's Plant

(a) The Purchaser must, at its cost, operate and maintain the Purchaser's Plant so that it is capable of accepting supply of Recycled Water at the rates, in the quantities and of the quality provided for under this Agreement and otherwise in accordance with:

(1) Prudent Engineering Practice; and

(2) all applicable Regulatory Requirements.

(b) The Purchaser must ensure that a Prohibited Substance is never discharged into the Purchaser's Plant or the Barangaroo Water Network.

(c) The Supplier will not be in default of its obligations under this Agreement to provide a Water Service if such provision is not possible by reason of a fault or other defect in the Purchaser's Plant or the failure of the Purchaser to properly maintain the Purchaser's Plant.

8 Supplier's obligations

8.1 Plant

The Supplier must:

(a) maintain the Plant in good condition in accordance with Prudent Engineering Practice and the Maintenance Specification;

(b) carry out or cause all repairs and maintenance to the Plant to be carried out in a workmanlike manner using appropriate materials and equipment within a reasonable time after becoming aware of the need for the repairs; and

(c) use reasonable endeavours to procure that the relevant authority repairs and maintains the water and electricity supplies and drainage and sewerage services to the Plant.

8.2 Generally

The Supplier must ensure that:

(a) it maintains all Permits necessary to provide the Water Services to the Purchaser;

(b) it pays all fees, effects all insurances, provides any bonds and executes any undertakings or agreements reasonably required under the Regulatory Requirements in respect of any Permit. Without limiting the generality of the foregoing, the Supplier must effect industrial special risks insurance with responsible commercial insurers; and

(c) it complies with Prudent Engineering Practice and all applicable Regulatory Requirements in carrying out its obligations under this Agreement.

8.3 Energy and Environmental Rating

The Supplier agrees to provide the Purchaser (at the Purchaser's cost) with information from time to time, as reasonably requested by the Purchaser, to enable the Purchaser:

(a) to obtain or renew any energy or environmental rating in respect of the Site Address; and

(b) comply with its energy reporting requirements under Law, under the Barangaroo Management Plan, the Lease or as required by the BDA from time to time,

provided that the Supplier will not be required to provide any information if it would involve any breach of any obligation of confidence or any Law.

9 Purchaser's obligations

9.1 Compliance with Regulatory Requirements

(a) The Purchaser must comply with all applicable Regulatory Requirements, Prudent Engineering Practice and obligations to third parties which relate to the maintenance and operation of the Purchaser's Plant.

(b) The Purchaser must immediately notify the Supplier of any incident related to the provision of Water Services under this Agreement that threatens, or could threaten, water quality, public health or safety or could result in the Supplier being in breach of a Regulatory Requirement.

9.2 Alteration or damage to Equipment and Purchaser's Plant

(a) The Purchaser will not and will procure that its employees, agents, contractors and Occupants do not:

(1) alter or reconfigure the Delivery Point, the Collection Point or the Purchaser's Plant; or

(2) damage, tamper or interfere with any of the plant, equipment (including metering equipment), interconnections or Meters owned or

installed by the Supplier or a Metering Provider for the purposes of this Agreement (**Equipment**),

without the prior written consent of the Supplier (which consent is not to be unreasonably withheld).

(b) The Purchaser must use its reasonable endeavours to prevent, and is liable for all damage to Equipment:

(1) caused by or as a result of the Purchaser's failure to comply with clause 9.2(a); and

(2) hosted or installed at the Site Address, unless caused by any of the Water Services not being provided in accordance with the Supplier's obligations under this Agreement.

(c) Despite clause 9.2(a), the Purchaser is not liable for damage to Equipment that occurs as a result of:

(1) normal wear and tear; or

(2) any act or omission of the Supplier or any of the Supplier's employees, agents or contractors.

9.3 Redevelopment or replacement of Building

(a) The Purchaser must give the Supplier no less than 12 months' notice of any intention to redevelop or replace the Building.

(b) Provided the Purchaser has notified the Supplier in accordance with clause 9.3(a), and subject to clause 9.3(c), the parties' obligations under clause 3, clause 5 and corresponding Charges under clause 11 are suspended in accordance with, and to the extent set out in the notice given by the Purchaser under this clause 9.3, and so far as necessary to conduct the redevelopment and replacement, during the period of any redevelopment or replacement of the Building.

(c) Despite clause 9.3(b), the Purchaser must continue to pay the Recycled Water Service Charge and the Wastewater Service Charge in full in accordance with Schedule 3 during any redevelopment or replacement of the Building.

(d) No later than 90 days prior to completion of any redevelopment or replacement of the Building, the Purchaser must ensure that the Site Address is connected to the Barangaroo Water Network and the Purchaser and the Supplier must thereafter comply with all of their obligations under this Agreement.

(e) The Purchaser must provide the Supplier with reasonable notice of when it requires the Supplier to recommence the provision of Water Services under this Agreement following any redevelopment or replacement of the Building.

9.4 Exclusivity

(a) The Purchaser will not, at any time after the date of this Agreement and during the Term, enter into any agreement, understanding or any other arrangement with a third party for the provision to the Site Address for the Purchaser's use of Water Services that materially reduces demand for those Water Services under this Agreement.

(b) Subject to the Supplier's compliance with its obligations under this Agreement, the Purchaser will not, at any time after the date of this Agreement and during the Term, install or operate alternative Wastewater treatment or Recycled Water

facilities at the Site Address unless otherwise agreed in writing with the Supplier.

10 Metering

10.1 Meters

(a) The Supplier will be responsible for the installation, maintenance and routine testing and auditing of Meters for the measurement of the quantity of:

(1) Recycled Water supplied to the Purchaser at the Site Address; and

(2) Wastewater collected from the Purchaser,

and may use a Metering Provider for this purpose.

(b) Unless the parties agree otherwise, the Supplier will provide the Purchaser with Metering Data for each Billing Period sufficient for the Supplier to prepare and render an invoice in respect of the Site Address.

(c) The Supplier will ensure that all Meters used for the purposes of this Agreement comply with all applicable Regulatory Requirements.

(d) Subject to clause 10.3, in the absence of manifest error or negligence by the Supplier or the Metering Provider, all measurements made by the Meters as to the quantity of Recycled Water consumed or Wastewater collected are taken to be correct.

(e) The Meters remain the Supplier's property or in some cases, the property of the Supplier's Metering Provider.

10.2 Metering Data

Subject to clause 10.3, the quantity of Recycled Water supplied to the Purchaser and Wastewater collected from the Purchaser is to be determined by the Supplier from Metering Data. The Metering Data is prima facie evidence of the amount of Recycled Water supplied to the Purchaser and the amount of Wastewater collected from the Purchaser.

10.3 Using estimated data to calculate Charges

(a) The Charges in an invoice may be based upon estimated data where:

(1) access to the Meter(s) is denied for any reason;

(2) the Supplier considers that it is not reasonably practicable to obtain a reading of the Meter(s);

(3) the Meter(s) is providing incorrect readings for any reason;

(4) the Supplier is unable to obtain the Metering Data for any reason; or

(5) the Supplier discovers that Recycled Water has been supplied to the Site Address or Wastewater collected from the Site Address without passing through the Meter(s).

(b) Where the Charges in an invoice are based on estimated data in accordance with this clause 10.3(a), the amount payable will be determined by the Supplier in accordance with any applicable Regulatory Requirements and may be by

reference to prior billing history or any other criteria the Supplier reasonably considers is relevant in consultation with the Purchaser and any Meter reading which the Supplier may subsequently take. If an invoice is based upon estimated data, and actual data subsequently becomes available, the Supplier will include an adjustment on a later invoice under clause 13.1(b).

(c) Whenever the Charges on an invoice are based on estimated data in accordance with this clause 10.3(a), and the Purchaser subsequently requests an invoice based on an actual Meter reading and the Supplier is charged for the additional Meter reading, the Supplier may pass the cost of this additional Meter reading on to the Purchaser. The Purchaser will not be liable for such cost if the additional Meter read demonstrates that the Meter does not meet the required class of accuracy and permitted uncertainties as set out in the applicable Regulatory Requirements for the Meter.

(d) If any of the Charges are varied under this Agreement during a Billing Period, the Recycled Water and Wastewater measured by a Meter or estimated to have been delivered or taken is to be assumed to have been delivered or taken at a uniform daily charge for the whole of the Billing Period and the amount of that Charge is to be calculated on the basis of a pro-rata calculation of the relevant varied Charges over the Billing Period.

11 Charges

The Purchaser must pay to the Supplier:

(a) the Charges in accordance with Schedule 3;

(b) any reasonable costs that the Supplier incurs in complying with any laws relating to greenhouse gas reduction or other environmental initiatives that are necessarily attributable to the provision of Water Services to the Purchaser under this Agreement and that are not included in the Charges; and

(c) the price of Services (other than the provision of Water Services) that the Purchaser receives from the Supplier,

in each case in accordance with clause 13.

12 Change of Law

(a) If a Change of Law:

(1) affects the Supplier's costs in respect of the goods, services or other things supplied or provided under or in connection with this Agreement or incurred by the Supplier to enable it to acquire or dispose of, or as a result of it acquiring or disposing of, such goods or services or goods or services of that type, including costs in respect of production, creation, performance, acquisition, supply or sale of such goods, services or other things; or

(2) leads to a change in the benefits gained by it from the activities described in clause 12(a)(1) (except by operation of this clause),

and the change in those amounts or that change in benefit is not to be reimbursed under any other provision of this Agreement, the Charges may be

adjusted to reflect the impact on the Supplier of the change in those amounts or the change in benefit, as the case may be, attributable to the Change of Law.

(b) Any variation to the Charges under clause 12(a) will be effective as and from the date of any Change of Law.

(c) The Supplier will:

(1) notify the Purchaser in writing of any variation to the Charges under clause 12(a) as soon as practicable after any variation takes effect under clause 12(b); and

(2) use reasonable endeavours to provide the Purchaser with a description of the Change of Law.

(d) To the extent that a option of the new Change of Law regime is optional, the Supplier and the Purchaser will negotiate in good faith to determine an equitable method of implementing the new optional regime so that neither of those parties is adversely affected. If the matter cannot be resolved within 2 months after the Supplier and the Purchaser commence negotiations, either of those parties may refer the dispute to an independent expert (nominated in the event of dispute by the then current president of the Law Society of NSW) to determine an equitable method of implementing the new regime so that neither of those parties is adversely affected. The parties acknowledge and agree that the expert may determine that there is no equitable method of implementing the new optional regime so that neither the Supplier or the Purchaser is adversely affected, and in that event the new optional regime will not be implemented. The decision of the expert will be final and binding.

13 Payments

13.1 Payments

(a) The Supplier will issue an invoice for the Site Address to the Purchaser at the Purchaser's Address for Accounts.

(b) The invoice will include:

(1) the Charges as estimated for the most recent Billing Period including any adjusted amounts under clauses 10.3(a);

(2) amounts charged under clause 6.4;

(3) amounts charged under clause 11(c);

(4) amounts for GST under clause 22; and

(5) any outstanding amounts from previous invoices.

(c) The Supplier will use reasonable endeavours to ensure each Billing Period is approximately one month in length unless the Supplier and Purchaser agree otherwise.

(d) The Purchaser will pay each invoice in full no later than the Due Date.

(e) If the Purchaser fails to pay the invoice by the Due Date, the Supplier may:

(1) apply any security the Supplier holds in relation to this Agreement towards payment of the invoice;

(2) take action under clause 18(a)(2);

(3) recover the Supplier's costs of collecting the amounts the subject of the invoice from the Purchaser; and

(4) charge Interest and recover late payment costs under clause 21.

(f) The difference between the estimated Charges paid and the actual Charges payable by the Purchaser will be settled in accordance with Schedule 3.

13.2 No payment during initial period

(a) Despite any other provision in this Agreement, the Supplier must not issue an invoice under clause 13.1 during the initial period (as that term is defined in the Strata Schemes Management Act 1996 (NSW)) in relation to the Purchaser.

(b) Immediately following the end of the expiry of the initial period in relation to the Purchaser, the Supplier may issue an invoice for the Site Address to the Purchaser for all amounts owing by the Purchaser to the Supplier under this Agreement for the period commencing on the Commencement Date to the end of the month immediately preceding the date of the invoice.

14 Risk and Liability Provisions

14.1 Purchaser's indemnity

The Purchaser indemnifies the Supplier against all Liabilities which the Supplier incurs or suffers as a consequence of any negligence in the performance of its obligations under this Agreement, or breach of this Agreement, by the Purchaser.

14.2 Exclusion of Consequential Loss

Notwithstanding any other provision of this Agreement and to the extent permitted by law, a party will not be liable for any liquidated damages, for construction delays or otherwise, or for any special loss, Consequential Loss or indirect loss or damage (including loss of opportunity, loss of credit rating or loss of business reputation) incurred or suffered by the other party or any third party whether under this Agreement or at law.

14.3 Exclusion of liability

(a) Notwithstanding any other provision of this Agreement, the Supplier will not be in default of its obligations under this Agreement to the extent that it is unable to supply the Recycled Water or collect the Wastewater as a result of the termination of, or the failure of any person to comply with any of their obligations, or the suspension of those obligations, under:

(1) the Lease;

(2) the lease of an Occupant Lot; or

(3) any contractual arrangement between the Supplier and a third party in respect of the acquisition or maintenance of the Plant and its supply at the Site Address of the Recycled Water or its collection from the Site Address of Wastewater,

unless that termination, suspension or failure arises due to the default of the Supplier.

(b) To the fullest extent permitted by law, all warranties implied by common law or statute are excluded from this Agreement unless expressly included. However, if any part of this Agreement is unlawful, unenforceable or invalid, that part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.

14.4 If the Purchaser is a Consumer

If the Purchaser is a Consumer:

(a) clauses 14.2 and 14.3 do not apply to any liability of the Supplier for failure to comply with a Consumer Guarantee;

(b) in respect of the goods supplied under this Agreement, subject to clause 14.4(d), unless the goods are Excluded Goods, the liability of the Supplier for Liability, however caused (including by the negligence of the Supplier), suffered or incurred by the Purchaser because of a failure to comply with a Consumer Guarantee is limited to the Supplier (at its election):

(1) replacing the goods or supplying equivalent goods;

(2) repairing the goods;

(3) paying the cost of replacing the goods or of acquiring equivalent goods; or

(4) paying the cost of having the goods repaired;

(c) in respect of the services supplied under this agreement, subject to clause 14.4(d), unless the services are Excluded Services, the liability of the Supplier for Liability, however caused (including by the negligence of the Supplier), suffered or incurred by the Purchaser because of a failure to comply with a Consumer Guarantee is limited to the Supplier (at its election):

(1) resupplying the services; or

(2) paying the cost of having the services supplied again;

(d) clauses 14.4(b) and 14.4(c) do not apply in relation to a Title Guarantee or if it is not Fair or Reasonable for the Supplier to rely on them; and

(e) in this clause 14.4:

(1) **Australian Consumer Law** or **ACL** means Schedule 2 to the *Competition and Consumer Act* 2010 (Cth) and the corresponding provisions of the Australian Consumer Law (New South Wales) as applicable;

(2) **Consumer** has the same meaning as in section 3 of the Australian Consumer Law;

(3) **Consumer Guarantee** means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty;

(4) **Excluded Goods** means 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law;

(5) **Excluded Services** means 'services of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law;

(6) **Express Warranty** has the same meaning as in section 2(1) of the Australian Consumer Law;

(7) **Fair or Reasonable** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law; and

(8) **Title Guarantee** means a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

14.5 No warranty

The Purchaser acknowledges and agrees that it has not relied on any representation or warranty that is not contained in this Agreement.

15 Priority of supply and step-in

(a) The Purchaser acknowledges that clause 66 of the BMS applies in relation to the priority of supply from the Plant to customers at Barangaroo South.

(b) The Purchaser acknowledges that the Supplier has granted step in rights pursuant to the BMS, and will not object to the valid exercise of step in rights in accordance with the BMS.

16 Force Majeure

(a) If any party is, by reason of a Force Majeure Event, prevented, wholly or in part from, or delayed in, performing any obligation (other than any obligation to pay an amount, including the Charges, as and when due and payable) under this Agreement:

(1) that party will give the other party notice in writing as soon as reasonably possible of that fact including:

(A) reasonable particulars of the Force Majeure Event, the obligations affected by it and the extent of the effect of the Force Majeure Event on those obligations;

(B) an estimate of the period of time required to enable the party affected by the Force Majeure Event to resume full performance of their obligations under this Agreement;

(C) where possible, the steps taken or to be taken to remove, overcome or minimise the effects of the Force Majeure Event; and

(2) the obligations (other than any obligation to pay an amount, including the Charges, as and when due and payable) of the party giving the notice referred to in clause 16(a)(1) are suspended to the extent to which they are affected by the Force Majeure Event, for as long as the Force Majeure Event continues and will not give rise to any liability to the other party for any loss, cost, damage or expense including Consequential Loss arising out of, or in any way connected with, the non-performance of those obligations.

(b) A party claiming a Force Majeure Event will use reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure Event.

(c) A party claiming a Force Majeure Event will:

(1) notify the other party in writing when the Force Majeure Event has terminated or abated to the extent which permits resumption of performance to occur; and

(2) notify the other party in writing when resumption of performance of the affected obligations has occurred.

(d) If the effects of a Force Majeure Event are widespread, the Supplier will be deemed to have given the Purchaser notice under this clause 16 if the Supplier makes the information available to the Purchaser by way of a 24 hour telephone service as soon as reasonably practicable.

(e) If due performance of any obligation under this Agreement is prevented for more than 6 months in aggregate by reason of the Force Majeure Event then either party may, after that period, provided it has complied with clauses 16(a) and 16(b), terminate this Agreement by giving not less than 30 days' notice in writing to the other party.

17 Suspension; Termination

17.1 Supplier's notice to suspend

Subject to the provisions of the BMS, the Supplier may by notice to the Purchaser suspend such of the rights and obligations of the Purchaser nominated in that notice if:

(a) an Insolvency Event occurs in respect of the Purchaser [which the Supplier believes on reasonable grounds will result in the Purchaser failing to comply with its obligations under this Agreement];

(b) any of the events in clause 18(a)(1), (3) (7) or (8) occur and provided that in case of the events described in clause 18(a)(1), (3) or (7), the event lasts for more than 30 days;

(c) a Permit Event occurs;

(d) any State or Federal government body or authority fails to perform or repudiates any of its obligations under any Permit;

(e) the Access Rights to the RWP Lot are terminated;

(f) the Plant becomes a 'Shared Facility' in accordance with the BMS; or

(g) the Purchaser is in breach of its material obligations under this Agreement and does not rectify such breach within 15 Business Days after receiving notice from the Supplier to do so,

until such time as the event or circumstance giving rise to the suspension is remedied.

17.2 Purchaser's notice to terminate

Subject to the provisions of the BMS, the Purchaser may by notice terminate this Agreement if:

(a) an Insolvency Event occurs in respect of the Supplier [which the Purchaser believes on reasonable grounds will result in the Supplier ceasing to supply the Recycled Water or collect the Wastewater in accordance with this Agreement]

(b) the Supplier abandons the Plant; or

(c) the Supplier is in breach of its material obligations under this Agreement and does not rectify such breach within 45 Business Days after receiving notice from the Purchaser to do so.

17.3 Consequences of suspension; termination

(a) If this Agreement is suspended or terminated for any reason, except where:

(1) the Purchaser terminates this Agreement under clause 17.2; or

(2) the Supplier suspends or terminates this Agreement under:

(A) clause 17.1(b) if any of the events described in clause 18(a)(1), (3) and (7) occur;

(B) clause 17.1(d);

(C) clause 17.1(e) other than where the suspension or termination arises as a result of the act or omission of the Supplier; or

(D) clause 17.1(f),

the Purchaser will pay the Supplier the costs the Supplier incurs due to that suspension or termination within 10 Business Days of receipt of a request from the Supplier to do so.

(b) Notwithstanding clause 17.3(a), if this Agreement is suspended or terminated under:

(1) clause 17.1(c), the party responsible for, or the causer of, that Permit Event must pay the costs the other party incurs due to that suspension or termination. If neither party is responsible for or the causer of the Permit Event, each party must bear their own costs in relation to the suspension or termination;

(2) clause 17.1(a) or clause 17.2(a), the party the subject of the Insolvency Event must pay the costs the other party incurs due to that suspension or termination; or

(3) clause 17.1(g) or clause 17.2(c), the party in breach of its material obligations must pay the costs the other party incurs due to that suspension or termination.

(c) To the maximum extent permitted by law the Supplier is not liable to the Purchaser or any other person where the Supplier has disconnected the Site Address or suspended or terminated this Agreement in accordance with the terms of this Agreement.

(d) Suspension or termination of this Agreement will be without prejudice to any accrued or other rights of either party whether at law or otherwise, and does not affect the rights and obligations of the parties under the clauses of this Agreement expressed to continue in force or are, by their nature, capable of enforcement against a party by the other party after suspension or termination of this Agreement.

(e) If, when this Agreement ends (whether by effluxion of time or otherwise), the Purchaser has accrued or incurred, but has not paid, Charges pursuant to this Agreement then, notwithstanding the end of this Agreement, the Purchaser's obligation to pay those Charges survives the termination of the Agreement.

18 Temporary Disconnection

(a) The Supplier may disconnect, curtail, interrupt or reduce the supply of Recycled Water or the collection of Wastewater at the Site Address:

(1) on the Purchaser's request;

(2) if the Purchaser fails to pay on time any 3 consecutive invoices or 3 invoices in any 6 month period, and the Supplier has issued the Purchaser with a notice setting out that the Purchaser's supply will be disconnected after 5 Business Days unless the Purchaser pays the outstanding amount and the 5 Business Day period has expired and the Purchaser has not paid that amount;

(3) if the Purchaser, or a person within the Purchaser's authority, does not give an Authorised Person access to the Site Address in accordance with clause 4 and the Purchaser does not promptly rectify the obstruction following a request from the Supplier to do so;

(4) if the Purchaser breaches this Agreement and the Supplier has issued the Purchaser with a notice setting out that the Purchaser's supply will be disconnected within 15 Business Days if the breach is not remedied and that 15 Business Day period has expired without the Purchaser remedying the breach;

(5) in an Emergency;

(6) for inspections, maintenance, or testing;

(7) if the Supplier is directed or permitted to do so under a Regulatory Requirement or the BMS; or

(8) if the Purchaser has used any of the Water Services at the Site Address in a way that causes the Supplier to have committed an offence or breached a Permit condition.

(b) The Supplier will endeavour, where practicable, to ascertain and inform the Purchaser of the dates on which an event listed in clause 18(a)(5) to 18(a)(7) will occur and the extent to which the provision of Water Services to the Purchaser under this Agreement will be affected.

(c) If the Site Address is disconnected pursuant to clause 18(a), the Purchaser and the Supplier:

(1) must use all reasonable endeavours to resume connection for the supply of the Recycled Water and collection of the Wastewater as soon as reasonably practicable following the disconnection event(s) having regard to the nature of the disconnection event(s); and

(2) agree that all Charges [relating to maintenance of the Plant] remain in effect during the period of disconnection.

(d) The Supplier is not liable for loss or damage arising from or in connection with the provision of Water Services being disconnected, curtailed, interrupted or reduced in accordance with this clause 18 unless the disconnection, curtailment, interruption or reduction is due to, or as a result of, the Supplier's act or omission which is done or made through negligence.

(e) The Purchaser agrees to pay the Supplier for any costs that the Supplier incurs relating to disconnection and any subsequent reconnection in accordance with this clause 18.

19 Terms of this Agreement

(a) This Agreement applies to the exclusion of any Regulatory Requirements except where the Regulatory Requirements prohibit this.

(b) Where this Agreement refers to the Purchaser or the Supplier exercising a right or performing an obligation, that right will be exercised or that obligation performed in accordance with all relevant Regulatory Requirements should that Regulatory Requirement apply to this Agreement.

(c) The warranties, undertakings and indemnities in this Agreement do not merge on the termination of this Agreement.

(d) Except in relation to any Express Warranty (as defined in clause 14.4), this Agreement overrides all prior negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement. The Purchaser acknowledges that it has not relied on any predictions, forecasts, advice or statements of opinion by the Supplier, or any of the Supplier's employees or agents, as to the appropriateness or financial effect of this Agreement, market conditions, the likelihood or otherwise of price changes or events that may constitute a Change of Law.

20 Assignment

The Purchaser may not sell, assign or transfer or allow an Encumbrance to arise in respect of its interest under this Agreement to any other person except with the prior written consent of the Supplier.

21 Interest

If a party fails to pay an amount to be paid under this Agreement by the due date for payment, the unpaid party may charge Interest on the unpaid amount on and from the due date and recover any costs the unpaid party incurs as a result of the late payment.

22 GST

(a) In this clause 22, all italicised and emboldened terms, have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 and in the **GST law**. In addition:

(1) "Agreement Price" means the ***consideration*** to be provided under this Agreement for the Supply (other than under this clause);

(2) "Recipient" means the party that receives the Supply from the Supplier;

(3) "Supplier" means the party that provides the Supply to the Recipient and includes the ***representative member*** of the ***GST Group*** if the Supplier is a member of a ***GST Group***;

(4) "Supply" means any ***supply*** to the Recipient by the Supplier pursuant to this Agreement. However, if the ***GST law*** treats part of a **supply** as a separate ***supply*** for the purpose of determining whether **GST** is payable on that part of the ***supply*** or for the purpose of determining the tax period to which that part of the ***supply*** will be attributable, such part of the ***supply*** will be treated as a separate ***supply*** for the purposes of this clause.

(b) Unless expressly stated otherwise in this Agreement, all amounts payable or consideration to be provided under this Agreement are exclusive of GST.

(c) Notwithstanding any other provision in this Agreement, if a Supplier is or becomes liable to pay ***GST*** in connection with any Supply:

(1) the Recipient will pay to the Supplier, in addition to the Agreement Price, an additional amount equal to the amount of that ***GST***;

(2) the Recipient will pay the Agreement Price plus the additional amount on account of ***GST*** within the Payment Term upon receiving a ***tax invoice*** from the Supplier for that Supply or as otherwise provided in this Agreement;

(d) if the ***GST*** payable in relation to a Supply made under or in connection with this Agreement varies from the additional amount paid or payable by the Recipient under clause 22(c)(1) 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 22(d) is deemed to be a payment, credit or refund of the additional amount payable under clause 22(c)(1). If an ***adjustment event*** occurs in relation to a Supply, the Supplier will issue an ***adjustment note*** to the Purchaser in relation to that Supply within 10 Business Days after becoming aware of the adjustment;

(e) where a party reimburses the other party for an expense or other amount incurred in connection with any wholly or partly ***creditable acquisition*** or any wholly or partly ***creditable importation*** made by that other party, the amount reimbursed shall be net of any ***input tax credit*** claimable in respect of that acquisition or importation (as the case may be).

23 Dispute Resolution

(a) Except where an alternative dispute resolution process is expressly set out in this Agreement, if an issue between the Supplier and the Purchaser arises out of or in connection with this Agreement, then either party may give to the other party a notice of issue in writing adequately identifying and providing details of the issue and the contractual provisions relied upon. Notwithstanding the existence of an issue, but subject to clause 17, the Supplier and the Purchaser must continue to perform and comply with the Agreement.

(b) Neither party may commence any court proceedings or arbitration in respect of any issue notified under this clause 23 until that party has complied with the requirements of this clause 23(b). Within 5 Business Days after service of a notice of issue, senior executives of each Party must confer at least once to attempt to resolve the issue and failing resolution of the issue must consider and if possible agree on methods of resolving the issue by other means. If the senior executives of each Party cannot agree on the method of resolving the

issue as contemplated by this clause 23(b) within 15 Business Days following the service of a notice of issue under clause 23(a), either Party may after giving notice in writing to the other Party commence litigation in respect of that issue.

24 Confidentiality

(a) Except as otherwise provided in this Agreement, all information obtained by a party orally, or in writing or on disk or electronic form relating in any way, directly or indirectly, to this Agreement and the provision of Water Services under this Agreement (including the terms of this Agreement), which is not in the public domain (or which is in the public domain, but only as a consequence of a breach of this clause 24) (**Confidential Information**) will be kept confidential. Neither party will disclose Confidential Information to third persons without the prior written consent of the other party, provided that each party will be entitled to disclose to:

(1) Sydney Water Corporation if the information relates to Barangaroo Water Network operational or pricing matters;

(2) if required by law, the Regulatory Requirements or the rules of a stock exchange on which a party's shares are listed;

(3) to the receiving party's Related Bodies Corporate or to the employees of the receiving party of a Related Bodies Corporate whose duties in either such case reasonably require such disclosure;

(4) to independent consultants, advisers and contractors of the receiving party whose duties in relation to the receiving party reasonably require such disclosure (subject to those persons agreeing to be bound by the confidentiality obligations of the receiving party under this clause 24(a));

(5) a potential purchaser or mortgagee of the Lease;

(6) a financier to the Supplier;

(7) a person proposing to acquire shares, units or other equity interests in the Supplier or any holding entity of the Supplier, whether direct or indirect;

(8) any Occupant; or

(9) as expressly permitted under this Agreement.

(b) The Purchaser authorises the Supplier to disclose Metering Data relating to the Purchaser's Site Address:

(1) to any counterparty of agreements the Supplier enters into to manage any arrangements in providing the Water Services (the **Recipient**);

(2) for the purpose of the Supplier achieving, maintaining or promoting performance, environmental impact rating of the Barangaroo Stage 1 development or both; or

(3) for the purpose of meeting obligations in relation to greenhouse gas reporting.

(c) The Supplier authorises the Purchaser to disclose anything other than sensitive information to third parties who reasonably require such disclosure for the purpose of the Purchaser achieving, maintaining or promoting a building performance and/or environmental impact rating of the Site Address, its energy

usage or environmental profile (subject to those persons agreeing to be bound by the confidentiality obligations of the receiving party under clause 24(a)).

(d) The provisions of this clause 24 continue to bind a party, notwithstanding that it may have ceased to be a party to this Agreement, and will continue to apply for a period of three years after the termination of this Agreement.

25 Privacy Statement

Both parties will comply with the provisions of the Privacy Act 1988 (Cth).

26 Notices

26.1 Form

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the person identified in Schedule 1 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

26.2 Delivery

They must be:

(a) left at the address set out or referred to in Schedule 1;

(b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in Schedule 1;

(c) given in any other way permitted by law.

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

26.3 When effective

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

26.4 Receipt - post

If sent by post, they are taken to be received 3 days after posting (or 7 days after posting if sent to or from a place outside Australia).

26.5 Receipt - general

Despite clause 26.4 if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

27 General

27.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

27.2 Failure to exercise rights

Except as otherwise set out in this Agreement, any partial exercise, failure to exercise, or delay in exercising, a right or remedy provided under this Agreement or by law does not operate as a waiver or prevent or restrict any further or other exercise of that or any other right or remedy in accordance with this Agreement.

27.3 No liability for loss

Except as otherwise set out in this Agreement, a party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy that is available to it under this Agreement.

27.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

27.5 Conflict of interest

The parties' rights and remedies under this Agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

27.6 Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

27.7 Rights and obligations are unaffected

Rights given to the parties under this Agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

27.8 Variation and waiver

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

27.9 Indemnities

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

27.10 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

(a) to bind the party and any other person intended to be bound under this Agreement;

(b) to show whether the party is complying with this Agreement.

27.11 Prompt performance

If this Agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

27.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

27.13 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation except for stamp duty. The Purchaser agrees to pay any stamp duty chargeable, payable or assessed in relation to this Agreement.

27.14 Inconsistent law

To the extent permitted by law, this Agreement prevails to the extent it is inconsistent with any law.

27.15 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this Agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

27.16 Ombudsman

The Purchaser may apply to an industry Ombudsman for a review of a decision by the Supplier relating to the supply of the Water Services under this Agreement.

28 Governing law

28.1 Governing law

This Agreement is governed by the law in force in New South Wales.

28.2 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

28.3 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered to or left at that party's address shown in Schedule 1.

29 Counterparts

This Agreement may consist of a number of copies each signed by one or more parties to the Agreement. If so, the signed copies are treated as making up the one document.

30 Definitions and Interpretation

(a) This Agreement includes any Schedule.

(b) In this Agreement, unless the contrary intention appears, an obligation or a liability assumed by 2 or more persons binds them jointly and severally and a right conferred on 2 or more persons benefits them jointly and severally.

(c) If there is any inconsistency between the provisions of this Agreement and the provisions of the BMS, the provisions of the BMS will prevail.

(d) Unless otherwise stated:

(1) a reference to this Agreement or another document includes any variation or replacement of any of it;

(2) the singular includes the plural and vice versa;

(3) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(4) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated without including that day;

(5) a day is the period of time commencing at midnight and ending 24 hours later;

(6) a month is a calendar month;

(7) a person includes any type of entity or body, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

(8) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(9) if an example is given of any thing (including a right, obligation or concept), the scope is not limited to the example.

(e) Except as specifically provided in this Agreement, if a day on or by which a person will do something under this Agreement is not a Business Day:

(1) if the act involves payment that is due on demand, the person will do it on or by the next Business Day; and

(2) in any other case, the person will do it on or by the previous Business Day.

(f) The meanings of capitalised terms used in this agreement are set out below.

Term	Meaning
Access Rights	rights granted by the RWP Lot Owner for the benefit of the Supplier under the Sub lease or the BMS or otherwise for the construction and operation of the Plant and the supply of Recycled Water to the Delivery Point and the collection of Wastewater from the Collection Point, including all rights of access to the RWP Lot to facilitate construction of, and to maintain, repair and replace, the Plant.
Address for Accounts	the address specified in Item 1 of Schedule 1 as the Address for Accounts.
Agreement	this Agreement, including the Schedules.
Authorised Person	has the meaning given in clause 4(a).
Barangaroo Management Plan	has the meaning given in the Lease.
Barangaroo South	the land being Barangaroo Stage 1 being the subject of the Project Development Agreement between Lend Lease (Millers Point) Pty Limited (ABN 15 127 727 502) and the BDA.
Barangaroo Water Network	the pipeline component of the Plant that connects the Site Address to the Plant at the Delivery Point.
BDA	Barangaroo Delivery Authority, a corporation constituted by the Barangaroo Delivery Authority Act 2009 (NSW).
Billing Period	any period for which an invoice is or may be issued.
BMS	the Building Management Statement for the Barangaroo South, registered with deposited plan [•].

Term	Meaning
Business Day	a day that is not a Saturday, Sunday or a statewide public holiday in NSW.
Business Hours	between 9am and 5pm on Business Days.
Change of Law	means: 1 any law, regulation, rules, code or sub-code being introduced, amended or repealed in whole or in part; the imposition of any Tax which was not in force as at the date of this Agreement; the rate at which any Tax is levied being varied from the rate prevailing as at the date of this Agreement; the basis on which any Tax is levied or calculated being varied from the basis which it is levied or calculated as at the date of this Agreement; a variation in the interpretation or administration of a law or regulation by a governmental agency or body or a court tribunal; or a scheme being introduced by any government agency providing for the Supplier to gain or hold any licence, permit or authorisation or providing for the Supplier to purchase, hold or surrender any certificate, permit or instrument or any such scheme being varied, except to the extent such imposition, amendment, repeal, variation or introduction relates to income tax or GST.
Charges	each of the: 1 Recycled Water Service Charge; 2 Wastewater Service Charge; 3 Recycled Water Usage Charge; 4 the Wastewater Usage Charge; and 5 the Water Use Charge, payable by the Purchaser to the Supplier as determined in accordance with Schedule 3.
Collection Point	the point identified in Part B of Schedule 2.
Commencement Date	the date on which the last of the Conditions Precedent has been satisfied or waived in accordance with this Agreement.
Conditions Precedent	has the meaning given in clause 1.1(b).

Term	Meaning
Confidential Information	has the meaning given in clause 24(a).
Consequential Loss	any loss of revenue or profit, loss of business opportunity or goodwill and any claims for indirect, special or punitive damages and includes any other indirect or consequential losses, costs, damages, liabilities or expenses.
Delivery Point	the point identified in Part A of Schedule 2.
Domestic Wastewater	water which has in it human faecal matter, urine or refuse of any type produced in premises used exclusively for residential purposes, and which is permitted to be discharged to a Sydney Water sewer. For the avoidance of doubt, Domestic Wastewater includes wastewater from toilets, basins, showers, and non commercial kitchens and laundries.
Due Date	the date by which the Purchaser must pay the Purchaser's invoice as specified on the invoice which will be no less than the period after the date of the invoice as specified as the Payment Term in Item 4 of Schedule 1.
Emergency	means: 1 the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages or threatens to destroy or damage any property; or 2 any emergency under the Regulatory Requirements.
Encumbrance	an interest or power: 1 reserved in, or over, an interest in any asset, including any retention of title; or 2 created or otherwise arising in, or over, any interest in any asset, under an invoice of sale, mortgage, charge, lien, pledge, trust or power, by way of security for the payment of a debt or any other monetary obligation, or the performance of any other obligation, and includes any agreement to grant or create any of the above. **Encumber** has a corresponding meaning.
End Date	is the date specified in Item 2 of Schedule 1 unless this Agreement is terminated earlier in accordance with its terms, in which case, the date this Agreement is terminated.

Term	Meaning
Environmental Attributes	any: 1 labelling or other promotional rights in respect of the Plant; and 2 future right, instrument, credit, mechanism, off-set or benefit in respect of or in connection with a recycled water plant using similar technology to the Plant that is related to emissions (including abatement or avoidance of emissions) or other matters affecting the environment.
Equipment	has the meaning given to that term in clause 9.2(a)(2).
Financial Year	a period of 12 consecutive months, starting on 1 July and ending on 30 June.
Force Majeure Event	means: 1 a failure of the power grid to provide electricity supplies to the Plant, the Site Address or any premises at the Site Address or the failure of third parties to supply utility services (including water, gas and electricity) to the Plant, the Site Address or any premises at the Site Address except where the failure is due to the default or wrongful or negligent act or wrongful or negligent omission of the Supplier; 2 terrorism, act of war (whether declared or not), civil commotion, explosion, earthquake, aircraft or other aerial device, fire, flood, lightning, storm, tempest, machinery or equipment failure or breakdown or act of God, except in the case of machinery or equipment failure or breakdown, where the failure or breakdown is due to the default or wrongful or negligent act or wrongful or negligent act or omission of the Supplier; 3 the provisions of any Laws or the direction of any authority with respect to the operation of the Plant or the Barangaroo Water Network, except where due to any non-compliance by the Supplier with its obligations under this Agreement; or 4 in the case of the Plant, if the original basis of design in respect of the Plant is exceeded by the Purchaser or other purchasers of services similar to those being supplied under a Supply Agreement or by both.
Insolvency Event	the occurrence of any of the following events: 1 an application is made to the court for an order that a party may be wound up; 2 an order is made that a body corporate be wound up; 3 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a party; or 4 a liquidator or provisional liquidator is appointed in respect of a body corporate, whether or not under an order.

Term	Meaning
Interest	on any day, the average bid rate (expressed as a percentage yield to maturity per annum rounded upwards, if necessary, to the nearest 0.01%) displayed on the page of the Reuters Monitor System, designated "BBSY" at or about 10.30am on that day (or if that day is not a Business Day then on the Business Day which immediately precedes that day) for the purchase of invoices of exchange (as defined in the Banking Act 1959 (Cth)) (**Banking Act**) bearing the acceptance of a bank licensed under sections 8 or 9 of the Banking Act and for a term to maturity of 90 days, or if there is manifest error in the calculation of that average rate, or that average rate is not displayed at or about 10.30am on that day, or if that average rate becomes clearly inappropriate, unfair or incapable of application, then the "Bank Invoice Rate" for that day is as agreed between the parties in good faith to be representative of the rate at which such invoices are being purchased by such banks at or about 10.30am on that day plus a margin of 3.00%.
Laws	all statutes (including the Barangaroo Delivery Authority Act but not including the Barangaroo Management Plan), rules, regulations, proclamations, ordinances, by laws or the common law, present or future and includes any rules, regulations, proclamations, ordinances or by laws other than the Barangaroo Management Plan made by the BDA in its statutory capacity but not in its capacity as head lessor.
Lease	lease registered number [•]
Liability	any loss, damage, liability, costs, charges and expenses.
Licence Deed	the deed of that name between the Purchaser (as licensor) and the Supplier (as licensee) as set out in Schedule 4.
Maintenance Specification	the specification attached as Schedule 5.
Maximum Daily Allocation	the maximum quantity of Recycled Water up to which the Supplier agrees to supply to the Purchaser on any Day under and subject to the terms of this Agreement, being the amount specified in Item 5 of Schedule 1.
Meter	a meter or monitor to be installed and maintained for the purpose of measuring the supply of Recycled Water and the collection of Wastewater at the Site Address.
Metering Data	information obtained from a Meter installed at the Site Address in accordance with this Agreement in relation to the Recycled Water and

Term	Meaning
	Wastewater sufficient for the Supplier to determine the Charges.
Metering Provider	a person engaged by the Supplier and accredited to provide Metering Services, including the provision and maintenance of the Meters.
Metering Services	include the installation, maintenance or testing of Meters and other metering equipment at the Site Address, including Meters for each Lot, and the reading and generation of Metering Data from those Meters sufficient for individual invoicing of each Lot.
Minimum Daily Entitlement	the minimum quantity of Recycled Water that the Supplier agrees to supply to the Purchaser under and subject to the terms of this Agreement, being the amount specified in Item 6 of Schedule 1.
Network Licence	the Supplier's network operator's licence granted under WICA as amended from time to time.
Occupant	the owner or occupier of an Occupant Lot.
Occupant Lot	[tbc]
Outage	an interruption to or a reduction in the capacity of the Supplier to provide the Water Services at the Site Address as measured at the Delivery Point.
Payment Term	the period specified in Item 4 of Schedule 1 from the date of an invoice.
Permit	any permit, licence, approval, consent, waiver, authorisation or other requirement required in connection with this Agreement or the operation of the Plant, the Barangaroo Water Network or the Purchaser's Plant from any State or Federal government body or agency under the Regulatory Requirements.
Permit Event	the occurrence of any of the following: 1 any Permit not being granted upon application having been duly made; any Permit ceasing to remain in full force and effect, or not being renewed upon application having been duly made or being renewed upon terms and conditions which are less favourable to the Supplier than those originally imposed;

Term	Meaning
	the attachment to any Permit subsequent to its grant of any terms or conditions which adversely affect any of the Supplier's rights or the performance by the Supplier of any of its obligations; or the requirement of any Permit not required as of the date of this Agreement.
Plant	the recycled water plant, being the facility located at the RWP Lot which is used or operated by the Supplier for or in connection with the acceptance of Wastewater from, and the supply of Recycled Water to, the Purchaser. The recycled water plant comprises the recycled water plant, pipe work and other apparatus including metering equipment, Delivery Point and Collection Point but excludes the Purchaser's Plant and any other plant or equipment on the Purchaser's side of the Delivery Point and the Collection Point.
Potable Water	potable water supplied to the Purchaser by an entity other than the Supplier.
Power Purchase Agreement	the agreement of that name between the Supplier (as seller) and the Purchaser (as buyer) as set out in Schedule 4.
Prohibited Substance	any substance other than Domestic Wastewater.
Prudent Engineering Practice	means: 1 those laws, statutory regulations, orders and standards of best practice stipulated by any applicable State or Federal body or agency or other relevant body duly authorised in respect of the supply of any or all of the Water Services or other related matters; or 2 in the absence of any such laws, statutory regulations, orders or standards of best practice, those practices that are generally accepted and commonly used in the industries involved in the supply of any or all of the Water Services.
Purchaser's Plant	the Recycled Water reticulation system connected to the Delivery Point and the Wastewater collection system connected to the Collection Point located at the Site Address, including [•] used to transmit/transport Recycled Water and WasteWater throughout the Site Address.
Recycled Water	water of a quality specified in the applicable Regulatory Requirements.
Recycled Water Service Charge	the service charge payable in respect of Recycled Water by the Purchaser to the Supplier determined in accordance with this

Term	Meaning
	Agreement.
Recycled Water Usage Charge	has the meaning given in Schedule 3.
Regulatory Requirements	all legislation, rules, regulations, codes, and orders in council, licences, proclamations, directions or standards that are relevant to the supply, sale or purchase of the Water Services and Services that do not include the Water Services in New South Wales.
RWP Lot Owner	[•] ABN [•]
RWP Lot	lot [•] in DP[•], being the lot within which the main part of the Plant is located, and being the lot the subject of the lease from the RWP Lot Owner to the Supplier.
Schedule	a Schedule to this Agreement.
Service Standards	the service standards set out in Schedule 4.
Services	means: 1 the provision of Water Services; and 2 any other services (including goods) which the Purchaser agrees in writing to purchase from the Supplier.
Site Address	the address described in Item 3 of Schedule 1.
Sub-lease	sub-lease registered number [•]. *[Note – this is the RWP lease of the RWP Lot]*
Supply Agreement	an agreement by the Supplier to supply Recycled Water from and/or collect Wastewater to the Plant to a third party.
Supply Period	the period commencing on the Commencement Date and ending on the End Date.
Sydney Water	Sydney Water Corporation, a State owned corporation constituted under the *State Owned Corporations Act 1989* and operating under the

Term	Meaning
Corporation	Sydney Water Act 1994.
Tax	means: 1 any tax (including a goods and services tax and any valued added tax), levy, charge, impost, duty (including import and customs), tariff, excise, fee, deduction, compulsory loan or withholding; or 2 any income, stamp, indirect or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any governmental agency, or other body authorised by law to impose that Tax and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.
Term	the term of this Agreement as defined in clause 2.
Wastewater	any water, and the substances in it, including human waste, ingredients or products used in cooking or cleaning or for other purposes (commonly associated with a residential building) produced in the Site Address and which may be permitted by Law and the Regulatory Requirements, for discharge to sewer from sinks or drains within the Site Address.
Wastewater Service Charge	the service charge payable in respect of Wastewater by the Purchaser to the Supplier determined in accordance with this Agreement.
Wastewater Unit Rate	the dollar rate per kL of Wastewater collected by the Supplier that is payable by the Purchaser to the Supplier as determined in accordance with this Agreement.
Wastewater Usage Charge	has the meaning given in Schedule 3.
Water Services	each of: 1 the delivery of Recycled Water to the Site Address; 2 the collection of Wastewater from the Site Address; and 3 the provision of Metering Services at the Site Address.
WICA	the *Water Industry Competition Act 2006* (NSW).

HERBERT SMITH FREEHILLS

Schedules

Table of contents

Reference Schedule	**37**
Delivery Point and Collection Point	**39**
Charges	**40**
Service Standards	**44**
Power Purchase Agreement and Licence Deed	**45**
Maintenance Specification	**46**

HERBERT SMITH FREEHILLS

Schedule 1

Reference Schedule

[Note: to be agreed prior to execution.]

Item	Description	Clause Reference	Details
1	Address for Accounts	Defined terms	[tbc]
2	End Date	Defined terms	The fiftieth anniversary of the Commencement Date of the first Supply Agreement.
3	Site Address	Defined terms	[insert site address]
4	Payment Term	Defined terms	30 days
5	Maximum Daily Allocation	Defined Terms	[•] kL
6	Minimum Daily Entitlement	Defined terms	[•] kL
7	Conditions Precedent	1.1	*[insert date by which CPs must be satisfied or waived.]*
8	Technical Details	3.7	The water sources the Supplier derives Recycled Water from: [•] The rate at which Recycled Water is to be available for supply to the Site Address: [•] The minimum pressure at which Recycled Water is to be supplied: [•] The rate at which Wastewater may be discharged into the Barangaroo Water Network from the Site Address: [•]

Contact details for Notices – clause 26

Supplier

Nominated Agent	TBA

Purchaser

Nominated Agent	TBA

HERBERT SMITH FREEHILLS

Schedule 2

Delivery Point and Collection Point

[Note: diagrams to be provided prior to execution.]

Part A – Delivery Point

Part B – Collection Point

Barangaroo Delivery Authority NSW GOVERNMENT

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Schedule 3

Charges

1 Purchaser must pay the Charges

1.1 What are the Charges?

(a) The Charges are:

(1) the Charges; and

(2) any other charge agreed in writing between the Supplier and the Purchaser for Services provided by the Supplier under this Agreement including the charges detailed in clause 3 of this Schedule 3.

(b) The Charges consist of the aggregate of the following:

(1) Recycled Water Service Charge;

(2) Recycled Water Use Charge

(3) Wastewater Service Charge;

(4) Water Service Charge; and

(5) Water Use Charge.

(c) Clause 3 of this Schedule contains the definitions which set out how the Charges, and their respective constituent components. are calculated.

(d) The Charges are exclusive of any GST or other relevant Taxes that may be imposed from time to time.

(e) If any rate set out in this Schedule is subject to government regulation or approval (including by IPART) and the application of the relevant government regulation or approval results in the relevant rate being varied, then this Schedule must be applied as if it referred to the relevant rate as varied by the application of the relevant government regulation or approval.

1.2 Purchaser must pay estimated Charges

(a) The Purchaser must pay instalments of the Charges as estimated and notified by the Supplier or the relevant energy provider to the Purchaser under clause 2 of this Schedule 3 in advance on the first day of the Supply Period and on the first Business Day of every month during the Supply Period.

(b) The Supplier and the Purchaser must make any necessary adjustments between the estimated Charges paid by the Purchaser and the actual Charges payable by the Purchaser in accordance with clause 2 of this Schedule 3 at least once each year and upon the End Date.

(c) The Supplier will estimate the Charges referred to in clause 2 of this Schedule 3 in accordance with any applicable Regulatory Requirements and the Charges may also be estimated by reference to prior billing history or any other criteria the Supplier reasonably considers is relevant in consultation with the Purchaser.

1.3 Purchaser to provide information

The Purchaser must provide the Supplier on demand with all information the Supplier reasonably requires the Purchaser to provide in order to assist the Supplier to calculate the Charges (including online access to the Purchaser's Meters as necessary).

2 Estimates of Charges, statements and adjustments

(a) At least one month before the start of each Financial Year during the Supply Period and one month before the start of the Supply Period during the first year of this Agreement, the Supplier must notify the Purchaser of the Supplier's estimate in good faith of the Charges for that Financial Year or balance of that Financial Year.

(b) Within three (3) months after the end of each Financial Year, the Supplier must give the Purchaser a statement of the actual Charges for the preceding Financial Year **(Preceding Year)** **(Annual Reconciliation Statement)**. The Annual Reconciliation Statement must contain or indicate:

(1) the amount paid by the Purchaser by way of estimated Charges for Services consumed and any other services provided by the Supplier during the Preceding Year;

(2) the amount of the Charges for Services provided and any other services provided by the Supplier for the Preceding Year, calculated in accordance with this Schedule; and

(3) the balance of the Charges payable by the Purchaser (or any over payment to be credited or refunded to the Purchaser).

(c) Unless the Supplier or the Purchaser gives the other notice detailing a numerical or other error in the Annual Reconciliation Statement within one month of its service, then (subject to clause [2(d)] of this Schedule) within twenty (20) Business Days after the Purchaser receives a statement under clause [2(b)] of this Schedule:

(1) the Purchaser must pay the Supplier the balance (if any) of the Charges shown as payable by the Purchaser in the Annual Reconciliation Statement; or

(2) the Supplier must credit the overpayment (if any) of the Charges to the Purchaser's account (or refund the overpayment if no other money is payable to the Supplier) as shown in the Annual Reconciliation Statement.

(d) If the Supplier or the Purchaser gives notice under clause [2(c)] of this Schedule, a further Annual Reconciliation Statement (complying with clause [2(b)]) must be given. Clause [2(c)] applies to the further Annual Reconciliation Statement.

3 Defined terms and interpretation

3.1 Defined terms

(a) **Charges** has the meaning given in clause 1.1(a) of this Schedule.

(b) **Financial Year** has the meaning given in clause 30 of this Agreement.

(c) **IPART** means the Independent Pricing and Regulatory Tribunal of New South Wales, or such other body as replaces it from time to time.

(d) **Recycled Water Service Charge (RWSC)** means the Recycled Water Service Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis) being the aggregate of all metered usage at the Site Address having regard to the published quarterly Reference Charges for the relevant Financial Year applicable to the relevant meter size for the recycled water service located at the Site Address.

(e) **Recycled Water Use Charge** means the following, being the Recycled Water Use Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis):

$A = B \times C$

where:

A = Recycled Water Use Charge

B = Recycled Water Use Charge (RWUC) unit rate per kilolitre (kL) in accordance with the relevant Reference Charge (Ref 2A)

C = aggregate of all metered usage at the Site Address measured in kilolitres (kL) for the relevant Financial Year.

(f) **Reference Charges** means the published Service Charges and Usage Charges from **Sydney Water Corporation** as determined from time to time by IPART. The following are examples of residential water charges current as at the date indicated:

(1) **Recycled Water Service Charge (Ref 1A)** Reference Charge shall be equal to the Home Bush Bay Recycled Water Service Charge

By example: published Service Charges 2012-13 (effective 1 July 2012)

Jul-Sep Qtr	Oct-Jun Qtr
$8.78	$8.76

(2) **Recycled Water Use Charge (Ref 2A)** Reference Charge shall be equal to the Home Bush Bay Recycled Water Use Charge calculated on metered usage

By example: published Service Charges 2012-13 (effective 1 July 2012)

$1.98/kl

(3) **Wastewater Service Charge (Ref 3A)** Reference Charge shall be equal to the Wastewater Service Charge

By example: published Service Charges 2012-13 (effective 1 July 2012)

Each Qtr $138.77

(4) **Water Service Charge (Ref 4A)** Reference Charge shall be equal to the Water Service Charge

By example: published Service Charges 2012-13 (effective 1 July 2012)

Over Meter Charge	Each Qtr	$33.78

(5) **Water Use Charge (Ref** 5A) Reference Charge shall be equal to the Water Use Charge

By example: published Water Use Charge 2012-13 (effective 1 July 2012)

$2.13/kl

(g) **Wastewater Service Charge (WWSC)** means the Waste Water Service Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis) being the aggregate of all metered usage at the Site Address having regard to the published quarterly Reference Charges for the relevant Financial Year applicable to the relevant meter size for the wastewater service located at the Site Address.

(h) **Water Use Charge (WUC)** means the following, being the Water Use Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis):

A = B x C

where:

A = Water Use Charge

B = Water Use Charge (WUC) unit rate per kilolitre (kL) in accordance with the Reference Charges

C = aggregate of all metered usage at the Site Address measured in kilolitres (kL) for the relevant Financial Year.

(i) **Water Service Charge (WSC)** means the Water Service Charge for the relevant Financial Year payable by the Purchaser (calculated on a full year basis) being the aggregate of all metered usage at the Site Address having regard to the published quarterly Reference Charges for the relevant Financial Year applicable to the relevant meter size for wastewater service located at the Site Address.

4 Overriding clause

(a) Notwithstanding anything else set out in this Schedule the Supplier may vary any charge referred to in this Schedule to reflect any additional charges which may affect utility prices from time to time.

(b) In this clause, "charge" includes assessments, charges, costs, duties, expenses, fees, levies, rates, taxes and outgoings.

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Schedule 4

Service Standards

All applicable Regulatory Requirements.

Regulatory Requirements has the meaning given in clause 30 of this Agreement, being:

> 'all legislation, rules, regulations, codes, and orders in council, licences, proclamations, directions or standards that are relevant to the supply, sale or purchase of the Water Services and Services that do not include the Water Services in New South Wales.'

Barangaroo Delivery Authority NSW GOVERNMENT

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Schedule 5

Power Purchase Agreement and Licence Deed

Barangaroo Delivery Authority
NSW GOVERNMENT

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Agreement

Power purchase agreement

Lend Lease Recycled Water (Barangaroo South) Pty Limited

[Residential Building Owner]

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
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Contents

Table of contents

1	**Definitions, interpretation and agreement components**	**2**
1.1	Definitions	2
1.2	Interpretation	7
1.3	Interpretation of inclusive expressions	8
2	**Supply of Electricity**	**8**
2.1	Initial connection	8
2.2	Access to Supply Address	8
2.3	Purchase of Electricity	8
2.4	Entitlement and risk	8
2.5	Warranties and representations	9
3	**Metering Facilities**	**9**
4	**Term**	**9**
5	**Interruptions**	**9**
5.1	Planned Interruptions	9
5.2	Unplanned Interruptions	9
6	**Charges**	**9**
6.1	Charges	9
6.2	Variation of Charges	10
6.3	Variation of Electricity Charge	10
7	**Green Products**	**10**
8	**Invoicing and payment**	**10**
8.1	Calculation of actual usage	10
8.2	Calculation of charges by estimated usage	11
8.3	Invoicing procedure	11
8.4	Payment of invoices	11
8.5	Review by the Seller	11
8.6	Disputed invoices	11
9	**Goods and Services Tax (GST Exclusive Prices)**	**12**
10	**Force Majeure**	**12**
11	**Limitation of liability**	**12**
11.1	Limitation of liability	12
11.2	Exclusion of Consequential Loss	13
11.3	Terms Implied by Law	13
12	**Indemnity**	**13**
13	**Transfer and Assignment**	**13**
13.1	Sale of Supply Address	13
13.2	Transfer and assignment by the Seller	14
13.3	Transferee's details to be provided	14
13.4	Encumbrances	14

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Contents

14	**Termination**	**14**
15	**General**	**14**
	15.1 Confidentiality	14
	15.2 No waiver	15
	15.3 Governing law and jurisdiction	15
	15.4 Severability	15
	15.5 Notices	15
	15.6 No interference	16
	15.7 Access to records	16
	15.8 Costs	16
	15.9 Further assurance	16
	15.10 Rights on termination	16
	15.11 Relationship of the parties	16
	Schedule 1	**17**
	Signing page	**18**

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Power purchase agreement

Date ▸

Between the parties

Seller	**Lend Lease Recycled Water (Barangaroo South) Pty Limited** ABN 30158168686 of [TBA] **(Seller)**
Buyer	**[Residential Building Owner]** ABN [•] of TBA **(Buyer)**
Recitals	The Seller has agreed to sell to the Buyer and the Buyer has agreed to buy from the Seller a supply of Electricity in the quantities and on the terms set out in this agreement.

The parties agree as follows:

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1 Definitions, interpretation and agreement components

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Average Spot Price	an average over the previous 12 months of the load weighted average monthly spot price of electricity in NSW published by the Australian Energy Market Operator.
Billing Period	the period specified in Schedule 1.
Business Day	a day on which trading banks are open for business in New South Wales, excluding a Saturday, Sunday or public holiday.
Buyer's Address	the address specified in Schedule 1.
Cabling	has the meaning given in the Licence Agreement.
Call Option	has the meaning given to in the Security of Supply Deed.
Call Option Completion Date	has the meaning given in the Security of Supply Deed.
Charges	any charges payable by the Buyer under this agreement including the Electricity Charge, the Regulated Charge, the Connection Charge, the Metering Charge and the Environmental Charge.
Confidential Information	has the meaning given in clause 15.1(a).
Connection Charge	means the charges incurred by the Seller in relation to the connection of the Supply Address to the PV Cells plus any reasonable administrative costs.
Consequential Loss	▪ in the case of loss or damage resulting from a breach of contract – indirect, remote or unforeseeable loss including loss of profits, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business, loss of business reputation, future reputation or publicity, damage to credit rating, loss of use or any other similar loss occasioned by that breach, whether or not in the reasonable contemplation of the parties at the time of

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Term	Meaning
	execution of this agreement as being a probable result of the relevant breach; and • in the case of loss or damage arising from any tort (including negligence) indirect, remote or unforeseeable loss, and in the case of pure economic loss, loss not flowing directly from the commission of the tort.
Consumer Law	means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the New South Wales consumer protection laws.
CPI Adjustment Factor	the greater of 1 and the amount calculated as follows per annum from the Start Date: A = B/C where: A = the CPI Adjustment Factor for the relevant year; B = the Consumer Price Index (All Groups) for Sydney last published prior to the beginning of the relevant year; C = the Consumer Price Index (All Groups) for Sydney last published prior to the beginning of the previous year.
Dispute Notice	has the meaning given in 8.6(a).
Electricity	electrical power generated by the PV Cells and supplied by the Seller to the Buyer at the Point of Supply.
Electricity Charge	the charges for each kilowatt hour of Electricity consumed by the Buyer at the Supply Address under this agreement, which: • at the Start Date is the amount specified in Schedule 1; and • is adjusted annually in accordance with clause 6.3.
Encumbrance	an interest or power: • reserved in, or over, an interest in any asset, including any retention of title; or • created or otherwise arising in, or over, any interest in any asset, under a bill of sale, mortgage, charge, lien, pledge, trust or power; by way of security for the payment of a debt or any other monetary obligation, or the performance of any other obligation, and includes any agreement to grant or create any of the above and **Encumber** has a corresponding meaning.
End Date	the date specified in Schedule 1.

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Term	Meaning
Environmental Charge	the aggregate of the: 1 REC Rate multiplied by the Electricity consumed by the Buyer at the Supply Address under this agreement; and 2 [others]
Force Majeure Event	any event beyond the reasonable control of the parties, including: ▪ any act of God; ▪ fire, explosion, flood or bad weather, storm, lightning, epidemic; ▪ war, revolution, outbreak of hostilities, riot, civil disturbance, acts of terrorism or any other unlawful act against public order or authority; ▪ theft, malicious damage, strikes, lock outs or industrial action of any kind; ▪ the act of a Government Agency (including refusal or revocation of a licence or consent); and ▪ any failure or delay in obtaining necessary licences or authorisations, but does not include lack of or inability to use funds for any reason.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government Minister, agency or entity in any part of the world.
Green Products	means any right, credit, certificate, interest, entitlement, incentive, compensation, claim or benefit created by or recognised or arising under any Law, or which may become available under any Law to an owner or operator of any facility for the generation of Electricity and relates directly or indirectly to renewable energy, any emission trading scheme, any carbon pollution reduction scheme or any greenhouse gas abatement scheme, including any small scale or large scale renewable energy certificate under the Renewable Energy (Electricity Act) 2000.
GST	has the same meaning as in the GST Act and includes any replacement or subsequent similar tax.
GST Act	the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Increased Cost Event	▪ the imposition of, or change in the rate or basis of calculation of, any Taxes as a result of changes in Laws; ▪ the incurring of any liability to the Seller because of an introduction or change in a Law; or ▪ any increase in the costs or expenses incurred or payable by the Seller in connection with or as a result of the supply of Electricity to the Buyer under this agreement including as a result of changes in any environmental Laws.

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Term	Meaning
Interest Rate	on any day means 2% per annum plus the arithmetic mean of the bid rates shown at or about 10:30am (Sydney time) on the Reuters BBSW page (or any page or service which replaces it) for bills of exchange with a tenor of 90 days on that day.
kWh	kilowatt hours.
Laws	statutory Laws and all other laws from which legal obligations may arise.
Licence Agreement	the deed of licence for photovoltaic cells between the Buyer (as licensor) and the Seller (as licensee) dated [•].
Loss	subject to clause 11, any claim, action, damage, loss, liability, cost, charge, expense, diminution in value or deficiency of any kind or character that any party pays, suffers or incurs or is liable for, including: ▪ all interest and other amounts payable to third parties; and ▪ all legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of a claim or action.
Metering Charge	the reasonable costs of providing, installing and maintaining the Metering Facilities provided by the Seller.
Metering Facilities	the meters and associated equipment to be utilised for the measurement of Electricity for determining payment under this agreement as referred to in clause 3.
Notice	has the meaning given in clause 15.5.
Officer	in relation to a party, a director, secretary, general manager or other duly authorised officer for the time being of that party.
Other Charges	any other charges which the Seller is charged or incurs as a result of supplying Electricity under this agreement including any other costs incurred in complying with any Laws relating to greenhouse gas reduction or other environmental initiatives that are not already captured.
Payment Period	has the meaning given in clause 8.4.
Planned Interruptions	an interruption in the delivery or acceptance of Electricity which: ▪ is scheduled for the purposes of repair, maintenance and testing of the PV

Term	Meaning
	Cells or Cabling, as the case may be; and ▪ has been notified in advance to the Buyer.
Point of Supply	the point(s) described in the Licence Agreement.
PV Cells	has the meaning given in the Licence Agreement.
REC Rate	has the meaning given in Schedule 1.
Regulated Charge	any amounts (if any) payable by the Seller for any charges imposed by Law or any other Government Authority in relation to the delivering Electricity under this agreement.
Security of Supply Deed	means the Recycled Water Security of Supply Deed between the Seller, [insert Seller Holdco] and Barangaroo South Infrastructure Stakeholder Pty Limited.
Seller's Address	the address specified in Schedule 1.
Start Date	the date specified in Schedule 1.
Statutory Laws	all of the following sources of legal rights and obligations, whether now in existence or coming into existence in the future: ▪ Acts of the Parliament; ▪ codes of practice, guidelines, directions, orders and requirements of any Government Agencies empowered to issue the same under any such Act; and ▪ the requirements imposed under any licence or authority issued under any such Act.
Supply Address	the premises at which Electricity is to be supplied as specified in [ ].
Tax	▪ a tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or ▪ income, stamp or transaction duty, tax or charge, other than GST, that is or may be at any time assessed, levied, imposed or collected by a Government Agency (other than in respect of the assessable income of the Seller) and includes interest, fines, penalties, charges, fees or other amounts imposed on or in respect of any of the above.

Term	Meaning
Tax Invoice	the invoice issued pursuant to clause 8.3.
Term	the term of this agreement as determined according to clause 4.
Unplanned Interruptions	any interruption in the delivery of Electricity which is not a Planned Interruption and is not otherwise excused under this agreement.
Variation Notice	has the meaning given in clause 6.2(b).
Variation Date	has the meaning given in clause 6.2(b)(3).
Wilful Default	any act or omission done or omitted to be done with deliberate or reckless disregard to foreseeable, harmful and avoidable consequences which is not an act or omission done or omitted to be done in good faith.

1.2 Interpretation

In this agreement:

(a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of any gender include all genders.

(d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.

(e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.

(f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2 implies that performance of part of an obligation constitutes performance of the obligation.

(g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.

(h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.

(i) A covenant or agreement on the part of 2 or more persons binds them jointly and severally.

(j) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.

(k) A reference to any licence includes the licence as varied or replaced.

(l) A reference to a body other than a party to this agreement (including, an institute, association or authority), whether statutory or not:

(1) which ceases to exist; or

(2) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

(m) A reference to time is to local time in Sydney.

(n) A reference to currency is a reference to Australian currency and all amounts payable under this agreement must be paid in Australia in Australian currency.

(o) Terminology used to prescribe units will be, unless otherwise stated, in accordance with Australian Standard AS1000 1998 'The International System of Units (SI) and its Application', the National Measurement Act 1960 (Cth) and Australian Standard AS/NZS1376 1996 'Conversion Factors'.

(p) No provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision.

1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2 Supply of Electricity

2.1 Initial connection

The Buyer consents to, and agrees to do anything reasonably required by the Seller to enable, the Seller to take all necessary steps to supply Electricity generated by the PV Cells to the Supply Address including:

(a) accessing the Supply Address; and

(b) installing Metering Facilities to measure Electricity consumption at the Supply Address.

2.2 Access to Supply Address

The Buyer must provide the Seller with safe, convenient and unhindered access to the Supply Address and Metering Facilities for the purposes of this agreement, if the Seller has:

(a) given the Buyer at least 10 Business Days Notice, in the ordinary course of events; or

(b) attempted to contact the Buyer prior to entry, in the case of an emergency.

2.3 Purchase of Electricity

Except as otherwise permitted under this agreement the Buyer must purchase from the Seller all the Electricity generated by the PV Cells and supplied to the Supply Address.

2.4 Entitlement and risk

(a) The Seller must deliver Electricity to the Buyer at the Point of Supply.

(b) Entitlement to and risk in all Electricity delivered by the Seller passes from the Seller to the Buyer at the Point of Supply.

2.5 Warranties and representations

The Seller provides no guarantees, representations or warranties in relation to:

(a) its ability to supply Electricity under the terms of this agreement; or

(b) the quality of the Electricity supplied under this agreement.

3 Metering Facilities

(a) The Seller will provide, own and maintain the Metering Facilities.

(b) The Seller may carry out maintenance and replacement of the Metering Facilities as the Seller deems necessary.

4 Term

The Term of this agreement commences on the Start Date and will end on the earlier of:

(a) the End Date; or

(b) the date this agreement is terminated in accordance with the terms of this deed.

5 Interruptions

5.1 Planned Interruptions

(a) At the sole discretion of the Seller, Planned Interruptions (with total shutdown) will be performed by the Seller.

(b) The dates and times chosen for Planned Interruptions must be arranged between the Seller and the Buyer as far as possible in advance. In any event, the Seller must inform the Buyer at least [20 Business Days] in advance of Planned Interruptions.

5.2 Unplanned Interruptions

Whenever the Seller becomes aware that an Unplanned Interruption may occur, the Seller must advise the Buyer of that as soon as reasonably possible (which notice may be given after the Unplanned Interruption).

6 Charges

6.1 Charges

During the Term, the Buyer must pay to the Seller:

(a) the Electricity Charge multiplied by the amount of Electricity supplied under this agreement;

(b) any Connection Charge;

(c) the Metering Charge;

(d) the Environmental Charge;

(e) any Regulated Charge; (if any) and

(f) any Other Charges,

in each case in accordance with 8.

6.2 Variation of Charges

(a) Any or all of the Charges payable by the Buyer under this agreement can, at the Seller's sole discretion, be adjusted as a result of an Increased Cost Event.

(b) To vary any or all of the Charges, the Seller shall issue a Notice to the Buyer (**Variation Notice**) which details:

(1) the proposed variation;

(2) in the case of a variation resulting from an Increased Cost Event, a description of that event; and

(3) the date from which the variation will take effect (**Variation Date**), which must not be more than 30 Business Days from the date of the Variation Notice.

6.3 Variation of Electricity Charge

(a) The Electricity Charge will be automatically adjusted by the Seller on annual basis from the Start Date:

(1) for any increase is the Average Spot Price; and

(2) by the CPI Adjustment Factor.

(b) Notwithstanding any other provision of this agreement, the Electricity Charge must not exceed the Maximum Allowable Amount.

7 Green Products

To the extent possible under Law, entitlement to and risk in the Green Products created or able to be created in connection with the PV Cells rest with the Seller.

8 Invoicing and payment

8.1 Calculation of actual usage

(a) At the end of each Billing Period a reading of the Metering Facilities is to be taken by the Seller.

(b) Subject to this clause 8, the reading will be conclusive evidence of the amount of Electricity supplied to the Buyer at the Supply Address during the Billing Period.

8.2 Calculation of charges by estimated usage

(a) If the Metering Facilities fails to register the consumption of Electricity by the Buyer for a Billing Period, the Seller may charge the Buyer for the Buyer's estimated consumption over the Billing Period as estimated by the Seller, acting reasonably.

(b) The Seller's estimate of the Buyer's consumption under clause 8.2(a) will be made in accordance with applicable Laws and generally accepted industry practice.

8.3 Invoicing procedure

(a) After the end of each Billing Period, the Seller must invoice the Buyer for the Charges, by issuing a Tax Invoice to the Buyer at the Buyer Address or to such other address as the Buyer may by written Notice nominate for invoicing from time to time.

(b) The Tax Invoice will include the Charges for the most recent billing period, including any amounts varied in accordance with clause 6.2, clause 6.3 and any amounts outstanding from a previous Tax Invoice (unless that amount is subject to a bona fide dispute under clause 8.4).

8.4 Payment of invoices

(a) Within 15 Business Days of the date of the Tax Invoice issued by the Seller pursuant to clause 8.3 (**Payment Period**), the Buyer must pay the Seller the amount specified in the Tax Invoice.

(b) Without prejudice to the Seller's rights under this agreement, if the Buyer fails to pay any amount due by it under this agreement on the due date for payment, the Buyer will pay interest to the Seller on that amount at the Interest Rate.

8.5 Review by the Seller

The Seller may review a Tax Invoice at any time to determine if the Buyer has been undercharged or not charged for the services provided under this agreement. If the Buyer has been undercharged or not charged then these amounts will be billed to the Buyer as soon as reasonably practicable after the Seller has determined the amount undercharged or not charged to the Buyer.

8.6 Disputed invoices

(a) If the Buyer disputes any amount set out in a Tax Invoice issued under clause 8.3, the Buyer must pay the undisputed portion (if any) in accordance with this agreement and must, prior to the expiry of the Payment Period, give Notice to the Seller that it disputes the amount and provide full details of the dispute (**Dispute Notice**).

(b) On receipt of a Dispute Notice the Seller will review the Tax Invoice and if necessary correct any errors identified and submit an updated Tax Invoice.

(c) If after the Seller reviews the Tax Invoice, in accordance with clause 8.6(b), a dispute continues the dispute must be referred to the [insert name of relevant person] (or to such person's nominee) of the Seller and the [insert name of relevant person] of the Buyer (or to that person's nominee) to resolve the dispute.

(d) If within 10 Business Days of the giving of the Dispute Notice those persons do not reach agreement and resolve the dispute, the dispute must be referred by the parties to an expert for determination in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

(e) Any amount withheld by the Buyer under clause 8.6(a)but subsequently found to have been payable by the Buyer attracts interest calculated daily at the Interest Rate from the expiry of the Payment Period until the date that payment is made.

(f) The parties agree to use all reasonable efforts in good faith to resolve any dispute under this clause 8.6.

9 Goods and Services Tax (GST Exclusive Prices)

The amount payable for any supply under this agreement is to be increased by the amount of any GST payable on that supply. The party seeking payment must provide a Tax Invoice (or any other thing required under any legislation) at the time, and in the form, required by the relevant legislation.

10 Force Majeure

(a) If a party is prevented from performing its obligations in whole or in part under this agreement by a Force Majeure Event, performance of those obligations is suspended to the extent that performance is prevented by the Force Majeure Event. The occurrence of a Force Majeure event does not relieve a party from any obligation under this agreement to pay any money.

(b) A party claiming the benefit or protection of clause 10(a) must:

(1) give Notice to the other party of the occurrence and circumstances in respect of which the claim arises as soon as it becomes aware of the Force Majeure event occurring;

(2) use all reasonable endeavours to overcome the event of Force Majeure; and

(3) resume performance in full of its obligations under this agreement as soon as reasonably practicable.

(c) [If due performance of any obligation under this agreement is prevented for more than 6 months in aggregate by reason of a Force Majeure Event then either party may after that period, provided it has complied with clauses 10(a) and 10(b), terminate this agreement by giving not less than 30 days Notice in writing to the other party, without prejudice to any antecedent rights.]

11 Limitation of liability

11.1 Limitation of liability

The Buyer agrees that the Seller will not be liable for any Loss suffered or sustained by the Buyer arising from the failure by the Seller to supply Electricity in accordance with this agreement or an interruption of or disturbance or fluctuation in that supply of Electricity if that failure, interruption, disturbance of fluctuation is due to the act or omission of any third party or other circumstances beyond the reasonable control of the Seller.

11.2 Exclusion of Consequential Loss

The Seller shall not be liable to the Buyer for any Consequential Loss arising out of performance of this agreement, any failure to comply with this agreement, in contract, tort or otherwise.

11.3 Terms Implied by Law

To the extent permitted by Law, all guarantees, warranties, conditions and undertakings of the Seller implied by Law are excluded from this agreement and if the Buyer is a Consumer (as that term is defined under Consumer Law):

(a) clauses 11.1 and 11.2 do not apply to limit any liability of the Seller for failure to comply with any warranty, guarantee, condition or undertaking applicable to this agreement under Consumer Law;

(b) any liability the Seller has to the Buyer under the Consumer Law that cannot be excluded but can be limited is (at the Seller's option) limited to:

(1) providing equivalent goods or services provided under this agreement to the Supply Address;

(2) repairing the goods;

(3) paying the Buyer the cost of replacing the goods or services provided under this agreement to the Supply Address, or of acquiring equivalent goods or services; or

(4) paying the cost of having the goods repaired.

12 Indemnity

The Buyer indemnifies the Seller, and will keep the Seller indemnified, against any Loss which arises from, or in connection with, the supply of Electricity to, or use of Electricity by the Buyer at, the Supply Address or otherwise, where the Loss is caused or contributed to by:

(a) any negligent act or omission by the Buyer;

(b) any Wilful Default of the Buyer; or

(c) the Buyer's failure to comply with any obligations under or in connection with this agreement.

13 Transfer and Assignment

13.1 Sale of Supply Address

(a) If the Buyer sells the Supply Address or any building located on the Supply Address to a third party, the contract relating to that sale must provide that the purchaser will enter into a deed with the Seller which preserves the Seller's rights and obligations as contained in this agreement.

(b) The Seller will enter into such deeds of assignment or novation as is necessary to give effect to clause 13.1(a).

13.2 Transfer and assignment by the Seller

(a) The Seller may transfer its rights, or rights and liabilities under this agreement without the consent of the Buyer in the event of a change of control or a change of ownership of the PV Cells and the Cabling.

(b) The Buyer will enter into such deed of assignment or novation as is necessary to give effect to clause 13.2(a).

13.3 Transferee's details to be provided

The party seeking to sell, assign or transfer its interest under this agreement must provide the other party with reasonable details of the Transferee at a reasonable time prior to the proposed date of assignment of the party seeking to sell, assign or transfer its interest.

13.4 Encumbrances

The Buyer may not Encumber its interest in this agreement without the Seller's prior written consent, which consent is not to be unreasonably withheld.

14 Termination

This agreement terminates automatically:

(a) if the Licence Agreement terminates; or

(b) on the Call Option Completion Date, if the Call Option has been exercised.

15 General

15.1 Confidentiality

(a) Except as otherwise provided in this agreement, all information obtained by a party orally, or in writing or in disk or electronic form relating in any way, directly or indirectly, this agreement and the sale of Electricity and provision of services under this agreement (including the terms of this agreement), which is not in the public domain (or which is in the public domain, but only as a consequence of a breach of this clause 15.1) **(Confidential Information)** will be kept confidential. Neither party will disclose Confidential Information to third persons without the prior written consent of the other party, provided that each party will be entitled to disclose to:

(1) its consultants, auditors and insurers and any of its Related Bodies Corporate under similar conditions of confidentiality;

(2) the distributor and/or transmission service providers if the information relates to the distribution network or the transmission network operational or pricing matters;

(3) if required by Law, the regulatory requirements or the rules of a stock exchange on which a party's shares are listed.

(b) The Buyer authorises the Seller to disclose metering data relating to the Supply Address (the **data**) to any counterparty of agreements the Seller enters into to manage the

financial side of selling electricity (the **recipient**) provided that the only identifier for the data disclosed is the NMI(s) at the meter(s) for the Supply Address and such disclosure is made on the basis that the recipient will maintain the confidentiality of the data.

(c) Where the Seller is supplying Green Products, the Buyer acknowledged that the Seller may for the purposes of its activities as a retailer of Green Products, acquire information (including information of a confidential or sensitive nature) relating to the buyer. The Buyer hereby consents, during the Term of this agreement, to the Seller disclosing all or any information where the Seller reasonably considers that such disclose is necessary to protect the safety or security of any person or any property and for use to comply with any law or any contract to which we are a party and which related directly to the sale of supply of Green Products to the Buyer.

(d) The provisions of this clause 15.1 continue to bind a party, notwithstanding that it may have ceased to be a party to this agreement, and will continue to apply for a period of three (3) years after the termination of this agreement.

15.2 No waiver

The Seller does not waive any of its rights by the acceptance of any payments outstanding under this agreement or by any delay in the exercise of any rights under this agreement.

15.3 Governing law and jurisdiction

(a) This agreement is governed by the Laws in force in the New South Wales.

(b) Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales.

15.4 Severability

If any part of this agreement is or becomes for any reason invalid or unenforceable at law, that part of this agreement is deemed to be severed from this agreement without affecting the remainder of this agreement and the remainder of this agreement continues to be valid and enforceable.

15.5 Notices

(a) Any notice or other document to be given by the Buyer under this deed is valid and effectual if signed by any director, attorney under power, manager, company secretary or other officer of the Buyer or the manager appointed by the Buyer from time to time.

(b) Any notice or other document required to be given under this deed by the Buyer is sufficiently given to the Seller if forwarded to the Seller by prepaid security post addressed to [insert title and address][insert title and address], or as otherwise agreed in writing.

(c) Any notice or other document to be given by the Seller under this deed is valid and effective if signed by any director, attorney under power, manager, company secretary or other officer of the Seller, and is sufficiently given to the Buyer if addressed to the manager of the Buyer from time to time and delivered to or sent by prepaid security post or facsimile transmission care of the manager's registered office in Sydney, New South Wales.

(d) Any notice or other document or writing must be legible and in English.

(e) A notice is regarded as being given by the sender and received by the addressee:

(1) if by delivery in person, when delivered to the addressee; and

(2) if by post, 2 Business Days from and including the date of postage/on delivery to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

15.6 No interference

The Buyer must not damage or otherwise tamper or interfere with the Metering Facilities, the PV Cells or the Cabling.

15.7 Access to records

The Seller will make and retain all records relating to the supply of Electricity to the Supply Address as required by the applicable Laws. The Seller will provide, on reasonable notice at reasonable times at the cost of the Buyer, access by the Buyer to these records.

15.8 Costs

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

15.9 Further assurance

Each party agrees that it will perform, execute, acknowledge and deliver all such further acts, deeds and assurances as will be reasonably required for the purposes of or in connection with this agreement.

15.10 Rights on termination

Termination of this agreement pursuant to any clause is without prejudice to any accrued rights of the Seller or the Buyer under this agreement.

15.11 Relationship of the parties

Nothing in this agreement shall be considered or interpreted as giving rise to any fiduciary relationship or constituting the relationship of the parties as partnership, joint venture, lessor/lessee or association.

HERBERT SMITH FREEHILLS

Schedule 1

Billing Period

Seller	**Land Lease Recycled Water (Barangaroo South) Pty Limited** ABN 30 158 168 686 of [TBA]
Seller's Address	[•]
Seller's Fax Number	[•]
Buyer	[Residential Building Owner] ABN [•] of TBA
Buyer's Address	[•]
Buyer's Fax Number	[•]
Supply Address	[*to match the address in the Licence Agreement*]
Start Date	[•]
End Date	[•]
Billing Period	Monthly
Electricity Charge	[#] c/kWh + GST
Environmental Charge	
• **REC Rate**	[[#] c/kWh + GST

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Signing page

Executed as an agreement

Seller

Signed for
Lend Lease Recycled Water (Barangaroo South) Pty Limited
by its attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____

HERBERT
SMITH
FREEHILLS

Buyer

Signed for
[Residential Building Owner]
by its attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

Deed

Barangaroo South – *Insert Residential Building Reference*

Deed of licence for photovoltaic cells

[Licensor]

[Licensee]

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.freehills.com DX 361 Sydney
Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City

HERBERT SMITH FREEHILLS

Contents

Table of contents

1 Definitions, interpretation and deed components 2

1.1 Definitions 2
1.2 Interpretation 4
1.3 Deed components 5

2 Licence 5

2.1 Grant of licence 5
2.2 Relationship with Recycled Water Plant Sub-Lease and Power Purchase Agreement 6
2.3 Sale of building 6
2.4 Commencement date under Supply Agreement 6

3 Licence Fee 6

4 Licensee's general rights and obligations 6

4.1 Licensee's access 6
4.2 General conditions of use 7
4.3 Consent/approvals to be obtained by Licensee 8
4.4 Relocation of the equipment 8
4.5 Rights granted are personal to Licensee 8

5 Upkeep of the Equipment 8

5.1 Upkeep 8
5.2 Licensor may repair if Licensee fails 9
5.3 Rectification of interference 9

6 Acknowledgements 9

6.1 Licensee's acknowledgments 9

7 Risk, release and insurance 10

7.1 Licensee to use and operate at own risk 10
7.2 Release of Licensor and manager 10
7.3 Insurances and fire regulations 10

8 Termination 11

8.1 Termination at option of Licensor 11
8.2 Termination at option of either party 11
8.3 Termination not to prejudice other rights 11
8.4 No consequential loss 11
8.5 Make good 11

9 General 12

9.1 Goods and Services Tax (GST Exclusive Prices) 12
9.2 Licensee to pay stamp duty 13
9.3 Partnership negatived 13
9.4 Notices 13
9.5 No merger 13

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

Contents

10	**Power Purchase Agreement**	**13**
	Schedules	
	Reference schedule	**15**
	Signing page	**17**

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SMITH
FREEHILLS

Deed of photovoltaic cells licence

Date ▸

Between the parties

Licensor	**[Licensor [Insert Owners Corporation Strata Plan #]]** ACN *** *** *** of [Licensor address]
Licensee	**[Licensee]** ACN *** *** *** of [Licensee address]

Recitals

1 The Licensor is the lessee under the Lease.

2 The Licensor has agreed to grant and the Licensee has agreed to take a licence of the Licensed Area on the terms set out in this agreement.

This deed witnesses as follows:

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

1 Definitions, interpretation and deed components

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Barangaroo South	the land being Barangaroo Stage 1 being the subject of the Project Development Agreement between the Barangaroo Delivery Authority, Lend Lease (Millers Point) Pty Ltd (ABN 15 127 727 502) and Lend Lease Corporation dated 5 March 2010, as amended in accordance with the First Deed of Amendment to Project Development Agreement dated 8 June 2010, the Second Deed of Amendment to Project Development Agreement dated 30 July 2010, the Third Deed of Amendment to Project Development Agreement dated 23 December 2010 and the Fourth Deed of Amendment to the Project Development Agreement dated June 2012.
Building	1 the buildings and improvements constructed on the Land; 2 any alteration or addition to or replacement in respect of the building; and 3 any plant, machinery, equipment, fixtures, fittings and furnishings in the building and owned by the Licensor.
Building Rules	the rules which are to apply to all occupiers of the Building, as notified by the Licensor to the Licensee, from time to time.
Business Days	a day on which banks are open for business in Sydney, excluding a Saturday, Sunday or public holiday.
Cabling	the cabling installed by the Licensee in connection with the PV Cells and any means of the transmission of electricity generated by the PV Cells by cables throughout the Building or the Land.
Common Areas	1 any part of the Land and the Building provided for common use of occupants of and visitors to the Building; and 2 includes the plazas, pedestrian ways, forecourts, landscaped areas, entrances, lobbies, galleries, corridors, toilets, stairways, elevators, and common amenities other than those reserved to the Licensor or any tenant or other person claiming through the Licensor.
Equipment	the PV Cells and the Cabling owned by the Licensee.

Government Agency	any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
Land	the land the subject of the Lease.
Lease	Lease Registered No **[insert number]** granted by the Barangaroo Delivery Authority to the Licensor dated **[insert date]** over the land comprised in Folio identifier **[insert number]**.
Liabilities	each and every action, claim, expense, liability and loss of any kind and all damages.
Licence	the licence granted by the Licensor to the Licensee as evidenced in whole or in part by this deed including any exhibit, schedule or attachment to it.
Licence Fee	the amount in Item 2.
Licensed Area	the area described in Item 3.
Licensee	the Licensee and, where the context permits, includes its agents, contractors, employees and successors.
Licensor	the Licensor and, where the context permits, includes its agents (including the Manager), contractors, employees, successors and assigns.
Manager	**[*insert name*]** and any other manager appointed by the Licensor from time to time.
Normal Business Hours	**[*insert hours*]** on a Business Day.
Permitted Use	1 the non exclusive use of the Licensed Area for the installation, operation, maintenance, repair and replacement of the PV Cells by the Licensee for the generation of electricity; and 2 the non exclusive use of risers and such other positions as agreed for the installation, operation, maintenance, repair and replacement of the Cabling in connection with the generation and transmission of the electricity produced from the PV Cells to ***[insert relevant information]***.

Power Purchase Agreement	the 'Power Purchase Agreement' which is contemplated by Barangaroo South Residential Building Water Services Supply Agreement, dated on or about the date of this deed, between the Licensee (as the Supplier) and the Licensor (as the Purchaser).
PV Cells	the equipment described in Item 4.
Recycled Water Plant	the recycled water plant, being the facility owned by the Licensee which is used or operated for or in connection with the acceptance of wastewater from, and the supply of recycled water to, purchasers at Barangaroo South.
Recycled Water Plant Sub-Lease	the sub-lease granted to the Licensee dated **[insert date]** over the land comprised in Folio Identifier **[insert number]**.
Related Body Corporate	has the meaning given to the term "related body corporate" in section 50 of the *Corporations Act 2001* (Cth).
Supply Agreement	an agreement by the Licensee to supply recycled water from and/or collect wastewater to the Recycled Water Plant to a third party
Term	the term of this Licence shown in Item 1.

1.2 Interpretation

In this deed headings and bold type are for convenience only and do not affect the interpretation of this deed and unless the context otherwise requires:

(a) words importing gender include all genders and words importing number include singular and plural as the case may require;

(b) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;

(c) a covenant or agreement on the part of two or more persons binds them jointly and severally;

(d) where any provision of this deed is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed;

(e) clause 1.2(d) is not intended to exclude the application of the general law of severance to this deed;

(f) a reference to any thing (including, but not limited to a right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;

(g) this deed is governed by the laws of New South Wales;

(h) the application to this deed of any moratorium or other Act (whether State or Federal) having the effect of extending the Term, reducing or postponing the payment of the

Licence Fee or otherwise affecting the operation of any provision of this deed is excluded and negatived to the extent permitted by law.

(i) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;

(j) wherever this deed prohibits the Licensee from doing any act, matter or thing, the Licensee must not permit or suffer the act, matter or thing;

(k) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:

(1) which ceases to exist, or

(2) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

(l) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this deed, and a reference to an Item is a reference to that Item in Schedule 1;

(m) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

(n) a reference to a party to a document includes that party's successors and permitted assigns;

(o) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency.

1.3 Deed components

This deed includes any schedule.

2 Licence

2.1 Grant of licence

(a) The Licensor grants to the Licensee and the Licensee takes a licence during the Term subject to this deed to:

(1) use the Licensed Area on a non-exclusive basis for the Permitted Use (and for no other purpose); and

(2) use relevant risers and such other positions agreed prior to the date of this deed (or such other risers which are agreed to by the Licensor and the Licensee) for the installation, operation, maintenance and replacement of the Cabling.

(b) The Licensor must transfer its obligations, powers and rights under this deed to any person being, or entitled to be, the lessee under the Lease.

(c) This deed does not confer any right of exclusive occupancy on the Licensee. The Licensor (and those claiming through it) may at any time and at all times exercise all its rights (including, without limit, its right to use, possess and enjoy the Licensed Area)

except to the extent that those rights prevent the operation of the other provisions of this deed.

(d) The rights conferred by this deed are in contract only and do not create in or confer on the Licensee any tenancy or any estate or interest whatever in the Land or the Building and the rights of the Licensee are those of a licensee only.

2.2 Relationship with Recycled Water Plant Sub-Lease and Power Purchase Agreement

The Licensee's rights under this deed are interdependent with its rights:

(a) as lessee under the Recycled Water Plant Sub-Lease; and

(b) as supplier under the Power Purchase Agreement,

the intention of the parties being that this deed will terminate automatically on termination of the Recycled Water Plant Sub-Lease.

2.3 Sale of building

(a) If the Licensor sells the Building to a third party, the contract relating to that sale must provide that the purchaser will enter into a deed with the Licensee which preserves the Licensee's rights and obligations as contained in this deed.

(b) The Licensee will enter into such deeds of assignment or novation as is necessary to give effect to clause 2.3(a).

2.4 Commencement date under Supply Agreement

The Licensee will notify the Licensor of the commencement date of the first Supply Agreement.

3 Licence Fee

The Licensee must pay the Licence Fee to the Licensor upon demand during the Term or any period of holding over, the first payment being payable on the date of commencement of the Term.

4 Licensee's general rights and obligations

4.1 Licensee's access

(a) The Licensor grants to the Licensee access to the Licensed Area and all those parts of the Building and the Land, including the relevant risers in which the Cabling are or are to be located, as is necessary for the Licensee to exercise its rights and comply with its obligations under this deed.

(b) Other than in the case of an emergency, the Licensee must not exercise its rights under this deed with respect to any parts of the Building or the Land, outside of the Licensed Areas, in a manner which would cause the Licensor to breach any obligations of quiet enjoyment owed by the Licensor to tenants or other occupiers of this areas.

(c) If the Licensee needs to obtain access to any parts of the Building or the Land, other than the Licensed Areas, at any time which is outside of Normal Business Hours, the Licensee must give not less than 2 Business Days written notice to the Manager, except in the case of an emergency, when the Manager must be notified as soon as reasonably practicable after the Licensee becomes aware that relevant access is required.

(d) The Licensor must provide the Licensee with:

(1) 10 access cards; and

(2) such other keys as may be necessary to exercises its rights under this deed, on request from the Licensee. The Licensee must return these keys to the person from whom the keys were obtained before leaving the Building.

(e) To the extent that the Licensee obtains access to any parts of the Building in exercising its rights under this deed, the Licensee must:

(1) close any doors which lock automatically; and

(2) relock any doors which require manual locking.

(f) In exercising its right of access, the Licensee must comply with all reasonable requirements of the Licensor for:

(1) control of the entrances and elevators of the Building;

(2) gaining access to the Licensed Area; and

(3) identification of persons entering and being within the Building.

(g) Despite any other provision, the Licensee must give 2 Business Days written notice to the Licensor before removing any Equipment (except in the case of an emergency).

4.2 General conditions of use

The Licensee must:

(a) only use the Licensed Area and the Equipment for the Permitted Use as described in Item 5;

(b) install and operate the Equipment in the Licensed Area and the Cabling in the relevant risers, or such other positions agreed to by the Licensor and the Licensee, both acting reasonably;

(c) properly install the Equipment in a good and workmanlike manner and ensure that the Equipment is at all times during the Term securely and adequately fixed to the Building;

(d) comply with the Building Rules as determined and notified by the Licensor to the Licensee from time to time and all reasonable directions and requirements of the Licensor relating to the proper installation and maintenance of the Equipment or relating to the Licensed Area, provided that such Building Rules and directions are not inconsistent with any express rights of the Licensee under this deed;

(e) not do anything in any part of the Building which interferes with or may interfere with or disturb the use of any part of the Building by any occupier;

(f) not do anything which might in any way endanger the Building or any person in or on the Building or Common Areas; and

(g) not cause any damage to any equipment in the Building not being the property of the Licensee.

4.3 Consent/approvals to be obtained by Licensee

(a) The Licensee must at its own cost obtain all statutory and other consents and approvals necessary from time to time for the lawful installation and operation of the Equipment and the Licensed Area.

(b) The Licensee must at all times during the Term or any period of holding over keep all necessary consents and approvals current and comply with their terms.

(c) If any necessary consent or approval is suspended, withdrawn, cancelled or in any other way rendered ineffective, the Licensee must immediately stop the operation of the Equipment until all the necessary consents and approvals have been obtained or made effective.

4.4 Relocation of the equipment

(a) If at any time the Licensee wishes to relocate the Equipment or the Licensed Area, the Licensee must first obtain the Licensor's written approval, such approval not to be unreasonably withheld or delayed.

(b) In seeking the Licensor's approval, the Licensee must give to the Licensor a copy of the plans and specifications relating to the installation of any Equipment and the Licensed Area to be relocated and any other or further information which the Licensor reasonably requires.

4.5 Rights granted are personal to Licensee

The rights granted by this deed are personal to the Licensee and the Licensee must not transfer, sublicense, charge or otherwise deal with them, without the consent of the Licensor.

5 Upkeep of the Equipment

5.1 Upkeep

(a) The Licensee must ensure that the Equipment is maintained in safe and clean condition, consistent with the standards of a reasonable operator of equipment in the nature of the Equipment, at all times during the continuance of this deed.

(b) The Licensee must immediately remove from the Building any waste and garbage arising from any installation, relocation, maintenance, repair or removal of the Equipment or the Licensed Area done by or on behalf of the Licensee.

(c) The Licensee must promptly make good to the satisfaction of the Licensor any damage to:

(1) the Licensed Area, or any other part of the Building or Common Areas; or

(2) any equipment of the Licensor or of any other person in the Building ,

caused by negligence, misuse or abuse or wilful act or omission of or otherwise by the Licensee, its agents, contractors or employees.

(d) The Licensee must at its own cost arrange for the prompt removal in proper receptacles of any waste and rubbish of the Licensee, its agents, contractors and employees from the Licensed Area and any other part of the Building.

(e) The Licensee must pay all charges in respect of the use of the Equipment and Licensed Area.

5.2 Licensor may repair if Licensee fails

(a) The Licensor and the Manager may at any time view the state of repair and order of the Licensed Area, and the Equipment and may give the Licensee a written notice requiring the Licensee to repair or remedy within a reasonable time anything which the Licensee is responsible to remedy or repair under this agreement.

(b) If the Licensee does not comply with a notice issued under clause 5.2(a) or with its obligations under this deed:

(1) the Licensor, its agents, contractors and employees may do the required work, as if they were the Licensee; and

(2) the Licensee must pay to the Licensor on demand any expenses and costs in respect of the relevant work.

5.3 Rectification of interference

If the Licensor reasonably forms the opinion that the Equipment is causing interference to any Building equipment or service or news gathering equipment or transmitting or receiving station or radio repeater site in or on the Building and which is installed prior to the date of installation of the Equipment, the Licensee must, at its own cost when requested in writing by the Licensor:

(a) rectify the source of the interference; or

(b) if rectification is not possible, provide any protection reasonably nominated by the Licensor to protect the relevant equipment or service, or the other equipment, station or site from interference by the Equipment,

and if the Licensee does not rectify or provide protection in accordance with this clause within a reasonable time specified by the Licensor, the Licensee must or the Licensor may at the Licensee's cost remove the source of the interference.

6 Acknowledgements

6.1 Licensee's acknowledgments

The Licensee acknowledges that:

(a) the Licensor and the Manager have made no promise, representation or warranty in relation to:

(1) the suitability of the Licensed Area for the Permitted Use;

(2) the location of the Equipment in the Licensed Area or the other designated areas throughout the Building;

(3) the Building, any facilities in the Building or any businesses to be carried on in the Building;

(4) the capacity of any riser or other part of the Building;

(5) any additional space being made available to the Licensee in or near the Licensed Area; or

(6) the suitability or compatibility to the Equipment of any Building equipment or service or any other equipment or service of any other person in the Building;

(b) the Licensee does not have any exclusive right to use any riser in the Building nor to carry on in or on the Building the type of use or business permitted under this agreement and neither the Licensor nor the Manager has made any promise, representation or warranty to that effect to the Licensee, its agents, contractors or employees; and

(c) no waiver by the Licensor of any breach of this deed operates as a waiver of another breach of the same type or of any other provision.

7 Risk, release and insurance

7.1 Licensee to use and operate at own risk

(a) The Licensee uses the Licensed Area and all other parts of the Building and Common Areas and installs, repairs and operates the Equipment and Licensed Area at its own risk.

(b) The Licensor is not liable for any loss of or damage to the Equipment and Licensed Area except to the extent that it is caused by the negligent or wilful act or omission of the Licensor, its agents, contractors or employees.

7.2 Release of Licensor and manager

The Licensee releases to the full extent permitted by law the Licensor, the Manager and their respective agents, contractors and employees in the absence of any negligence on their part from all Liabilities resulting from any damage, loss, death or injury caused or contributed to, by or arising from:

(a) the installation, repair, operation or removal of the Equipment;

(b) any act or omission of the Licensee, its agents, contractors or employees;

(c) breach of this deed by the Licensee, its agents, contractors or employees; or

(d) the Equipment or its use.

7.3 Insurances and fire regulations

(a) The Licensee must at all times keep current in respect of the Licensed Area and the Equipment a public liability insurance policy:

(1) noting the interest of the Licensor under this deed;

(2) for an amount in respect of any single claim of not less than $10,000,000; and

(3) with an insurer reasonably approved by the Licensor.

(b) The Licensee must deliver to the Manager, on request a certificate of currency of the policy on each anniversary of the commencement of the Term and when reasonably required by the Licensor.

8 Termination

8.1 Termination at option of Licensor

(a) This deed terminates at the option of the Licensor if the Licensee does not comply within a reasonable time with a notice given by the Licensor requiring the Licensee to remedy a default by the Licensee under this deed.

(b) This deed terminates automatically if:

(1) the Lease terminates;

(2) the Recycled Water Plant Sub-Lease terminates; or

(3) the Recycled Water Plant permanently ceases to operate.

8.2 Termination at option of either party

This deed terminates at the option of either party:

(a) by written notice to the other party if either party is required by law to remove the Equipment or is precluded by any Government Agency from operating or permitting the operation of the Equipment; or

(b) by one month's written notice to the other party if it is, in the reasonable opinion of the Licensor or the Licensee, impracticable to continue the operation of the Equipment from the Building due to:

(1) damage to or destruction of, or the redevelopment of the Building;

(2) any resumption or compulsory acquisition of the Building; or

(3) the withdrawal of any consent or permission by any body or authority whose consent or permission is required for the installation or continued operation of the Equipment.

The Licensee is not entitled to exercise its right under clause 8.2(b)(3) if the withdrawal of consent or permission is the result of an act, default or omission of the Licensee unless the cost of complying with such consent or permission is no longer economically viable.

8.3 Termination not to prejudice other rights

Any termination under clauses 8.1 or 8.1(b)(3) is without prejudice to any action or remedy which the Licensor has as at the date of termination for:

(a) arrears of the Licence Fee or any other money; or

(b) damages for breach of any of the Licensee's agreements in this deed.

8.4 No consequential loss

The parties agree that neither will have any liability to the other, at law or in equity, for any consequential loss or loss of profits, that the other may incur as a result of the breach or termination of this deed.

8.5 Make-good

(a) Subject to clause 8.4, if this deed terminates in accordance with this clause 8:

(1) the Licensee may, within a reasonable period following termination and unless otherwise agreed by the parties, remove the Equipment from the Building and repair any damage to the Building caused by the Equipment or its removal;

(2) if the Licensee exercises its rights under clause 8.5(a), the Licensor must grant the Licensee access to the Licensed Area to enable the Licensee to comply with its obligation in clause 8.5(a)(1).

(b) If the Licensee does not exercise its rights under clause 8.5(a), the Equipment becomes the property of the Licensor.

9 General

9.1 Goods and Services Tax (GST Exclusive Prices)

(a) Any reference in this clause 9.1 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause 9.1.

(c) Any amount referred to in this agreement (other than an amount referred to in clause 9.1(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.

(d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.

(e) The recipient must pay the additional amount payable under clause 9.1(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.

(f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 9.1(d) or at such other time as the parties agree.

(g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 9.1(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

(h) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 9.1(d).

9.2 Licensee to pay stamp duty

The Licensee must pay within 14 days after written notice all stamp duty which may be payable in connection with this deed.

9.3 Partnership negatived

Nothing in this deed creates the relationship of partnership, principal and agent or joint venturers between the parties to this agreement.

9.4 Notices

(a) Any notice or other document to be given by the Licensor under this deed is valid and effectual if signed by any director, attorney under power, manager, company secretary or other officer of the Licensor or of the Manager.

(b) Any notice or other document required to be given under this deed by the Licensor is sufficiently given to the Licensee if forwarded to the Licensee by prepaid security post addressed to ***[insert title and address]***, or as otherwise agreed in writing.

(c) Any notice or other document to be given by the Licensee under this deed is valid and effective if signed by any director, attorney under power, manager, company secretary or other officer of the Licensee, and is sufficiently given to the Licensor if addressed to the Manager and delivered to or sent by prepaid security post or facsimile transmission care of the Manager's registered office in Sydney, New South Wales.

(d) Any notice or other document or writing must be legible and in English.

(e) A notice is regarded as being given by the sender and received by the addressee:

(1) if by delivery in person, when delivered to the addressee; and

(2) if by post, 2 Business Days from and including the date of postage/on delivery to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

9.5 No merger

The provisions of this deed to be performed by the Licensee do not merge nor are they extinguished or otherwise affected by the determination of this deed prior to its expiry.

10 Power Purchase Agreement

The parties agree to enter into the Power Purchase Agreement.

HERBERT SMITH FREEHILLS

Schedules

Table of contents

Reference schedule **15**

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Schedule 1

Reference schedule

Items

1	**Term**:	20 years commencing on the commencement date of the first Supply Agreement. Expiring on the earlier of: • date that the Licensee ceases to occupy premises under the Recycled Water Plant Sub Lease; and • the [termination date] of the Power Purchase Agreement. ***Editorial note: this needs to be re-considered once the form of the PPA is agreed***
2	**Licence Fee**:	$1.00 per annum
3	**Licensed Area**:	***[insert description]***
4	**PV Cells**:	***[insert details, eg Microwave Dish]***
5		

HERBERT
SMITH
FREEHILLS

Signing page

Executed as a deed

Barangaroo Delivery Authority
NSW GOVERNMENT

HERBERT SMITH FREEHILLS

Schedule 6

Maintenance Specification

Barangaroo Delivery Authority NSW GOVERNMENT

Plant – Recycled Water

Plant performance and maintenance service scope inclusions

The Supplier will engage the services of a specialist Mechanical services provider to control the operation of the Plant and perform all Programmed Preventative Maintenance (PPM) and Reactive Maintenance on the Plant & infrastructure serving the Purchaser. The system is will be managed in a way to maximise operational efficiencies whilst minimising cause for Purchaser complaint, irregular operation, failures, unscheduled down time and deterioration or loss of performance of the equipment. PPM schedules will be implemented with reference to manufacturer's recommendation and relevant Australian and accepted Industry Standards. The Supplier reserves the right to change, amend and / or modify any works associated with the asset management plan at its sole discretion.

Sufficient spare parts will be held in stock to ensure efficient maintenance and timely repair of any worn or failed components, relating to the Plant.

All recycled water meters used for billing and tenant bill apportionment will remain the property of the Supplier. These meters will be maintained in accordance with relevant standards and industry best practices.

Routine condition monitoring will be performed as deemed necessary to ensure a proactive and predictive methodology is employed in the maintenance of each of the assets owned and operated by Supplier.

Asset Management Plan

The Supplier and its specialised operators will implement a maintenance system specific to the equipment in the Plant which will include an annual maintenance plan indicating when the maintenance activities will occur and nominating the maintenance tasks to be performed. The maintenance system will be implemented with reference to manufacturer's recommendations, Australian Standards and industry standards.

An example of equipment and task frequency in contained in the below table.

Mechanical Equipment Maintained under Scope of Services	Frequency of Service			
	Monthly	Quarterly	6 Monthly	Annually
SCADA Systems	X	X	X	X
Screening and filtration	X	X	X	X
Blowers	X	X	X	X
Pumps	X	X	X	X
Chemical Management	X	X	X	X
Valves		X		X
Pipework	X		X	X
Meters			X	X
Plant Rooms	X			X
Storage Vessels	X	X	X	X
Switch boards		X		X

HERBERT SMITH FREEHILLS

Signing page

Executed as an agreement

Supplier

Signed for
Lend Lease Recycled Water (Barangaroo South) Pty Limited
by their attorney

sign here ▶ _____
Attorney

print name _____

sign here ▶ _____
Witness

print name _____

Purchaser

Signed for
The Owners – Strata Plan No. [•]
by their attorney

sign here ▶ _____
Attorney

print name _____

sign here ▶ _____
Witness

print name _____

HERBERT SMITH FREEHILLS

Barangaroo Network Connection Services Contract

Lend Lease Embedded Network (Barangaroo South) Pty Ltd

The Owners Corporation – Strata Plan No. [#]

[For inclusion in the BMS]

ANZ Tower 161 Castlereagh Street Sydney NSW 2000 Australia
GPO Box 4220 Sydney NSW 2001 Australia

T +61 2 9225 5000 F +61 2 9322 4000
herbertsmithfreehills.com DX 361 Sydney

HERBERT SMITH FREEHILLS

Contents

Table of contents

1	**Definitions**	**4**
2	**Customer Utility Connection Services**	**9**
2.1	Commencement	9
2.2	Customer Utility Connection Services	9
2.3	Commencement of Customer Utility Connection Services	9
3	**Pre-conditions to Customer Utility Connection Services**	**10**
3.1	Pre-conditions to connection	10
3.2	Applications for new connection or to increase capacity or consumption of existing connection	11
3.3	Customer must continue to comply	11
3.4	Co-operation with inspectors and officers	11
3.5	Maintenance of customer installation	11
3.6	Protective devices and measures	12
3.7	Location and placement of Electricity Works	12
3.8	Life Support Equipment	12
4	**Requirements for Customer Utility Connection Services**	**12**
4.1	Choosing a service provider to provide any Required Services, Goods or Equipment	12
4.2	Contracting for the provision of Required Services, Goods or Equipment from an Accredited Person	13
4.3	Installation and use of apparatus	13
4.4	Transformers and other equipment	13
4.5	Service equipment	13
4.6	Service lines	14
4.7	Electricity meters and metering equipment	14
4.8	Customer responsibility for electricity meters and other equipment	14
4.9	Access to electricity meters and other equipment	14
4.10	Seals	15
4.11	Retail Providers	15
5	**Work on the Barangaroo Network**	**15**
5.1	Contribution to costs of extending or increasing capacity of Barangaroo Network	15
6	**Feeding Electricity back into the Barangaroo Network**	**16**
6.1	Customer must not feed electricity back into the Barangaroo Network without LLEN approval	16
6.2	Approvals	16
6.3	Control over connection	16
6.4	Changing the connection	16
7	**Charges**	**16**
7.1	No separate charge for Customer Utility Connection Services	16
7.2	Customer liability for charges for services provided under this agreement	17
7.3	Liability for Network Charges	17
7.4	Varying charges	17
7.5	Government taxes	17

HERBERT SMITH FREEHILLS

Contents

7.6 No payment during initial period 17

9 Bills **18**

9.1 Issue of bills 18
9.2 Correcting bills 18
9.3 What the Customer has to pay 19
9.4 When the Customer has to pay 19
9.5 Payment provisions 19
9.6 If the Customer does not pay on time 19
9.7 Interest on outstanding amounts 19
9.8 If the Customer does not agree with a bill 19

10 Security for Payment **20**

10.1 Requirement for security 20
10.2 Form and amount of security 20
10.3 When LLEN can use the security 20
10.4 Return of security 20

11 Guaranteed Customer Service Standards **21**

11.1 Service Standards 21
11.2 Timely provision of services 21
11.3 Timely notice of planned interruptions to supply 21
11.4 Giving notice of intention to disconnect 21
11.5 Giving notice after Disconnection 21
11.6 Telephone Services 21
11.7 New connection services 21

12 Other Standards of Service for Customer Utility Connection Services **22**

12.1 Quality and reliability of services 22
12.2 Response times 22
12.3 Commencement of work 22
12.4 Commencement of work to remedy a disruption to a service 22
12.5 Period of notice of work that will disrupt a service 22
12.6 Payment of compensation arising under guaranteed customer service standards 23

13 Availability of and Interruptions to Supply **23**

13.1 Responsibility for electricity supply to customers 23
13.2 Interruptions beyond LLEN's control 23
13.3 Interruptions 23
13.4 Compensation for interruptions without notice 24
13.5 Rescheduling interruptions at the Customers request 24

14 Disconnecting Customers Premises **25**

14.1 Reasons for disconnecting Customer's Premises 25
14.2 Notice and other requirements for Disconnection 25
14.3 Charges for going to the Premises 25
14.4 This does not affect LLEN's other rights 26
14.5 If the Customer wants Disconnection 26

15 Last Resort Supply **26**

15.1 Transfer to Retailer of Last Resort 26
15.2 Provision of information to enable transfer 26

HERBERT SMITH FREEHILLS

Contents

15.3 Payments to LLEN on behalf of Retailer of Last Resort 26

16 Reviewing LLEN's decisions, customer disputes and complaints 27

17 Liability 27

17.1 Statutory rights and conditions and warranties implied by law 27
17.2 Limitation of any liability under the Australian Consumer Law 27
17.3 LLEN's warranties 27
17.4 Exclusion of liability for supply interruptions, distortions or fluctuations 28
17.5 General limitation on liability 28
17.6 Exclusion of liability and indemnity for customers use and supply of electricity 28
17.7 Limitation of liability for system operations functions 29
17.8 Limitation of liability for supply failure from Generating Systems and Complying Generators 29

18 Customer Information 29

18.1 The Customer consents to LLEN's disclosure of Customer Information 29
18.2 Disclosure of Customer Information under law 29

19 Force Majeure 30

20 Other Matters 30

20.1 How to give any notice required under this agreement 30
20.2 Severability 30
20.3 No waiver 30
20.4 Interpretation of this agreement 30
20.5 Table of Contents and headings 31
20.6 The law to apply to this agreement 31
20.7 Assignment of this agreement 31

Schedules

Reference Schedule 33

Notice details 34

Network Price Schedule 35

Service Standards 36

Varying charges and government taxes 37

Notice and other requirements for Disconnection 39

Internal review and EWON 41

Signing page 44

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HERBERT SMITH FREEHILLS

1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Accredited Person	a person accredited under Part 10 of the Regulation in accordance with the accreditation scheme currently entitled 'Accreditation of Service Provider's Scheme' (as amended or replaced from time to time).
Access Rights	[rights for the benefit of LLEN under the relevant Building Management Statement for the operation and construction of the Barangaroo Network including all rights of access to the premises on which the Barangaroo Network is located.]
Act	the *Electricity Supply Act 1995* (NSW) as amended from time to time.
Ausgrid	the energy services corporation of that name constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor of that corporation.
Australian Consumer Law	the *Competition and Consumer Act 2010* (Cth).
Barangaroo Network	the Distribution System located within the Barangaroo South precinct.
Business Day	any day that is not a Saturday, Sunday or a public holiday in New South Wales.
Complying Generator	has the meaning given to that term in the Act as amended from time to time.
Connect	to form a physical link between the Customer Installation and the Barangaroo Network and Connected, Connection and Connecting have corresponding meanings.
Customer Information	information about:

Term	Meaning
	1 the supply of electricity to the Customer; 2 Meter readings and Meter registrations connected with the Customer's Supply Points; or 3 the status of the Customer's account with LLEN or any other personal information regarding the Customer.
Customer Installation	the electrical wiring and associated equipment that are used to convey and control the conveyance of electricity within Premises to which electricity is supplied from the Barangaroo Network, but does not include anything connected to and extended or situated beyond an electrical outlet socket and for the avoidance of doubt includes any poles and wires owned by the Customer.
Customer Installation Safety Plan	any Safety Management System established by LLEN or Ausgrid under the *Electricity Supply (Safety and Network Management) Regulation 2014* (NSW).
Customer Supply Contract	a contract between the Customer and a Retail Provider for the sale of electricity at the Premises.
Customer Utility Connection Services	any of the following services: 1 the connection of the Premises to the Barangaroo Network; 2 an increase in the maximum capacity of the Premises' existing connection to the Barangaroo Network; 3 the maintenance of the capacity for electricity to be supplied to or received from the Premises from the Barangaroo Network, and includes: 4 any other services offered by LLEN free of charge in conjunction with the connection of the Premises to the Barangaroo Network; and 5 any services of the kind prescribed by any regulations under the Act being within this definition, but does not include services of a kind prescribed as not being within this definition.
Disconnection	includes (without limitation) the discontinuation of supply of electricity to the Premises by any means including operating a switch, removing meters or dismantling equipment between the Premises and the Barangaroo Network.
Distribution System	has the meaning given to that term in the Act as amended from time to time.

Term	Meaning
Electricity Network Operation Standards	Ausgrid publication NS238 entitled 'Supply Quality' as amended or replaced from time to time.
Electricity Works	any electricity power lines or associated equipment or electricity structures that form part of a Transmission System or Distribution System.
Energy Laws	the Act, the Regulation, the Rules and any other national and State and Territory laws and rules relating to energy and the legal instruments (including exemptions and guidelines) made under those laws and rules.
EWON	the Energy and Water Ombudsman NSW, the electricity industry ombudsman appointed under the electricity industry ombudsman scheme established under the Act.
External Distribution System	the Distribution System operated by Ausgrid connected to the Barangaroo Network at [●].
Financially Responsible	has the meaning given to that term in the Rules.
Force Majeure Event	an act, event or cause (other than lack of funds) which is beyond the reasonable control of the relevant party to this agreement, including: 1 act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, strike or other labour difficulty (whether or not involving employees of the relevant party), epidemic, quarantine, radiation or radioactive contamination; 2 action or inaction of government or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; 3 any act of a third person, other than LLEN; or 4 a requirement of any law.
GST	has the meaning given to that definition in the GST Act.

Term	Meaning
GST Act	*A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time.
Generating System	has the meaning given to that term in the Act as amended from time to time.
Input Tax Credit	has the meaning given to that definition in the GST Act.
Last Resort Supply Arrangements	the operation of the Retailer of Last Resort scheme under the National Energy Retail Law.
Loss	all damages, costs, losses (including, without limitation, any loss of profits, revenue forgone or losses in connection with a credit that would otherwise have been recorded against charges payable), expenses, claims and demands from any liabilities whatsoever, whether contractual, tortious, statutory or otherwise.
Market Operations Rules	any rules (as amended or replaced from time to time) approved by the Minister under section 63C of the Act.
Meter	a device complying with Australian Standards issued by the Standards Association of Australia and the requirements of the Rules for measuring and recording the consumption of electricity at a Supply Point and any associated, CT, VT, kVA demand Meter or communications device.
Metering Installation	has the meaning given to that term in the Rules.
Metering Provider	has the meaning given to that term under the Rules.
National Electricity Market Power System	the interconnected power system regulated under the Rules comprising (among other things) interconnected electricity Generating Systems, Transmission Systems, Distribution Systems and customer installations.
National Metering Identifier	has the meaning given to the term NMI in the Rules.
Network Charges	charges for the use of a Distribution System to convey electricity to the Premises of the Customer.

Term	Meaning
Network Exemption	the exemption referred to in clause 3.1(a)(9).
Network Price Schedule	Schedule 3 to this agreement.
Premises	the Customer's premises, as indicated in Schedule 1.
Registered Participant	a Registered Participant under the Rules.
Regulation	the *Electricity Supply (General) Regulation 2014* (NSW) as amended from time to time.
Required Services, Goods or Equipment	any services, goods or equipment which LLEN requires the Customer to have or to be provided with, in order to comply with any requirements imposed on the Customer under clauses 4.1 to 4.8.
Retail Provider	initially the person identified as such in Schedule 1 an such other person as the Customer may contract with or be taken to contract with for the retail Supply under a Customer Supply Contract.
Retailer of Last Resort	for the Customer, the retail supplier designated as its Retailer of Last Resort in accordance with the Retailer of Last Resort scheme under the National Energy Retail Law.
Rules	the National Electricity Rules established (and as amended from time to time) under the National Electricity Law.
Service Standards	the service standards set out in
Small Customer	a residential customer, or a business customer who consumes energy at or below a level determined under the National Energy Retail Law.
Supply	in relation to electricity, the supply of electricity by means of a Transmission System or Distribution System.
Supply Point	a point of Supply between the Premises and the Barangaroo

Term	Meaning
	Network.
System Operations Function	has the meaning given to that expression in section 119 of the National Electricity Law.
Tax	includes but is not limited to, sales tax, carbon taxes, duties, surcharges, levies and dues (whatever they may be called) and also includes additional taxes and penalty taxes.
Tax invoice	has the meaning given to that definition in the GST Act.
Taxable Supply	has the meaning given to that definition in the GST Act.
Telephone Service	the Telephone Service (telephone number [•]) established to deal with customer enquiries under this agreement.
Transmission System	any electricity powerlines and associated equipment and electricity structures that are a Transmission System by virtue of an order in force under Section 93 of the Act.

2 Customer Utility Connection Services

2.1 Commencement

This agreement commences on the date it has been executed by LLEN and the Customer.

2.2 Customer Utility Connection Services

LLEN will provide the Customer with Customer Utility Connection Services to the Premises on the terms set out in this agreement.

2.3 Commencement of Customer Utility Connection Services

(a) Subject to clause 2.3(b), the provision of Customer Utility Connection Services to the Premises under this agreement will commence on the date that the last of the conditions to connection set out in clause 3.1(a) are met to the reasonable satisfaction of LLEN.

(b) LLEN may begin to provide the Customer Utility Connection Services to the Customer before any condition to connection set out in clause 3.1(a) has been

met, but only on condition that LLEN may still require the Customer to meet that condition at any time after commencement of those Customer Utility Connection Services.

3 Pre-conditions to Customer Utility Connection Services

3.1 Pre-conditions to connection

(a) LLEN is not obliged to provide the Customer with Customer Utility Connection Services to the Premises under this agreement until:

(1) the Customer provides satisfactory proof that they own or occupy the Premises;

(2) the Customer provides any details required by LLEN of the Customer Installation and electrical load for the Premises;

(3) the Customer has entered into a Customer Supply Contract for the Premises with the Retail Provider or another retail supplier;

(4) where the Customer is required to give security in accordance with clause 10 the Customer has given LLEN that security;

(5) the Premises and the connection to the Barangaroo Network comply with:

(A) the requirements set out in the Service and Installation Rules for NSW;

(B) applicable laws;

(C) any requirements or standards specified by LLEN to ensure compliance with applicable laws and any conditions applying to the Network Exemption from time to time; and

(D) any other reasonable requirements LLEN imposes;

(6) without limiting clause 3.1(a)(5), the Customer has submitted to LLEN any plans or other documents reasonably required by LLEN including (without limitation) an Installation Safety Management Plan if LLEN requires the Customer to have one under a Customer Installation Safety Plan;

(7) the Customer provides evidence (satisfactory to LLEN) of the execution of any easements, leases and/or Access Rights reasonably required by LLEN in respect of the Premises where part of the Barangaroo Network or Electricity Works is (or will be) located on the Premises in order to provide Customer Utility Connection Services to the Premises;

(8) the Customer has signed such memoranda, consents or other documents reasonably required by LLEN to ensure that any easements, leases and/or Access Rights required by LLEN under clause 3.1(a)(7) are obtained; and

(9) LLEN is exempt from the requirement to register as a Network Service Provider and the operation of Chapter 5 of the Rules under section 2.5.1 of the Rules.

(b) The conditions to connection in clause 3.1(a) are for the sole benefit of LLEN and may only be waived by notice in writing by LLEN.

(c) LLEN may lodge a caveat on title to the Premises to protect its interest in relation to its entitlement under clause 3.1(a)(7) to register an easement, lease and/or Access Right in respect of the Premises.

3.2 Applications for new connection or to increase capacity or consumption of existing connection

Any application by the Customer for a new connection to the Barangaroo Network or to increase the capacity of an existing connection at the Premises or to connect a Generating System or a Complying Generator to the Barangaroo Network must be made in writing and the Customer enters into any agreement required by LLEN, including LLEN's standard construction connection agreement.

3.3 Customer must continue to comply

The Customer must at all times ensure that:

(a) it complies with the Energy Laws relating to the provision of Customer Utility Connection Services that LLEN provides to the Premises;

(b) it complies with LLEN's reasonable requirements under the Energy Laws;

(c) LLEN is provided with up to date and correct information about the details referred to in clause 3.1(a)(2) and that LLEN is notified of any changes or likely changes to those details as soon as possible after the Customer becomes aware of those changes or likely changes;

(d) the Premises and connection to the Barangaroo Network continue to comply with the requirements specified in clause 3.1(a)(5); and

(e) where easements, leases and/or Access Rights have been provided as a precondition to connection in accordance with clause 3.1(a)(7), those easements, leases and/or Access Rights are renewed or new ones executed prior to their expiry.

3.4 Cooperation with inspectors and officers

The Customer must cooperate with the reasonable requirements of LLEN's authorised officers and inspectors.

3.5 Maintenance of customer installation

Subject to clause 3.3, the Customer must to the best of its knowledge maintain the Customer Installation so that:

(a) it operates safely and in accordance with the responsibilities identified in any Customer Installation Safety Plan;

(b) any damage is rectified by a suitably qualified person as soon as reasonably possible;

(c) its live parts remain properly insulated, or protected, against inadvertent contact with any person; and

(d) it is not used in a manner that exceeds the operating limits imposed by its design or installation.

3.6 Protective devices and measures

The Electricity Network Operation Standards set out some of the protective devices the Customer may install and some of the measures the Customer may take in order to avoid damage to the Customer's Installation or business due to fluctuations or interruptions in the supply of electricity by the Retail Provider to the Customer through the Barangaroo Network. The Customer must ensure that each user of electricity supplied to the Premises is aware of these matters.

3.7 Location and placement of Electricity Works

LLEN may from time to time install or relocate its Electricity Works (including any service lines or other equipment) at the Premises.

3.8 Life Support Equipment

(a) If a person living at the Premises requires life support equipment, the Customer must register the Premises with its Retail Provider or LLEN. To register, the Customer must give written notice from a registered medical practitioner of the requirement for life support equipment at the Premises.

(b) The Customer must inform its Retail Provider if the life support equipment is no longer required at the Premises.

(c) If the Premises are registered as having life support equipment, LLEN must give the Customer:

(1) general advice that there may be a planned or unplanned interruption to the supply of energy to the Premises;

(2) at least 4 Business Days' notice in writing of any planned interruptions to the supply of energy to the Premises;

(3) information to assist the Customer prepare a plan of action in case of an unplanned interruption and

(4) an emergency telephone contact number.

4 Requirements for Customer Utility Connection Services

4.1 Choosing a service provider to provide any Required Services, Goods or Equipment

(a) Subject to clauses 4.1(b) and 4.2, in complying with the requirements in clauses 4.3 to 4.10, the Customer must procure that any Required Services, Goods or Equipment are provided by an Accredited Person.

(b) In relation to any metering required under clause 4.7 the Customer must ensure that the Retail Provider is able to comply with the processes and requirements set out in the Rules.

(c) For the avoidance of doubt, compliance with the requirements in clauses 4.3 to 4.10 is at the Customer's own cost.

4.2 Contracting for the provision of Required Services, Goods or Equipment from an Accredited Person

Subject to clause 4.8:

(a) the Customer must separately contract with the Accredited Person for the provision of any Required Services, Goods or Equipment;

(b) if required by LLEN, that contract must be in a form approved by LLEN;

(c) if required by LLEN, it will be entitled to become a party to that contract or to a further separate contract between it, the Customer and the Accredited Person (in a form approved by LLEN); and

(d) the Customer must ensure that the Accredited Person meets all of LLEN's requirements under clauses 4.3 to 4.10 and any other requirements reasonably specified by LLEN from time to time.

4.3 Installation and use of apparatus

LLEN may:

(a) impose such requirements for the installation and use of electrical appliances and equipment by the Customer as LLEN considers necessary to prevent or minimise adverse effects on the Supply of electricity to other customers by retail suppliers;

(b) impose requirements relating to loading of, and the balancing of the load over, the phases of the Customer's electricity Supply from the Retail Provider;

(c) impose requirements as to the minimum rupture rating or minimum breaking capacity of the Customer's main protection devices; and

(d) require the Customer to install relays, current transformers and other protective equipment which have characteristics to suit any load shedding requirements, protection system, load shedding obligations and other obligations in relation to the Barangaroo Network under the Rules to the extent that the Rules apply.

4.4 Transformers and other equipment

(a) If, in LLEN's opinion, the Supply of electricity required by the Customer from the Retail Provider exceeds that which can be provided by a service line from LLEN mains and can best be given by installing transformers, switchgear or other equipment on the Premises, then the Customer must, if LLEN requires, and at the Customer's cost, provide that equipment in a place within the Premises to LLEN's specifications.

(b) The equipment installed in the Premises remains LLEN's property and under its control unless other arrangements are agreed to by it.

(c) Other customers may be Supplied from any equipment installed within the Premises provided that the Supply requirements of the Premises (as agreed with LLEN at the time the equipment is installed) are met first.

4.5 Service equipment

(a) LLEN may require the Customer to install such service equipment and make provision for its mounting as it considers necessary.

(b) The position and standards of installation of service equipment are to be determined by LLEN.

4.6 Service lines

(a) LLEN may require the installation of such service lines and provision for their attachment as it considers necessary.

(b) The type, construction and route of a service line and its point of connection are to be determined by LLEN.

(c) LLEN may need to provide the Premises with more than one point of connection to the Barangaroo Network, if it considers this is necessary.

4.7 Electricity meters and metering equipment

(a) The Customer must have a Metering Installation which complies with the requirements of the Network Exemption (and to the extent applicable, the Rules) installed at their Premises. The position and standards of installation of the Metering Installation are to be determined by LLEN.

(b) LLEN may also require the Customer to install additional Meters and Metering Equipment which it considers necessary to measure the quantity of electricity supplied to the Premises or supplied to the Barangaroo Network by a Generating System or Complying Generator installed at the Premises. The position and standards of installation of such electricity Meters and Metering Equipment are to be determined by LLEN.

4.8 Customer responsibility for electricity meters and other equipment

(a) The Customer is responsible for the safe custody of the Metering Installation and any other electricity Meters, Metering Equipment and all other equipment (relating to the Supply of electricity) installed at the Premises.

(b) The Customer may be required to pay the cost of repairs should that Metering Installation, those electricity meters, that Metering Equipment or that other equipment be damaged by any means other than LLEN's error or negligence.

(c) The Customer must not handle, alter, adjust or otherwise interfere with that Metering Installation, those electricity Meters, that Metering Equipment or that other equipment nor must the Customer allow anyone else to do so other than an Accredited Person (or any other person authorised by LLEN) and only with LLEN's express agreement. If the Customer interferes with LLEN's Electricity Works or alters or otherwise interferes with a Meter, then the Customer may be committing a criminal offence under the Act.

4.9 Access to electricity meters and other equipment

(a) LLEN and its authorised officers may enter the Premises (including, without limitation, any of its substations in the Premises) during daylight hours (and at any other time, if separately agreed with the Customer), for any purpose relating to the Supply of electricity, including:

(1) reading electricity Meters;

(2) inspecting, testing, replacing, repairing, adjusting or removing its equipment; and

(3) inspecting, testing, repairing or adjusting the Customer's equipment.

(b) The Customer must ensure that LLEN's authorised officers have safe access to the Premises so as to ensure it is able to safely exercise its power of entry to the Premises under this clause 4.9.

(c) The Customer does not have to allow entry and give access under this clause 4.9 to someone who does not, when asked, both identify him or herself as one of LLEN's employees or agents and produce a proper identity card which LLEN has issued.

(d) LLEN must give the Customer reasonable notice before entering the Premises under this clause 4.9 unless:

(1) it is an emergency;

(2) an occupier of the Premises has agreed;

(3) it is only to read a Meter during daylight hours; or

(4) the Customer has separately agreed (as a condition of connection) that no notice is required.

4.10 Seals

(a) LLEN may attach seals or break seals and attach new seals to parts of the Customer Installation if it considers it appropriate to do so.

(b) LLEN may consider this appropriate on such items as Meters, relays, switches, links or any other item which could affect safety or the accuracy of the Customer's electricity account.

(c) The Customer must not alter or interfere with any seal which LLEN has attached, or which has been attached on its behalf, to the Customer Installation.

4.11 Retail Providers

(a) LLEN must, not less than once in every period of 12 months during the term of this agreement notify the Customer of:

(1) the names of the authorised electricity retailers who have entered into Network Use of System Agreements in respect of the sale of electricity to customers within the Barangaroo Network; and

(2) the Network Charges that LLEN imposes for the use of the Barangaroo Network for the supply of electricity by authorised electricity retailers.

(b) LLEN may give the notices referred to in clause 4.11(a) by publishing, and maintaining, the required information on the website maintained for the Barangaroo South precinct.

5 Work on the Barangaroo Network

5.1 Contribution to costs of extending or increasing capacity of Barangaroo Network

LLEN may require the Customer to contribute towards the costs incurred or to be incurred by it in extending or increasing the capacity of its Barangaroo Network to enable it to

provide extended or increased capacity Customer Utility Connection Services to the Customer.

6 Feeding Electricity back into the Barangaroo Network

6.1 Customer must not feed electricity back into the Barangaroo Network without LLEN approval

Subject to clause 6.2 the Customer must not make a Connection to the Barangaroo Network or change an existing Connection, so that electricity produced at the Premises can flow back into the Barangaroo Network unless LLEN has first given its approval. If the Customer owns, controls or operates a Generating System or Complying Generator which is Connected to the Customer Installation for the Premises or to the Barangaroo Network, then LLEN may also require the Customer to enter into a separate connection agreement for the Customer's Generating System or Complying Generator on terms and conditions acceptable to LLEN.

6.2 Approvals

The approval referred to in clause 6.1 may be subject to conditions and the Customer must comply with such conditions. LLEN can change the conditions at any time and will give the Customer a written notice of the change. However, LLEN will not withhold approval or impose conditions in circumstances that contravene the Rules, the Act, Regulations or any other law.

6.3 Control over connection

LLEN can give the Customer a notice, at any time, not to let electricity produced in the Premises flow into the Barangaroo Network. The Customer must comply with the notice as soon as possible. This notice does not have to be in writing. It can operate for a specified period, indefinitely or as set out or described in the notice.

6.4 Changing the connection

LLEN can give the Customer, at any time, a written notice to change or remove a connection that allows electricity produced in the Premises to flow back into the Barangaroo Network (whether or not the connection is approved). The Customer must comply with the notice as soon as possible.

7 Charges

7.1 No separate charge for Customer Utility Connection Services

(a) LLEN does not impose any charge upon the Customer for providing Customer Utility Connection Services under this agreement.

(b) However, LLEN does impose Network Charges for the use of the Barangaroo Network for the supply of electricity by the Retail Provider to the Premises. These charges are ordinarily imposed upon the Retail Provider, subject to clause 7.3.

7.2 Customer liability for charges for services provided under this agreement

(a) Where the Customer is separately liable under the Customer Supply Contract to pay the Retail Provider for any services provided under this agreement (at the rates provided for in this agreement), the Customer will not be liable to pay LLEN for those services under this agreement. The Customer must, however, provide LLEN with all information and assistance reasonably required by LLEN to ensure that the Retail Provider passes on all payments made by the Customer to LLEN.

(b) Where the Customer is not separately liable to pay the Retail Provider as outlined in clause 7.2(a), the Customer will be liable to pay LLEN for services provided to the Customer under this agreement in accordance with bills issued to the Customer under clause 8.

(c) The Customer will not be liable for any charges for any services, equipment or goods provided to the Premises for which a previous customer at the Premises is liable.

(d) The provisions of this clause 7.2 are subject to clause 7.3.

7.3 Liability for Network Charges

Ordinarily, LLEN will invoice the Retail Provider for Network Charges at the tariffs and rates set out in the Network Schedule.

In consideration of LLEN providing the Customer with Customer Utility Connection Services under this agreement, LLEN reserves the right to invoice the Customer directly for Network Charges at any time by issuing a bill for them, or including them in a bill issued, under clause 8 (except to the extent that doing so would be contrary to any obligations imposed upon it under applicable Energy Laws). The Customer will be liable to pay LLEN for all Network Charges included in any bill issued under clause 8, in accordance with clause 8.

7.4 Varying charges

LLEN may vary any charge imposed on the Customer under this agreement at any time (including, without limitation, by amending the Network Price Schedule), provided LLEN follows the notice procedures set out in Schedule 5.

7.5 Government taxes

Detailed provisions governing LLEN's right to charge for government charges and taxes are also dealt with in Schedule 5.

7.6 No payment during initial period

(a) Despite any other provision in this agreement, LLEN must not issue a bill under this agreement during the initial period (as that term is defined in the Strata Schemes Management Act 1996 (NSW)) in relation to the Customer.

(b) Immediately following the end of the expiry of the initial period in relation to the Customer, LLEN may issue a bill to the Customer under this agreement for all amounts owing by the Customer to LLEN under this agreement for the period commencing on the first date of the provision of Customer Utility Connection Services to the end of the month immediately preceding the date of the bill.

8 Wrongful and illegal use of energy

8.1 Illegal use of energy or interference

The Customer must not, and must take reasonable steps to ensure others do not:

(a) illegally use energy supplied to the Premises;

(b) interfere or allow interference with any of LLEN's equipment at the Premises, except as may be permitted by law;

(c) use the energy supplied to the Premises or any energy equipment in a manner that:

(1) unreasonably interferes with the connection or supply of energy to another customer; or

(2) causes damage or interference to any third party;

(d) use the Customer Utility Connection Services provided by LLEN in a way that is not permitted by law or this agreement; or

(e) tamper with, or permit tampering with, any meters or associated equipment.

8.2 Consequences for wrongful or illegal use

If the Customer does not comply with clause 8.1, LLEN may, in accordance with the Energy Laws take any or all of the following actions:

(a) estimate the amount of energy obtained wrongfully or illegally and take debt recovery action against the Customer for that amount;

(b) undertake (or agree that the Customer undertakes) any necessary rectification work at the Customer's cost; and

(c) arrange for the immediate disconnection of the Premises.

9 Bills

9.1 Issue of bills

Where, in accordance with clause 7.3, LLEN bills the Customer directly for Network Charges, LLEN will issue bills at monthly intervals (each bill to be issued within one month of the end of the month to which the bill relates).

9.2 Correcting bills

(a) If there is a mistake in the Customer's bill, or LLEN later receives information relevant to the Customer's bill, LLEN can adjust the bill (so as to correct that mistake or allow the relevant information to be incorporated) and send the Customer a new bill, whether or not the Customer has paid.

(b) The Customer must pay LLEN the amount noted on any corrected bill issued under this clause 9.2 by the date shown on the bill as the date for payment. Payment may be made by any method noted on the bill.

9.3 What the Customer has to pay

(a) Subject to clause 9.3(b), the Customer must pay LLEN the amount shown as the amount the Customer owes on each bill LLEN sends the Customer.

(b) The Customer will not be liable to pay any charge included in a bill if the amount of that charge, or the basis on which it is calculated, does not appear in the Network Price Schedule or in any relevant pricing or other document published by LLEN from time to time.

9.4 When the Customer has to pay

The Customer must pay LLEN by the date shown on the bill as the date for payment.

9.5 Payment provisions

(a) A payment due on a day that is not a Business Day is to be paid on the next Business Day.

(b) A payment is made when LLEN, or one of its agents authorised to accept payment, actually receives it, not when the Customer sends it. If a cheque or similar instrument the Customer uses to pay is dishonoured, the payment will be taken never to have been made.

9.6 If the Customer does not pay on time

If the Customer does not pay a bill on time and in full in accordance with clause 9.4, LLEN may require the Customer:

(a) to pay interest on the amount outstanding; and

(b) to pay LLEN's actual costs of recovering amounts the Customer owes. This clause 9.6 does not affect LLEN right to disconnect the Premises.

9.7 Interest on outstanding amounts

(a) If LLEN requires payment of interest under clause 9.6(a), the interest starts accruing on the day the payment is due, and stops accruing on the day LLEN is paid in full.

(b) The rate of interest will not exceed the rate prescribed under section 101 of the *Civil Procedure Act 2005* (NSW) for payment of interest on a judgment debt.

(c) LLEN can charge interest back to the day the original amount became due and payable, even if there is a court judgment against the Customer for what the Customer owes under this agreement.

9.8 If the Customer does not agree with a bill

(a) The Customer must pay the amount shown on the bill in accordance with clause 9.4 even if the Customer disagrees with it. If necessary, LLEN will make adjustments later, after the disagreement is resolved, in accordance with clause 9.2.

(b) If the Customer does not pay, then to the extent the Customer should have, the Customer will have to pay interest as set out in clause 9.7.

10 Security for Payment

10.1 Requirement for security

LLEN may require the Customer at any time, to provide security, top-up security, or additional security, for the payment of:

(a) any charges for services provided under this agreement;

(b) Network Charges payable (or which may become payable) under this agreement; or

(c) any shared revenue requirements of LLEN's relating to the use of any assets forming part of any extension or increase in the capacity of the Barangaroo Network made to enable it to provide Customer Utility Connection Services to the Customer:

(i) where that extension or increase in capacity has been funded by LLEN; and

(ii) only up to a level necessary to recover that funding by LLEN (plus interest arising since the date of that funding at the rate of interest referred to in clause 9.7).

10.2 Form and amount of security

(a) Any security provided must be in a form acceptable to LLEN and may include cash, an insurance bond, a bank guarantee, an indemnity from a financial institution or (in special circumstances and at the Customer's request) in another form.

(b) The amount of the security (if any) initially required by LLEN will be notified to the Customer at the time LLEN advises the Customer that security is required.

(c) LLEN may require the Customer to provide additional security or top-up security if LLEN has utilised the whole or part of the security. In such a case LLEN must inform the Customer in writing of the amount of additional security or top-up security required and the date by which it must be provided at least 10 Business Days before the additional or top-up security is required.

(d) Any security paid to LLEN will be owned by LLEN and is not held in trust. LLEN will not pay the Customer any interest on any security paid to and held by it.

10.3 When LLEN can use the security

LLEN may use some or all of the security at any time to satisfy any amount the Customer owes it under this agreement. Details of any security LLEN uses will be set out in the Customer's next bill and the amounts payable by the Customer amended accordingly.

10.4 Return of security

LLEN will return or release the security to the Customer within 3 months after the expiry or termination of this agreement (whichever is the earlier), provided the Customer has paid LLEN all amounts owing under this agreement. If the Customer still owes amounts under this agreement immediately prior to the return or release of the security, LLEN may apply the security against those amounts and, in the case of a cash deposit, return any surplus to the Customer.

11 Guaranteed Customer Service Standards

11.1 Service Standards

LLEN must use its reasonable endeavours to ensure the Customer Utility Connection Services supplied under this Agreement comply with the Service Standards.

11.2 Timely provision of services

If LLEN does not provide the Customer with a Customer Connection Service under this agreement by the date agreed between LLEN and the Customer (or the Customer's representative) LLEN will pay the Customer $60 for each day that elapses between the agreed date and the actual date on which the Customer connection service is provided, up to a maximum total amount of $300 per year. LLEN will not be liable to pay to the Customer any other amounts as compensation for any Loss suffered by or claimed against the Customer under this clause 11.1.

11.3 Timely notice of planned interruptions to supply

Guaranteed customer service standards for giving notice of LLEN's intention to interrupt the Supply of electricity to the Customer by the Retail Provider (through its Barangaroo Network) are set out in clause 13.4.

11.4 Giving notice of intention to disconnect

Guaranteed customer service standards relating to giving notice of intention to disconnect the Premises are set out in **Schedule 6**.

11.5 Giving notice after Disconnection

Guaranteed customer service standards relating to giving notice after disconnecting the Premises are set out in **Schedule 6**.

11.6 Telephone Services

(a) LLEN will provide a Telephone Service on which the Customer may telephone during business hours to give notice of and obtain information about the Customer's bills and Customer Utility Connection Services under this agreement. If the Customer needs to speak to an operator, simple steps are provided on the Telephone Service.

(b) LLEN will also provide a 24 hour, 7 days a week Telephone Service on which the Customer may telephone to give notice of and obtain information about faults and difficulties in LLEN's Electricity Works. If the Customer needs to speak to an operator, simple steps are provided on the Telephone Service.

11.7 New connection services

(a) Subject to clause 11.7(b), where the Customer requests that LLEN provide the Customer with a new connection under this agreement in accordance with clause 3.2, LLEN will connect the Premises:

(1) (if the connection request is made before 3pm on a Business Day) by no later than the end of the next Business Day; or

(2) (if the connection request is made after 3pm on a Business Day) by no later than the end of the second Business Day following the day the request is made,

unless LLEN and the Customer agree to a longer period before the Premises are connected.

(b) LLEN will not be required to connect the Premises to its Barangaroo Network within the period specified above if, in its opinion:

(1) the relevant equipment is not in place to do so; or

(2) the Customer is not entitled to be provided with the connection.

12 Other Standards of Service for Customer Utility Connection Services

12.1 Quality and reliability of services

Customer Utility Connection Services will be of a reasonable standard of quality and reliability.

12.2 Response times

LLEN will use all reasonable efforts to ensure that any customer problems or enquiries are quickly resolved. If any customer problems or enquiries cannot be resolved immediately by LLEN's Telephone Service, the Customer will be referred to one of LLEN's officers. That officer will contact the Customer promptly (usually within one Business Day of the Customer's telephone call) to answer the enquiry or make further arrangements with the Customer.

12.3 Commencement of work

(a) Where an enquiry from the Customer about the provision of Customer Utility Connection Services results in a request by the Customer for the connection of the Premises, LLEN will commence and complete the connection of the Premises in accordance with clause 11.7.

(b) Where an enquiry from the Customer results in a request by the Customer for any other Customer Connection Service, work on the provision of that service will commence within a reasonable time of the Customer's request.

12.4 Commencement of work to remedy a disruption to a service

Where the connection of the Premises is affected by an interruption to the Supply of electricity (by the Retail Provider) through the Barangaroo Network, LLEN will commence work to remedy that interruption within a reasonable time of becoming aware of the disruption, taking into account the particular circumstances of the interruption.

12.5 Period of notice of work that will disrupt a service

LLEN will endeavour to give the Customer reasonable notice of any work by LLEN relating to the interruption of Supply by the Retail Provider to the Premises (but will not be liable to the Customer if such notice is not given, except to the extent indicated in clause 13.4).

12.6 Payment of compensation arising under guaranteed customer service standards

Where LLEN is obliged to pay the Customer any compensation in accordance with clause 11.2 or 13.4 it may pay that compensation to the Customer by:

(a) deducting it from the Customer's next bill issued under this agreement; or

(b) paying it to the Customer directly by cheque or by electronic funds transfer (to the Customer's nominated account with a bank or building society, where electronic funds transfer facilities between LLEN and the Customer are available).

13 Availability of and Interruptions to Supply

13.1 Responsibility for electricity supply to customers

LLEN does not Supply electricity to the Customer under this agreement. The Retail Provider is contractually responsible for Supplying electricity to the Customer under the Customer Supply Contract. The Retail Provider Supplies electricity to the Customer through the Barangaroo Network.

13.2 Interruptions beyond LLEN's control

(a) Electricity Supplied by the Retail Provider through the Barangaroo Network may not be continuous and may be subject to fluctuations, distortions (in voltage, wave or frequency) or interruptions due to factors including:

(1) the operating characteristics and capacity constraints of the Barangaroo Network and of the National Electricity Market Power System;

(2) the power system security and system operation requirements imposed on LLEN and other persons under the Rules; and

(3) other factors which are beyond LLEN's control.

(b) If Supply continuity and consistency of electricity are important to the Customer then the Customer should bring this to the attention of the Retail Provider and the Customer and the Retail Provider should contact LLEN, a licensed electrician or an appropriately qualified electrical consultant about any options available to the Customer or whether the Customer may need additional equipment or services to achieve higher levels of Supply continuity (or consistency of Supply) from the Retail Provider through the Barangaroo Network.

13.3 Interruptions

In addition to interruptions under clause 13.2 (which may occur at any time without notice), LLEN may intentionally interrupt the Supply of electricity by the Retail Provider to the Premises at any time for any of the following purposes:

(a) inspecting, testing, replacing, repairing, adjusting or removing equipment installed or used for the purposes of this agreement;

(b) maintaining the safe and efficient operation of the Barangaroo Network;

(c) for the installation of a new connection or a connection alteration to another customer or to restore supply to another customer;

(d) to comply with the power system security and system operation requirements imposed on LLEN and other persons under the Rules or as otherwise required by Ausgrid or a relevant authority; or

(e) to deal with an emergency, which includes (but is not limited to) excess load in the Barangaroo Network or a reduction in electricity transmitted from the External Distribution System.

13.4 Compensation for interruptions without notice

(a) Subject to clauses 13.4(b) and 13.4(c), if LLEN interrupts the Supply of electricity by the Retail Provider to the Premises:

(1) without providing the Customer with at least 2 Business Days' notice; or

(2) for longer than the time indicated in any such notice,

LLEN will pay the Customer $20 by way of compensation. LLEN will not be liable to pay to the Customer any other amounts as compensation for any Loss suffered by or claimed against the Customer under this clause 13.4.

(b) LLEN will not be required to pay the Customer any amount under clause 13.4(a) if an interruption was:

(1) for the purposes of enabling LLEN to carry out emergency work;

(2) in circumstances beyond LLEN's control; or

(3) in circumstances where an occupier of the Premises agreed to the interruption before it occurred.

An interruption for a purpose referred to in clause 13.3(d) is taken to be an interruption in circumstances beyond LLEN's control.

(c) Despite LLEN's obligation to pay compensation to the Customer in the circumstances set out in clause 13.4(a), LLEN is under no obligation to provide any notice referred to in that clause. Accordingly:

(1) any interruption by LLEN:

(A) without providing the Customer with the notice referred to in clause 13.4; or

(B) for longer than the period referred to in such a notice,

will not amount to a breach of this agreement (or breach of any other obligation owed to the Customer under contract, tort, statute or any other basis) and will be considered an interruption to the Supply of electricity by the Retail Provider in accordance with this agreement; and

(2) the Customer must make its own arrangements to ensure that neither the Customer nor any other person suffers any Loss as a result of any such interruption without such notice.

13.5 Rescheduling interruptions at the Customers request

(a) At any time prior to occurring any interruption under clause 13.3, the Customer may request that LLEN reschedule that interruption to a time nominated by the Customer.

(b) LLEN may, in its absolute discretion:

(1) reschedule that interruption to that nominated time, and notify the Customer accordingly if it does so, and

(2) require the Customer to pay additional costs incurred or to be incurred as a result of that rescheduling, and the Customer must pay those additional costs to LLEN upon being requested to do so.

14 Disconnecting Customers Premises

14.1 Reasons for disconnecting Customer's Premises

Subject to clause 14.2, LLEN may refuse to connect the Premises to, or disconnect the Premises from, its Barangaroo Network, if any of the following happen:

(a) **(retailer notice)** the Customer's Retail Provider informs LLEN that it has a right to arrange for disconnection under the Customer Supply Contract and requests that LLEN disconnect the Premises;

(b) **(wrongful use)** the Customer uses energy supplied to the Premises wrongfully or illegally in breach of clause 8;

(c) **(security and unpaid amounts)** security required under this agreement is not provided as required or the Customer does not pay what the Customer owes under this agreement when the Customer is required to pay;

(d) **(false information)** the Customer provides any false information to LLEN or its Retailer Supplier such that it would not have been entitled to be connected if it had not provided the false information;

(e) **(failure to maintain)** the Customer does not provide and maintain space, equipment, facilities or anything else the Customer must provide under the Energy Laws or this agreement (including under clause 4.4) in order for LLEN to provide Customer Utility Connection Services;

(f) **(refuse access)** the Customer does not give one of LLEN's or Ausgrid's authorised officers safe and unhindered access to the Premises when the Customer is required to under this agreement or under Energy Laws;

(g) **(no customer supply contract)** the Customer no longer has the Customer Supply Contract for the Premises or the Customer has vacated the Premises;

(h) **(emergency)** in an emergency or for health and safety reasons; or

(i) **(compliance)** if LLEN is required to do so at the direction of Ausgrid or a relevant authority or if LLEN is otherwise permitted by Energy Laws to disconnect or refuse to connect the Premises.

14.2 Notice and other requirements for Disconnection

LLEN's right to disconnect the Premises under clause 14.1 is subject to LLEN (or the Retail Provider) complying with the notice and other requirements set out in **Schedule 6**.

14.3 Charges for going to the Premises

If LLEN goes to the Premises to disconnect or reconnect the Premises, LLEN can impose the charge which the Network Price List or any relevant pricing or other document

published by LLEN from time to time fixes for doing so even if, in the event, the Premises are not disconnected or reconnected.

14.4 This does not affect LLEN's other rights

LLEN's rights under this clause 14 are in addition to its rights:

(a) to refuse to connect or to disconnect the Premises under the Energy Laws; and

(b) under any other contract the Customer has with LLEN.

14.5 If the Customer wants Disconnection

(a) The Customer must give LLEN at least 48 hours' notice if the Customer wants its Premises to be disconnected from the Barangaroo Network.

(b) If the Customer does not give this period of notice the Customer will have to pay all the charges (including minimum charges) for services provided or Network Charges payable under this agreement until the earlier of the following:

(1) 48 hours after LLEN becomes aware that the Customer wants its Premises disconnected; and

(2) LLEN actually disconnects the Premises,

unless LLEN enters into, or is taken to have entered into, a new connection contract (under which those charges are payable) for the same Premises.

15 Last Resort Supply

15.1 Transfer to Retailer of Last Resort

If Last Resort Supply Arrangements come into force in respect of the Supply of electricity to the Customer at the Premises, then LLEN (or any person nominated by it) is authorised to transfer the Customer to the Customer's Retailer of Last Resort and to take any other action necessary to implement or arrange those Last Resort Supply Arrangements.

15.2 Provision of information to enable transfer

LLEN may provide any necessary information relating to the Customer to a retail supplier or other person or body for the purposes of enabling the Customer to be transferred to the Customer's Retailer of Last Resort and for the consequential implementation of Last Resort Supply Arrangements.

15.3 Payments to LLEN on behalf of Retailer of Last Resort

If LLEN agrees with the Customer's Retailer of Last Resort to arrange to collect charges for any electricity Supply (and any other related goods or services provided) to the Customer by the Customer's Retailer of Last Resort, then the Customer must pay those charges to LLEN (unless the Customer's pays them to the Customer's Retailer of Last Resort or enters into the Customer Supply Contract with the Customer's Retailer of Last Resort or another supplier under which those charges are payable).

16 Reviewing LLEN's decisions, customer disputes and complaints

(a) LLEN has adopted an internal review process for reviewing decisions by LLEN which:

(1) affects the Customer; and

(2) relates to any matter arising under this agreement (or any other matter that may be prescribed by the Regulation).

Details of how the Customer may apply for review of a decision (and how LLEN will conduct the review) are set out in Schedule 7.

(b) The rights of Customers in relation to complaints and resolution of disputes arising under this agreement are set out in the Customer dispute resolution procedures set out in Schedule 7.]

17 Liability

17.1 Statutory rights and conditions and warranties implied by law

Nothing in this agreement is to be taken to exclude, restrict or modify:

(a) any rights of recovery or to compensation the Customer may have under Energy Laws; or

(b) any condition, warranty or guarantee that LLEN are prohibited by law from excluding, restricting or modifying.

All other conditions, warranties and guarantees, whether or not implied by law, are excluded.

17.2 Limitation of any liability under the Australian Consumer Law

Under the Australian Consumer Law consumer guarantees apply to the supply of 'goods' and 'services' to 'consumers' (within the meaning of the Australian Consumer Law). If any such consumer guarantee applies to any goods or services LLEN supplies under this agreement then LLEN's liability (if any) for any failure to comply with that guarantee in connection with any goods or services (that are not of a kind ordinarily acquired for personal, domestic or household consumption) is limited, as far as the law permits and at LLEN's option, to resupplying the goods or services or paying for their resupply.

17.3 LLEN's warranties

(a) LLEN warrants to the Customer that it:

(1) is the owner and the operator of the Barangaroo Network; and

(2) is the holder of the Network Exemption.

(b) To the extent permitted by law, LLEN gives no condition, warranty or undertaking, and makes no representation to the Customer, about the condition or suitability of energy, its quality, fitness for purpose or safety, other than those set out in this Agreement

17.4 Exclusion of liability for supply interruptions, distortions or fluctuations

Subject to clauses 17.1 and 17.2, and as far as the law permits, LLEN is not liable for any Loss the Customer may suffer (including, without limitation, where caused by any negligent or wilful act or omission by LLEN or by any other person) arising from:

(a) any fluctuation or distortion (in voltage magnitude, voltage waveform or frequency) or interruption to the Supply (by the Retail Provider) of electricity to the Premises or from any such Supply not being or remaining continuous;

(b) the Retail Provider discontinuing Supply of electricity to the Customer; or

(c) LLEN interrupting the Supply of electricity by the Retail Provider to the Premises.

17.5 General limitation on liability

To the extent that LLEN has any liability to the Customer arising under this agreement (or arising from any act or omission by LLEN or by any other person under contract, tort or any other basis), LLEN's liability (under contract, tort or any other basis), is limited, as far as the law permits, as follows:

(a) LLEN is not liable for any indirect, economic, special or consequential Losses of any kind suffered by the Customer (including corruption of data losses, business interruption losses, loss of profits or any other indirect costs of any kind), and

(b) LLEN's liability for all other losses suffered by the Customer is limited to the lesser of:

(1) the total amount billed to the Retail Provider (or to the Customer under clause 7.3) for Network Charges relating to the use of the Barangaroo Network for the Supply of electricity by the Retail Provider to the Premises) during the year that LLEN's breach, act or omission (which gives rise to the claim) occurred, or

(2) $5,000 (GST inclusive, if any),

for all claims the Customer makes in any one calendar year.

17.6 Exclusion of liability and indemnity for customers use and supply of electricity

LLEN is not responsible for, and the Customer accepts all risks in respect of, the control and use of electricity on the Customer side of the Premises and in respect of the supply of electricity to the Premises or to the Barangaroo Network from any Generating System or Complying Generator located at the Premises.

The Customer indemnifies LLEN against (and therefore must pay LLEN for) Loss suffered by LLEN arising in connection with:

(a) the control and use of electricity on the Customer side of the Premises; or

(b) the installation, operation or maintenance of any Generating System or Complying Generator at the Premises and any supply of electricity to the Barangaroo Network from any such Generating System or Complying Generator.

17.7 Limitation of liability for system operations functions

So far as the law allows, LLEN is not liable for any Losses the Customer may suffer as a consequence of or in connection with any act or omission by LLEN in relation to the performance or exercise, or purported performance or exercise, of a System Operations Function or the function of operating, or managing the operations of, the Barangaroo Network.

17.8 Limitation of liability for supply failure from Generating Systems and Complying Generators

So far as the law allows, LLEN is not liable for any losses the Customer may suffer as a consequence of or in connection with any Generating System or Complying Generator located at the Premises failing (or being unable) to supply electricity to the Premises or to the Barangaroo Network, for any reason (including, without limitation, where caused by any negligent or wilful act or omission by LLEN or by any other person).

18 Customer Information

18.1 The Customer consents to LLEN's disclosure of Customer Information

The Customer consents to LLEN using and disclosing Customer Information for the following purposes if and to the extent that the use or disclosure is permitted by law with the Customer's consent:

(a) to verify the Customer's creditworthiness;

(b) to recover amounts that the Customer owes under this agreement;

(c) to carry out LLEN's responsibilities or exercise its rights under this agreement (including without limitation offering and providing electricity and related products and services to the Customer, invoicing the Customer and managing LLEN's relationship with the Customer);

(d) to obtain advice, assistance, products or services in relation to its business (including without limitation legal, engineering, accounting and information technology services);

(e) to develop new or varied products and services (including, without limitation, trials, pilot studies or projects relating to energy efficiency, demand management and/or smart electricity grid activities); and

(f) for the purposes of any national electricity market process or system operating under the Rules (including, without limitation, registration or transfer of registration of a Registered Participant as a person who is Financially Responsible for any customer connection point or the settlement of transactions or payments under the Rules), the Market Operations Rules, any regulation or any statutory instrument.

18.2 Disclosure of Customer Information under law

The Customer also acknowledges that LLEN may use or disclose Customer Information where the law otherwise permits, authorises or requires that disclosure.

19 Force Majeure

LLEN's obligations under this agreement are suspended while it cannot perform them due to a Force Majeure Event.

20 Other Matters

20.1 How to give any notice required under this agreement

Notices under this agreement:

(a) must be in writing;

(b) may be given by hand, sent by fax or sent by mail or email (if email facilities between the Customer and LLEN are available); and

(c) must be delivered:

(1) in the case of notices to LLEN: to one of LLEN's correct fax numbers, addresses or email addresses as noted on the Customer's latest bill; or

(2) in the case of notices to the Customer: to the Premises, the Customer's facsimile number or email address if the Customer provides one to LLEN.

(d) A party may assume that the other received a notice on the first Business Day after it was given, as long as it is given in accordance with the procedures in this clause.

(e) Any change in the address or notice details of either party must be notified in writing to the other party.

20.2 Severability

Any provision of this agreement which is prohibited, invalid or unenforceable will be ineffective (to the extent of its prohibition, invalidity or unenforceability) without affecting the validity or enforceability of the remaining provisions of this agreement.

20.3 No waiver

A failure, delay, relaxation or indulgence by LLEN or the Customer in exercising any power or right conferred by this agreement, does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this agreement. A waiver of a breach does not operate as a waiver of any other breach.

20.4 Interpretation of this agreement

In this agreement, unless the context requires otherwise:

(a) a reference to a clause is a reference to a clause in the main body of this agreement;

(b) the singular includes the plural and vice versa;

(c) other parts of speech and grammatical forms of a word or phrase defined in the dictionary to this agreement have a corresponding meaning;

(d) the word 'person' includes a natural person and any body or entity whether incorporated or not, including governments, governmental bodies and instrumentalities;

(e) a reference to a document includes the document as amended from time to time and any document replacing it;

(f) if something is to be done on a day which is not a Business Day then that thing must be done on the next following Business Day; and

(g) the words 'in writing' include any communication sent by letter or facsimile.

20.5 Table of Contents and headings

The Table of Contents and the headings contained in this agreement are used to assist the Customer in reading this agreement and do not affect its interpretation.

20.6 The law to apply to this agreement

This agreement shall be governed by and construed in accordance with the laws in force in the State of New South Wales.

20.7 Assignment of this agreement

(a) LLEN may assign any or all of its rights or obligations under this agreement without the Customer's consent. LLEN will notify the Customer of an assignment by publishing a notice in a national newspaper, publishing a notice on LLEN's website or by sending the Customer a written notice.

(b) The Customer may not assign its rights or obligations under this agreement at any time without first obtaining LLEN's consent in writing.

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Schedules

Table of contents

Reference Schedule	**33**
Notice details	**34**
Network Price Schedule	**35**
Service Standards	**36**
Varying charges and government taxes	**37**
Notice and other requirements for Disconnection	**39**
Internal review and EWON	**41**

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Schedule 1

Reference Schedule

Item	Details
Premises	[insert building details]
Retail Provider	**[EnergyAustralia]**

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Schedule 2

Notice details

LLEN

Address

Attention

Phone

Fax

Email

Customer

Address

Attention

Phone

Fax

Email

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Schedule 3

Network Price Schedule

Barangaroo Delivery Authority NSW GOVERNMENT

Network Price List 2014-2015

Ausgrid

Effective from 1 July 2014 to 30 June 2015 (Prices exclude GST)

Tariff Class	Tariff Code	Tariff Name	DLF	Network Access Charge	Network Energy Prices							Network Capacity Prices	
					Non-ToU				ToU				
					Flat	Block 1	Block 2	Block 3	Peak	Shoulder	Off-peak	Peak	Peak
				c/day	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kW/day	c/kVA/day
Low Voltage	EA010	Residential Inclining Block	1.0643	39.9237		12.8642	13.9612	9.9552					
	EA025	Residential ToU	1.0560	52.5312					26.7906	5.2740	2.6895		
	EA030	Controlled load 1	1.0643	3.3199	2.2032								
	EA040	Controlled load 2	1.0643	12.8386	5.4597								
	EA050	Small Business Inclining Block	1.0564	126.0750		11.5209	18.0897						
	EA225	Small Business ToU	1.0564	126.0750					21.6427	3.7121	2.3012		
	EA302	LV 40-160 MWh (System)	1.0564	577.8437					12.2334	3.7152	3.5424	33.8250	
	EA305	LV 160-750 MWh (System)	1.0564	1681.0000					9.7238	5.3811	2.7732		33.8250
	EA310	LV > 750 MWh (System)	1.0564	2,100.1993					9.9673	5.4124	2.8046		33.8250
	EA325	LV Connection (Standby) *Closed*	1.0564	2,100.1993					8.0827	6.0579	2.2725		
High Voltage	EA360	HV Connection (Standby) *Closed*	1.0189	1,891.1250					8.2079	4.8271	2.4455		0.4408
	EA370	HV Connection (System)	1.0189	4,202.5000					8.6681	5.3881	2.4054		18.1733
	EA380	HV Connection (Substation)	1.0140	4,202.5000					7.5099	5.3574	1.7903		16.1733
Sub-transmission	EA390	ST Connection	1.0078	5,253.1250					4.8449	3.4099	2.0262		5.7785
Unmetered	EA401	Public Lighting	1.0839		8.9533								
	EA402	Constant Unmetered	1.0613		10.9454								
	EA403	EnergyLight	1.0839		3.1402								

Barangaroo Delivery Authority

Network Price List 2014-2015

Ausgrid

Effective from 1 July 2014 to 30 June 2015 (Prices include GST)

Tariff Class	Tariff Code	Tariff Name	DLF	Network Access Charge	Network Energy Prices							Network Capacity Prices	
					Non-ToU				ToU				
					Flat	Block 1	Block 2	Block 3	Peak	Shoulder	Off-peak	Peak	Peak
				c/day	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kWh	c/kW/day	c/kVA/day
Low Voltage	EA010	Residential Inclining Block	1.0643	43.9161		14.1506	15.3573	16.4507					
	EA025	Residential ToU	1.0560	57.7843					29.4692	5.8014	2.9585		
	EA030	Controlled load 1	1.0643	3.6519	2.4235								
	EA040	Controlled load 2	1.0643	14.1225	6.0057								
	EA050	Small Business Inclining Block	1.0564	138.6825		12.6730	19.8987						
	EA225	Small Business ToU	1.0564	138.6825					23.8070	7.3833	2.3113		
	EA302	LV 40-160 MWh (System)	1.0564	635.6281					13.4567	6.2867	3.8966	37.2075	
	EA305	LV 160-750 MWh (System)	1.0564	1849.1000					10.6962	5.9192	3.0505		37.2075
	EA310	LV > 750 MWh (System)	1.0564	2310.2192					10.9640	5.9536	3.0851		37.2075
	EA325	LV Connection (Standby) *Closed*	1.0564	2310.2192					8.8910	6.6637	2.4998		
High Voltage	EA360	HV Connection (Standby) *Closed*	1.0189	2080.2375					9.0287	5.3098	2.6901		0.4849
	EA370	HV Connection (System)	1.0189	4622.7500					9.5349	5.9269	2.6459		19.9906
	EA380	HV Connection (Substation)	1.0140	4622.7500					8.2609	5.8931	1.9693		19.9906
Sub-transmission	EA390	ST Connection	1.0078	5778.4375					5.3294	3.7509	2.2288		6.3564
Unmetered	EA401	Public Lighting	1.0839		9.8486								
	EA402	Constant Unmetered	1.0613		2.0399								
	EA403	EnergyLight	1.0839		8.9542								

Network Price List 2014-2015

Ausgrid

Ausgrid's current price list and other pricing information, including submissions and expected trends, can be found on our website at: www.ausgrid.com.au/network_prices

Explanatory Notes

Supply Voltages The general voltage levels referred to in the price list are:

Low Voltage (LV)	nominally 230/400 V
High Voltage (HV)	nominally 5, 6.6, 11 or 22 kV
Sub-transmission (ST)	33 kV and above

The voltage levels for the purpose of application of network prices are determined at the metering point.

Distribution Loss Factors (DLFs) These represent the electrical energy lost in the transport of electricity over the distribution network. The factors are calculated by Distribution Network Service Providers (DNSPs) in accordance with the methodology in clause 3.6 of the National Electricity Rules. DLFs are used by the Australian Energy Market Operator (AEMO) in the market settlement to adjust the electrical energy attributed to each retailer at each transmission connection point.

DLFs are also used by retailers directly for reconciliation with their purchasing against customer billing processes. Network prices apply to metered (or estimated) customer consumption and therefore prices are not directly affected by these loss factors.

Network Tariff Changes and Tariff Reassignments The application of network tariffs is explained in Ausgrid's publication ES 7 Application of Network Use of System Charges (ES 7). The network price for a specific customer installation is determined in accordance with ES 7 and will depend upon a number of factors including the customer's load, supply voltage and metering configuration. Applications to change a network price should be made on a Network Price Application Form and if approved, will apply from the start of the next billing period following the date of receipt of the price change application.

Daylight Saving Daylight Saving time applies to all Ausgrid network prices.

Metering A customer's metering installation must have a meter which is capable of measuring the relevant electrical components of energy and demand before a given default price can be applied. If a customer or retailer would like an alternative meter to be installed they may be required to pay a contribution towards its cost.

NSW Solar Bonus Scheme Payments In weekly bill invoices, Ausgrid will credit retailers for their customers who have generation facilities and are eligible under the NSW Solar Bonus Scheme. The credit will be 20 cents or 60 cents per kWh depending on the conditions contained within the NSW Electricity Supply Act 1995 and the supporting regulations. Ineligible customers will not receive payments.

Types of Network Tariff Components

Network Access Charge (NAC) This is a fixed charge (¢/day) applied to each energised connection point at which energy or demand is recorded. A separate NAC may be applied to each connection point and their associated metering point(s) as determined by Ausgrid.

Non-ToU Rates The Non Time of Use charge (¢/kWh) is applied to the total energy determined from an energy only meter. A step pricing structure applies to selected non-ToU energy charges as follows:

- *EA010* - a three step pricing structure applies. Step 1 applies to the first 1000kWh per 91 days. Step 2 applies to consumption greater than 1000kWh and less than 2000kWh per 91 days. Step 3 applies to all consumption in excess of Step 2.
- *EA050* - a two step pricing structure applies. Step 1 applies to the first 2500kWh per 91 days. Step 2 applies to all consumption in excess of Step 1.

Time of Use (ToU) Rates All meters capable of recording the time electricity is used throughout the day will be charged according to Peak, Shoulder and Off Peak time periods.

The following time periods apply for ToU tariffs *EA025* and *EA225*:

Peak	2pm - 8pm on working weekdays
Shoulder	7am – 2pm and 8pm – 10pm on working weekdays 7am – 10pm on weekends and public holidays
Off Peak	All other times

All other ToU tariffs have the following time periods applied:

Peak	2pm - 8pm on working weekdays
Shoulder	7am – 2pm and 8pm – 10pm on working weekdays
Off Peak	All other times

Capacity Charges Capacity charges are applied to the maximum half hourly kW or kVA power reading that occurred at a customer's connection point over the 12 months prior to the bill being calculated.

The chargeable kW or kVA reading can only occur in peak times which are from 2pm to 8pm on working weekdays. The capacity charge is in cents per day and is calculated on the number of days in the billing period.

One capacity charge is applied at each connection point. Coincident or summated capacity charges from multiple connection points are not permitted without the written approval of the Manager Network Regulation.

Controlled Load Controlled load is applicable to electricity which is separately metered and controlled by Ausgrid. It is used for operating storage water heaters, thermal storage space heaters, and other approved fixed wired appliances.

Explanation of Network Tariffs

To obtain an understanding of Ausgrid's network tariffs please refer to ES 7 Application of Network Use of System Charges. This document is available from our website, see link below.

http://www.ausgrid.com.au/Common/Our-network/Network-prices/Price-lists-and-policy.aspx

Barangaroo Delivery Authority NSW GOVERNMENT

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Schedule 4

Service Standards

All applicable Regulatory Requirements.

Regulatory Requirements means all legislation, rules, regulations, codes, and orders in council, licences, proclamations, directions or standards that are applicable to the supply of the Customer Utility Connection Services to the Customer by LLEN.

Barangaroo Delivery Authority NSW GOVERNMENT

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Schedule 5

Varying charges and government taxes

Refer clauses 7.4 and 7.5 of this agreement.

1 Varying charges

(a) LLEN may vary any tariff or charge under this agreement. However any such variation will have no effect unless a notice setting out particulars of the variation is first served on the Customer or group of customers (where the variation applies only to that particular customer or group of customers).

(b) The particulars to be set out in any such notice must:

(1) specify the date on or after which the variation is to take effect, being a date that is later than the date the notice is published or served; and

(2) include a statement of the new rates or the amount of the variation.

(c) The notice may have general application or may be limited in its application by reference to specified exceptions or factors.

(d) A variation in a rate or charge for which notice must be given under this clause operates from the date specified in the notice and must not operate retrospectively.

2 GST, taxes and other government charges

(a) Any consideration to be paid or provided to LLEN under or in connection with this agreement (whether the amount of such consideration is listed in this agreement or elsewhere) does not include an amount on account of any GST or tax (unless specifically stated to be inclusive of GST).

(b) Despite any other provision of this agreement:

(1) if LLEN makes a Taxable Supply under or in connection with this agreement (not being a Taxable Supply the consideration for which is specifically described as being GST inclusive), the consideration payable or to be provided for that Taxable Supply but for the application of this clause will be increased by, and the Customer must pay to LLEN, an amount equal to the GST payable on that Taxable Supply; and

(2) LLEN can pass on to the Customer any tax in relation to the sale, Supply or purchase of electricity or any other thing that is imposed on LLEN, or that LLEN has to pay.

(c) LLEN can do this by:

(1) changing the tariffs;

(2) including the amount as a separate item in the Customer's bill; or

(3) issuing a separate Tax Invoice for the Taxable Supply.

(d) If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for that Loss.

Barangaroo Delivery Authority NSW GOVERNMENT

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Schedule 6

Notice and other requirements for Disconnection

1 Notice of intention to disconnect

1.1 Notice and warning of disconnection

If the Customer is a Small Customer, LLEN may disconnect the Premises under clauses 14.1(c), 14.1(d), 14.1(e) or 14.1(f) only if:

(a) LLEN first sends the Customer a disconnection warning notice that:

(1) requires the Customer to rectify, within 6 Business Days after the date of issue on the notice, the issue that could lead to disconnection; and

(2) carries a warning of the consequences of failing to comply with the notice; and

(b) in relation to safe and unhindered access only, LLEN has used its best endeavours to contact the Customer to arrange an appointment with the Customer for access to the Premises in addition to providing a disconnection warning notice; and

(c) the Customer fails to comply with the disconnection warning notice within 6 business days after the date of issue.

1.2 Life support equipment

(a) If the Customer is a Small Customer, LLEN must not disconnect the Premises if they are registered as having life support equipment, except in an emergency.

1.3 When LLEN must not disconnect

(a) Subject to paragraph (b), and otherwise in accordance with the Rules, if the Customer is a Small Customer LLEN must not disconnect the Premises during the following times (the **Protected Period**):

(1) on a business day before 8.00am or after 3.00pm; or

(2) on a Friday or the day before a public holiday; or

(3) on a weekend or a public holiday; or

(4) on the days between 20 December and 31 December (both inclusive) in any year; or

(5) if the Customer is being disconnected for a failure to pay, during an extreme weather event.

(b) The Premises may be disconnected within the Protected Period:

(1) for reasons of health and safety; or

(2) in an emergency; or

(3) as directed by a relevant authority; or

(4) if the Customer is in breach of clause 8 which deals with wrongful and illegal use of energy; or

(5) if the Customer's Retail Provider makes such a request on the Customer's behalf; or

(6) if the Premises contain a commercial business that only operates within the protected period and where access to the Premises is necessary to effect disconnection; or

(7) where the Premises are not occupied.

1.4 LLENs rights after disconnection

(a) The disconnection of the Premises does not limit or waive any of the parties' rights and obligations under this agreement arising before disconnection, including any of the Customer's obligations to pay amounts to LLEN or its Retail Provider.

2 Notice given after Disconnection

As soon as reasonably practicable after the Premises have been disconnected, LLEN or the Retail Provider must give the Customer a notice setting out:

(a) why the Premises were disconnected;

(b) a telephone number to contact LLEN regarding the Disconnection;

(c) the arrangements that the Customer will need to make for reconnection of the Premises to the Barangaroo Network, including any costs the Customer will need to pay; and

(d) the dispute resolution procedures available to the Customer.

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Schedule 7

Internal review and EWON

[see clause 16 of this agreement]

1 Internal review of LLEN decisions

1.1 Internal review

(a) The Customer may apply under clause 1.2 below to LLEN for a review of any of its decisions relating to any matter arising under this agreement.

(b) The Customer will not be charged for any application that the Customer makes to LLEN to review one of its decisions.

1.2 Applying to have a decision reviewed

(a) An application by the Customer to review a decision allowed by clause 1.1 above must be in writing.

(b) If the Customer makes an application referred to in clause 1.2(a) above, the application must:

(1) be served on LLEN no later than 28 days after the Customer receives written notice of the decision; and

(2) states the reason why the Customer is seeking a review of the decision.

1.3 Considering application to review decision

(a) When LLEN receives an application from the Customer to review a decision referred to in clause 1.1 above, LLEN will review the decision.

(b) After reviewing the decision, LLEN may:

(1) determine that the decision is to stand; or

(2) vary or revoke the decision.

(c) As soon as practicable after LLEN makes a determination, LLEN will give the Customer written notice:

(1) of the determination together with reasons for the determination;

(2) (if the determination is to vary the decision) of how LLEN will vary it; and

(3) (if applicable) the Customer's rights available under the Act and the Regulation.

(d) If LLEN fails to give the Customer such a notice within 14 days of when the Customer applied to have the decision reviewed, LLEN are taken to have determined

(1) that the decision stands (in the case of a complaint against a decision); or

(2) that no action is to be taken (in the case of any other complaint).

1.4 Manner of handling application

In addressing an application by the Customer to review a decision, LLEN will comply with Australian Standards AS 4269-1995 entitled "Complaints Handling", as amended or replaced from time to time.

2 Dispute and complaint resolution by EWON

(a) Subject to clause 2(b) below, if a dispute arises between LLEN and the Customer (or if the Customer has a complaint) about any matter arising under this agreement and it is a dispute or complaint to which EWON relates, the Customer may refer the dispute (or complaint) to EWON.

(b) The Customer does not have a right of review by EWON in respect of a decision by LLEN on any matter referred to under clause 1.1 above, unless that decision has first been the subject of an internal review by LLEN under clause 1 above.

(c) The Customer will not be charged for any application that the Customer makes to EWON.

(d) EWON may decline to deal with the Customer's application if it has been, is being or should be dealt with by another person or tribunal or there are not, in EWON's opinion, sufficient grounds for further investigation.

(e) EWON may also refer the Customer's application to another person or tribunal.

(f) EWON's decision on any dispute or complaint referred to EWON will be final and binding on LLEN and accordingly LLEN must comply with any decision of EWON.

3 Contacting EWON

Call EWON on 1800 246 545 or fax EWON on 1800 812 291.

Alternatively, write to EWON at:
Reply Paid 86550
Sydney South NSW 1234 or
email at omb@ewon.com.au

4 Customer dispute and complaint resolution procedures

(a) If a dispute arises between LLEN and a Customer (or if the Customer has a complaint) about any matter arising under this agreement and if clause 2.1(a) above applies and the Customer elects to not exercise its rights under that provision, then:

(1) either of them may notify the other in writing about the dispute or complaint; and

(2) they must then make reasonable efforts to try to resolve the complaint or dispute.

(b) If LLEN and the Customer are unable to resolve a dispute or complaint within 3 months of it being notified under this clause, either party may refer the matter to mediation under the guidelines for commercial mediation published from time to time by the Australian Commercial Dispute Centre. The parties will share equally in all reasonable costs of the mediator appointed to conduct any mediation under this clause but will otherwise bear their own costs of the mediation.

(c) The requirements of this clause 4 are without prejudice to (and are not intended to prevent) the parties from also pursuing) any legal or other remedies which either of them may be entitled to pursue by other means (such as by legal proceedings in a court or by arbitration).

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Signing page

Executed as an contract

LLEN

Signed for
Lend Lease Embedded Network (Barangaroo South) Pty Ltd
by its attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____

Customer

Signed for
[Building]
by their attorney

sign here ▶ _____
Representative

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____

Barangaroo South – Building Management Statement
Schedule 12 – Example Residential Supply Rates

Introduction

This Schedule 12 sets out the example Supply Rates payable by an Occupier of a notional residential apartment at Barangaroo South. This information is provided for illustrative purposes only and in order to assist users of this management statement in understanding the process for calculating usage costs and charges for Green Utilities.

Residential Design Basis Assumptions (Cooling)

- Based on a mix of 1, 2 and 3 bed apartments (1.8 average) with an average NUA per apartment of 100-110 m²
- Developed from one of a weather sensitive analysis of real measured electricity data at Stonecutters
- Coefficient of Performance (COP) assumed to estimate cooling loads from the weather sensitive electricity use. Note: use of real measured electricity data will include some non-cooling loads that are weather sensitive like fridges, lights (more daylight in summer) small appliances etc.
- Method applies the diversity in a real apartment building (different occupant behaviours and preferences) and is appropriate in modelling terms. Note: occupancy and usage patterns may vary from project to project.
- The modelled cooling profiles have a single day type for each month repeated over the month. Note: the seasonal volumes are representative whilst true operational cooling peaks may vary due to methodology.
- The annual cooling volume in the design profile is 19 kWhr/m² NUA pa with a diversified peak load of 16.5 Wr/m² NUA. Note: true operational cooling peaks may vary due to methodology.

- *General Note: Key factors that influence cooling demand*
  - Diversity in residential apartment behaviours and occupancy can impact upon on operation conditions and cooling profiles.
  - Occupant behaviour with regards to energy management - windows closed when A/C is in operation
  - Occupant temperature range tolerances 18-25.5°C - how cold an individual wished to set the cooling temperature.
  - Occupant tolerance to humidity – using A/C to mitigate humidity driving operating internal temperatures to be 24°C or lower in summer
  - Diversity in apartment design, specifically thermal mass, orientation, passive solar design etc.

Residential Design Basis Assumptions

What are the expected costs per annum for a 100sqm 2 bed room apartment typical user?

- The Charges for chilled water services fall into the categories and rates illustrated below (see issued charges schedule for complete detail).
- The model design developed for Barangaroo contemplates the following usage as related to defined criteria above.
- The Charge Estimates below relate to the anticipated changes for a 100sqm apartment based on this model and its assumptions.

Example costs per annum for a 100sqm, 2 bed room apartment typical user

CCWP - Charges 2010-11 Base Year

- *Chilled Water Usage Charge (volume charge – charge dependent on use)*

Charge =	$0.056 per kwh(r) X the actual metered usage (P & S)
Charge =	$0.023 per kwh(r) X the actual metered usage (OP)

- *Chilled Water Maintenance Charge (volume charge – charge dependent on use)*

Charge =	$0.11 per kWh(r) X actual metered usage

- *Chilled Water Capacity Charge (volume charge – charge dependent on use)*

Charge =	Peak Cooling Demand in kW(r) ÷ 3.0 COP X Capacity Charge (Ausgrid E310 daily capacity rate in cents/kVA)

- *Chilled Water Capital Replacement Charge (volume charge – charge dependent on use)*

Charge =	$0.068 per kWh(r) X actual metered usage

CCWP - Illustrated rates 2010-11 Base Year

- *Estimation for 1 bed Apartment (see Residential Design Basis Assumptions (Cooling))*

Charge	Volume	Price	A$/annum
Chilled Water Usage	1,898 kWhR	0.038 $/kWhR	73
Chilled Water Capacity	2 kW	0.110 $/kW/day	79
Chilled Water Maintenance	1,898 kWhR	0.110 $/kWhR	209
Chilled Water Capital Replacement	1,898 kWhR	0.068 $/kWhR	129
Total			**$490**

RWP - Illustrated rates SWC published Service Charges 2012-13

- *Recycled Water Service Charge (fixed charge)*

Charge =	Jul-Sep Qtr	Oct-Jun Qtr
	$8.78	$8.76

- *Recycled Water Use Charge (volume charge – charge dependent on use)*

Charge =	$1.98/kl X actual metered usage

- *Wastewater Service Charge (fixed charge)*

Charge =	$138.77 Each QTR

- *Water Service Charge(fixed charge)*

Charge =	$33.78 Each QTR

- *Water Use Charge(volume charge – charge dependent on use)*

Charge =	$2.13/kl X actual metered usage

EN – rates as per Ausgrid published tariffs regulated by AER and are included in retail billings from licences electricity retailers – these are direct contacts between Owners Corporations or individual residents with their retailer of choice

Barangaroo South – Building Management Statement

Signing page

Executed as a deed

DATED: _____

T2 Owner

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT (LLITST ST) Pty Limited

sign here ▸ _____
Director SIMON LECKIE

print name _____

sign here ▸ _____
Director/Secretary JAMES SAYER

print name _____

Lend Lease IMT (LLITST ST) Pty Ltd
Common Seal
A.C.N. 127 727 262

CCW Lot Owner

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT (LLITST ST) Pty Limited
by

sign here ▸ _____
Director

print name SIMON LECKIE

sign here ▸ _____
Director / Secretary

print name JAMES SAYER

Lend Lease IMT (LLITST ST) Pty Ltd Common Seal A.C.N. 127 727 262

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease (Barangaroo South Co-owner) Pty Limited
by its a tomey under power of attorney registered book no. BK4686 No. 713

sign here ▸ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDES

print address 30 HICKSON RD, MILLERS POINT 2000

RW Lot Owner

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT (LLITST ST) Pty Limited
by

sign here ▸ _____
Director

print name SIMON LECKIE

sign here ▸ _____
Director / Secretary

print name JAMES SAYER

Lend Lease IMT (LLITST ST) Pty Ltd Common Seal A.C.N. 127 727 262

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease (Barangaroo South Co-owner) Pty Limited
by its attorney under power of attorney registered book no. BK4686 No. 713

sign here ▸ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDES

print address 30 HICKSON RD, MILLERS POINT 2000

EN Lot Owner

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT (LLITST ST) Pty Limited
by

sign here ▸ _____
Director

print name SIMON LECKIE

sign here ▸ _____
Director/Secretary

print name JAMES SAYER

Lend Lease IMT (LLITST ST) Pty Ltd Common Seal A.C.N. 127 727 262

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease (Barangaroo South Co-owner) Pty Limited
by its attorney under power of attorney registered book no. BK4686 No. 713

sign here ▸ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDEY

print address 30 HICKSON RD, MILLERS POINT 2000

Bike Lot Owner

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT (LLITST ST) Pty Limited
by

sign here ▸ _____
Director

print name SIMON LECKIE

sign here ▸ _____
Director / Secretary

print name JAMES SAYER

Lend Lease IMT (LLITST ST) Pty Ltd Common Seal A.C.N. 127 727 262

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease (Barangaroo South Co-owner) Pty Limited
by its attorney under power of attorney registered book no. BK4686 No. 713

sign here ▸ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDEY

print address 30 HICKSON RD, MILLERS POINT 2000

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease (Millers Point) Pty Limited

by its attorney under power of attorney registered book no. BK4686 No. 712

sign here ▶ _____
Attorney Sonya Louise Harris

print name _____

in the presence of)

sign here ▶ _____
Witness

print name KATE E. SIGET

print address 30 HICKSON RD, MILLERS POINT 2000

Barangaroo Delivery Authority

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

SIGNED by)
)
as delegate of **BARANGAROO DELIVERY AUTHORITY**)
presence of:

DO NOT SIGN

.....
Signature of witness

.....
Name of witness (block let

.....
By executing this instrument the delegate states that the delegate has received no notice of revocation of the delegation.

Stakeholder

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease IMT 3 Pty Limited
by

sign here ▸ _____
Director

print name KYLIE RAMPA

sign here ▸ _____
Director/Secretary

print name JAMES SAYER

Lend Lease IMT 3 Pty Limited A.C.N. 121 721 244 Common Seal

Thermal Energies Supplier

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease Chilled Water (Barangaroo South) Pty Limited
by its attorney under power of attorney registered book no. BK4685 No. 975

sign here ▸ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDES

print address 30 HICKSON RD, MILLERS POINT 2000

Water Services Supplier

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease Recycled Water (Barangaroo South) Pty Limited
by its attorney under power of attorney registered book no. BK4685 No. 973

sign here ▸ _____
Attorney
Sonya Louise Harris

print name _____

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDEY

print address 30 MICKSON RD, MILLERS POINT 2000

Embedded Network Operator

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

Signed sealed and delivered for
Lend Lease Embedded Network (Barangaroo South) Pty Limited
by its attorney under power of attorney registered book no. BK4685 No. 974

sign here ▸ _____
Attorney
Sonya Louise Harris

print name _____

in the presence of

sign here ▸ _____
Witness

print name KIM E. SIDEY

print address 30 MICKSON RD, MILLERS POINT 2000

Barangaroo South – Building Management Statement

Annexure A – Waiver Application

HERBERT
SMITH
FREEHILLS

The Registrar-General
Land and Property Information
1 Prince Alfred Road
Queens Square
Sydney NSW 2000

4 December 2012
Matter 81968828

Attention: Gavin Bartier

Dear Sir

Barangaroo Stage 1 - Request for waiver under section 57A Strata Schemes (Leasehold Development) Act 1986 (SSLD Act)

We refer to the letter to you from the writer's partner, Mr Greg Hing, dated 6 June 2012 (**Letter**) in relation to the request by the Developer (as defined in the Letter) for the waiver under section 57A of the SSLD Act (**Developer's Request**).

Mr Hing is currently on sabbatical leave.

Would you please proceed to process the Developer's Request and, assuming that you consider it appropriate, provide the Letter, along with your accompanying documents in relation to the Developer's Request, to the Minster for consideration at your earliest convenience.

As you know, the Developer had anticipated that letters in support of the Developer's Request from each of the Barangaroo Delivery Authority (**BDA**) and their lawyers, Clayton Utz (together, **Letters of Support**), would be available to be submitted to the Minister for consideration with the Letter and your accompanying documents. At this stage, whilst we understand that the BDA has indicated its in-principle support of the Developer's Request, the BDA and Clayton Utz have not provided their final Letters of Support.

Under arrangements with investors in Barangaroo Stage 1, the Developer needs to have any waiver approval from the Registrar-General in respect of the Developer's Request by 7 January 2013. In the interests of satisfying these arrangements, the Developer would like to commence the progressing of the Developer's Request without the final Letters of Support.

The final Letters of Support will be provided when received from the BDA and Clayton Utz.

If you have any questions in relation to this letter, please contact the writer.

Doc 19668411.3

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GPO Box 4337 Sydney NSW 2001 Australia
T +61 2 9225 5000 F +61 2 9322 4000
herbertsmithfreehills.com DX 361 Sydney

HERBERT
SMITH
FREEHILLS

Yours sincerely

Murray Dearberg
Partner
Herbert Smith Freehills
+61 2 9225 5255
+61 414 225 255
murray.dearberg@hsf.com

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Freehills

The Registrar-General
Land and Property Information
1 Prince Alfred Road
Queens Square
Sydney NSW 2000

6 June 2012
Matter 81694650

Attention: Gavin Carter

Dear Sir

Barangaroo Stage 1 - Request for waiver under Section 57A Strata Schemes (Leasehold Development) Act 1973

We act for Lend Lease Millers Point Pty Limited (**Developer**), a wholly owned subsidiary of Lend Lease Corporation Limited, appointed to undertake the development of Barangaroo.

Overview of development

The Developer is currently in the process of undertaking the initial works for Barangaroo Stage 1.

Barangaroo Stage 1 is intended to comprise a number of commercial towers and residential apartment buildings, with certain of those components also intended to contain retail premises. Part of the efficiency of the Developer's design for Stage 1 is the proposal for all of those buildings to share a common basement area or podium. The basement area will contain carparking spaces relevant for each of the components of the development, and will also house plant and other items of central infrastructure that will service each of the commercial, retail and residential components of the development.

The Developer proposes to effect a number of stratum subdivisions, in order to create separate stratum lots that can each be the subject of a separate 99 year lease from the Barangaroo Delivery Authority (**BDA**). For example, it is intended that the stratum lot created for a commercial office building will include that part of the basement containing the car spaces allocated to that building, together with an envelope for the building as it will exist above ground. In this way it is intended that, when the entirety of Barangaroo Stage 1 has been completed, the totality of the space in the common basement will comprise a number of contiguous stratum lots, each of which will be the subject of a separate 99 year lease from the BDA.

Building Management Statement (BMS)

The initial stratum subdivision for Barangaroo Stage 1 will be created from the land currently contained in certificates of title folio identifiers 3/876514, 5/876514 and 6/876514.

Because of the physical and conceptual inter-relationship between the various stratum lots, and having regard to the intended shared aspect of components of the common basement, the Developer intends to lodge for registration a BMS with or shortly after registration of that first plan of stratum subdivision, being a BMS that complies with Part 23, Division 3B of the *Conveyancing Act 1919 (NSW)* as well as schedule 8A of that Act.

Doc 15094948.10

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.freehills.com DX 361 Sydney
Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City

The BMS will contain provisions that permit the Developer's ongoing development of Barangaroo Stage 1, and will contemplate the creation of new stratum lots including strata schemes. The BMS will be drafted to be sufficiently flexible to allow for an additional number of members of the relevant building management committee over the staged development of Barangaroo Stage 1.

The building management committee created in connection with the registration of the initial BMS will perform an important role in the ongoing management of the shared facilities that will be relevant to Barangaroo Stage 1, including the different types of central infrastructure mentioned earlier in this letter.

Impact of residential development

The Developer intends that a separate strata scheme is likely to be registered in respect of each residential tower. As you know, Section 57A(1) of the *Strata Schemes (Leasehold Development) Act 1986 (NSW)* (**SSLD Act**) provides that the Registrar- General must not register a strata plan creating a 'stratum parcel' unless a strata management statement for the relevant building or site concerned is also registered, unless waived under Section 57A(2).

As stated above, Barangaroo Stage 1 will be affected and governed by a registered BMS that complies with all requirements of the *Conveyancing Act*. In order to allow for the staged development of Barangaroo Stage 1 to proceed with maximum flexibility and minimal delay, it is the Developer's strong preference that Barangaroo Stage 1 be exempted from the requirement to register a strata management statement upon registration of any residential strata scheme.

The BMS proposed by the Developer would, upon registration of a strata scheme in respect of any one of the stratum lots affected by the BMS, expressly provide for the owners corporation of that particular strata scheme to become a member under the BMS. This will naturally preserve the ability for each owners corporation to participate in the building management committee created by registration of the BMS, and still permit both the BDA and the Developer to oversee and undertake the development of Barangaroo Stage 1 in accordance with a flexible development program.

Summary of request

The Developer requests that

(a) subject to paragraph (b), the Registrar-General on the direction of the Minister waives the requirement for registration of any strata management statement under section 57A(2)(b) of the SSLD Act; and

(b) further, the waiver of the requirement for registration of any strata management statement applies to the entirety of Barangaroo Stage 1, as the development program for Barangaroo Stage 1 is intended to remain flexible to permit the staging of the development in the most efficient manner possible.

In other words, the Developer's request is that the Registrar-General's waiver applies to each and every plan of strata subdivision that may be lodged for registration by or on behalf of the Developer in respect of any stratum lot relevant to Barangaroo Stage 1, so that the Developer is not required to lodge an individual request for such a waiver in respect of each plan of strata subdivision lodged for registration.

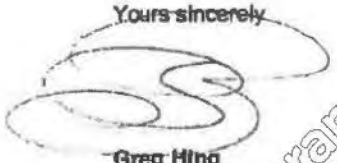
If the waiver is granted by the Registrar-General, it is likely that we would provide a copy of the waiver at the same time that the Developer lodges any plan of strata subdivision in connection with Barangaroo Stage 1.

Concluding comments

Please contact the writer if you have any queries in relation to this letter or the Developer's request for the waiver under section 57A of the SSLD Act.

We look forward to hearing from you.

Yours sincerely



Greg Hing
Partner
Freehills

+61 2 9225 5342
+61 4[illegible]1 532
greg.hing@freehills.com

Barangaroo South – Building Management Statement

Annexure B – Waiver Letters

NSW GOVERNMENT

The Hon **Greg Pearce** MLC
Minister for Finance and Services
Minister for the Illawarra

Ref: MC12/1031

Mr Murray Dearberg
Herbert Smith Freehills
GPO Box 4227
SYDNEY NSW 2001

Dear Mr Dearberg

I refer to your recent representations to the Registrar General on behalf of Lend Lease Millers Point Pty Limited, requesting that, in respect of the whole of the Barangaroo Stage 1 project, I exercise my discretion under section 57A(2)(b) of the *Strata Schemes (Leasehold Development) Act 1986* to waive the requirement for a strata management statement.

I am advised by the Registrar General that there is to be lodged with the first stratum subdivision or shortly thereafter a Building Management Statement pursuant to section 196D of the *Conveyancing Act 1919* (BMS). The BMS will provide for the ongoing development of the site and will include provisions to provide for the management of the site and the shared facilities and infrastructure; and that if the developer were required to lodge a strata management statement pursuant to section 57A this would be providing for the same matters which are already contained in the BMS.

I am pleased to advise that I will exercise my Ministerial discretion under section 57A (2)(b) of the *Strata Schemes (Leasehold Development) Act 1986* in regards to requiring a strata management statement to be lodged. Furthermore, this discretion will apply to the whole of the Barangaroo Stage 1 project.

As a condition of exercising my discretion, I require that you provide to the Registrar General, the original consents of Lend Lease Millers Point Pty Limited, Barangaroo Development Authority and their lawyers to the waiver under section 57A.

Yours sincerely

Greg Pearce MLC
Minister for Finance and Services
Minister for the Illawarra

18 December 2012

Level 36 Governor Macquarie Tower | 1 Farrer Place Sydney NSW 2000 | P 61 2 9228 5287 | F 61 2 9228 5899

NSW GOVERNMENT | Land & Property Information

A division of the Department of **Finance & Services**

Legal Services
Level 3, 1 Prince Albert Road
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ABN: 84 104 377 806
www.lpi.nsw.gov.au

Mr Greg Hing
Herbert Smith Freehills
GPO BOX 4227
SYDNEY NSW 2001

Your Ref: 82140624
Our Ref: FSMIN13-134; GB; Leg 2

27 February 2013

Dear Mr Hing

Barangaroo Stage 1

Waiver under Section57A Strata Schemes (Leasehold Development) Act 1986

Folio of the Register 54/SP80412

I confirm that the Registrar General has received the original consent letters of: Lend lease (Millers Point) Pty Limited, Barangaroo Delivery Authority, Clayton Utz as lawyers for Barangaroo Delivery Authority and Herbert Smith Freehills as lawyers for Lend lease (Millers Point) Pty Limited.

The letters satisfy the requirement of the Minister's consent as set out in his letter of 13 December 2012.

On lodgment of the relevant plan(s) with LPI, a copy of this letter must accompany the plan(s) on lodgment

Should you require any further assistance, or require this advice in a letter, please contact me, Gavin Bartier on 9228 6726.

Yours faithfully

Registrar General of NSW
Per:

Gavin Bartier

Annexure 36 - Barangaroo Management Plan

Barangaroo South Management Plan

Contents

Part 1 — Overview 2

1. About this Plan 2

1.1 Introduction 2
1.2 Green Utility Network 2
1.3 Aim of this Plan 3
1.4 Objectives 4
1.5 Who must comply with this Plan? 4
1.6 Good faith 4
1.7 Deed under seal 4

Part 2 — BMP Committee 6

2. The BMP Committee 6

2.1 Objectives of the BMP Committee 6
2.2 Members 6
2.3 Functions of the BMP Committee 6
2.4 Voting rights 6
2.5 Decisions of the BMP Committee 7
2.6 BMP Committee reports 7
2.7 Appointment of members 8
2.8 Instrument of appointment, removal or replacement 8
2.9 Tenure of appointment 8
2.10 Vacation of membership 8
2.11 Meetings of BMP Committee 9

Part 3 - Public Domain 11

3. The Public Domain 11

3.1 General obligation 11
3.2 Standards 11
3.3 Activities 12

4. Climate Positive rights and obligations 12

4.1 Climate Positive Initiatives 12
4.2 Carbon Neutral Instruments 12
4.3 Further information 13
4.4 Operation, Maintenance and Lifecycle Capital Replacement Report 14

Part 4 — General 16

5. Amending this Plan 16

6. Dispute resolution 16

7. Notices 16

7.1 Form of Notice 16
7.2 How Notice must be given and when Notice is received 16

Schedule 1 - Dictionary 18

Schedule 2 - Notice details 24

Schedule 3 - Assignee's Deed of Accession 25

Schedule 4 - New Tenant's Deed of Accession 29

Schedule 5 - Mortgagee's Deed of Accession 33

Schedule 6 - Draft Public Domain Maintenance Plan 1

BARANGAROO SOUTH PUBLIC DOMAIN MAINTENANCE PLAN 1

Schedule 7 - Public Domain Location Plan 10

Signing Page 11

Part 1 — Overview

1. About this Plan

1.1 Introduction

This Plan is a governance arrangement adopted by all of the key stakeholders within Barangaroo South for the ongoing long term management and operation of Barangaroo South and its interface with surrounding areas. The key stakeholders will include:

(a) the Authority;

(b) the Developer, for as long as it has outstanding obligations under the PDA;

(c) the Tenants, including Green Utility Lot Tenants; and

(d) each mortgagee in possession of any part of Barangaroo South.

(the **Stakeholders**).

It has been developed pursuant to clause 26.14 of the PDA in accordance with the principles outlined in Annexure P of the PDA and following consultation between the Authority and the Developer.

Words and expressions which are used in this Plan have the meanings given to them in the Dictionary in Schedule 1 to this Plan or where they are not defined in that Dictionary, the meaning given to them in the BMS.

1.2 Green Utility Network

The Developer proposes to establish a Green Utilities network for Barangaroo South as follows:

(a) the Authority will grant 99 year leases to the Tenants of the three major commercial buildings (the **Co-Owners**) in respect of the lots containing the Green Utilities and equipment, being the Central Chilled Water Plant Lot, the Recycled Water Lot and the Embedded Network Lot (together the **Green Utility Lots**);

(b) as the second, third and final Co-owner will not be known when the Green Utility Lots are first created, it is proposed that:

(i) Lend Lease IMT (LLITST ST) Pty Limited as trustee for the LLITST Stage 1 Sub Trust and Lend Lease (Barangaroo South Co-owner) Pty Ltd will be the initial tenants in common of each of the Green Utility Lots; and

(ii) as Commercial Buildings are leased to Tenants (being the tenant under a 99 year ground lease), Lend Lease (Barangaroo South Co-owner) Pty Ltd will transfer its proportionate interest in the leases of each of the Green Utility Lots to that new Tenant;

(c) once the final commercial building is leased to a Tenant, the 99 year leases of the Green Utility Lots will be held by the Co-owners in proportionate shares and Lend Lease (Barangaroo South Co-owner) Pty Ltd will not have any ongoing interest in each of the leases of the Green Utility Lots;

(d) upon the initial grant of a Lease of the Commercial Building known as 'T2' to a Commercial Tenant, the initial Co-owners, will grant sub leases to each of the Lend Lease operating companies for each green utility being:

(i) Lend Lease Chilled Water (Barangaroo South) Pty Ltd;

(ii) Lend Lease Recycled Water (Barangaroo South) Pty Ltd; and

(iii) Lend Lease Embedded Network (Barangaroo South) Pty Ltd,

(together, the **Suppliers**);

(e) the Suppliers may operate the Green Utilities on a profit generating basis;

(f) the Suppliers must bear all responsibility for the maintenance, repair, upkeep, upgrading and capital replacement of the Green Utilities relevant to each Supplier;

(g) the Suppliers will enter into supply agreements with the Tenants (including the relevant Owners Corporations in the case of strata buildings) for the supply of:

(i) thermal energies (chilled water) - provided by Lend Lease Chilled Water (Barangaroo South) Pty Ltd; and

(ii) recycled water - provided by Lend Lease Recycled Water (Barangaroo South) Pty Ltd;

(h) the supply agreements will have an initial term of 50 years;

(i) the Tenants will enter into 'Customer Utility Connection Contracts' for connection to the embedded network provided by the operator of the Embedded Network Plant;

(j) individual strata lot owners and (where separately metered) individual Commercial Tenants of any of the buildings will be able to connect to any electricity retail supplier of their choice; and

(k) the Green Utilities may cease to be operated by the Suppliers and may become 'Shared Facilities' under the BMS in which event, this Plan will be amended by the Stakeholders as necessary to reflect the arrangements which replace the operation of the Green Utilities by the Suppliers.

1.3 Aim of this Plan

The overall aim of this Plan is to:

(a) unite the Stakeholders;

(b) encourage behaviour which is for the advantage of the Barangaroo Precinct as a whole;

(c) provide the means for the Stakeholders to agree on how they will collectively deal with developing and implementing Climate Positive initiatives which are agreed to by Special Resolution of the BMP Committee;

(d) provide a framework for the BMP Committee to consider the support of low to non-income generating social programs and services for the Barangaroo Precinct;

(e) provide a clear and transparent and consistent approach to the management framework and operating principles for the Barangaroo Precinct; and

(f) ensure that all Stakeholders have the appropriate level of involvement in decision making to be dealt with in a long term sustainable operating framework.

1.4 Objectives

The objectives of this Plan are as follows:

(a) to provide for the establishment of the BMP Committee;

(b) to ensure the appropriate management, maintenance, upkeep and repair of the Public Domain, including providing a forum for the Stakeholders to provide input to the Authority with respect to the management of the Public Domain;

(c) otherwise to facilitate the use, upkeep and enjoyment of the Barangaroo Precinct by the Authority, the Tenants, the Occupiers and other persons having an interest in parts of the Barangaroo Precinct;

(d) to discuss and resolve Barangaroo Precinct wide issues and potential opportunities which may benefit all Stakeholders, such as combined tendering of services for multiple areas;

(e) to facilitate discussion and development of Climate Positive Initiatives;

(f) implementing the provisions of each of the Leases, to provide for reporting associated with the management of the acquisition of RECs; and

(g) to include other objectives which are adopted by a Unanimous Resolution of the BMP Committee.

1.5 Who must comply with this Plan?

Each of the Stakeholders must comply with this Plan and each Stakeholder will use all reasonable endeavours to oblige the Occupants of Premises within the building leased to that Stakeholder not to do anything which is inconsistent with the aim and objectives set out in sections 1.3 and 1.4.

1.6 Good faith

The Stakeholders agree and acknowledge that they must, at all times, act in the utmost good faith and with due consideration and care in regard to the different uses of the Barangaroo Precinct.

1.7 Deed under seal

(a) From its relevant Adoption Date, this Plan has the effect as a deed under seal, binding on each Stakeholder.

(b) The **Adoption Date** for the Stakeholders will be as follows:

(i) *for each of the Authority and the Developer*, on the date it signs a deed poll agreeing to comply with this Plan;

(ii) *for each Tenant whose Lease has been granted as at the date of this Plan*, on the date it signs a deed poll agreeing to comply with this Plan;

(iii) *for each other Tenant whose Lease is granted after the date of this Plan*, subject to it signing the New Tenant's Deed of Accession, the date of the grant of its Lease; and

(iv) *for each other Tenant who is the assignee of a Lease*, the date that it signs the Assignee's Deed of Accession; and

(v) *for each mortgagee of a Lease*, subject to it signing the Mortgagee's Deed of Accession, the date that it takes possession of the Lease under its mortgage.

(c) To the extent within the Developer's control, the Developer will procure that each new Tenant signs a New Tenant's Deed of Accession as a condition of its being granted a Lease by the Authority.

(d) Each Tenant agrees to procure that:

(i) each transferee from it will sign an Assignee's Deed of Accession as a condition of the assignment; and

(ii) each mortgagee of its Lease will execute a Mortgagee's Deed of Accession as a condition of the grant of the mortgage.

(e) The Authority agrees that if it ceases to be the owner of Barangaroo South, it will procure that the new owner will accede to the Authority's rights and obligations under this Plan, such accession to be for the benefit of all then and future Stakeholders.

Part 2 — BMP Committee

This part of the Plan deals with the management and operation of the Public Domain and the management of the Climate Positive Initiatives within Barangaroo South.

The Committee is deemed to have been established on execution of the Plan.

2. The BMP Committee

2.1 Objectives of the BMP Committee

The BMP Committee is established to be the forum for the Stakeholders to meet and confer on the following matters:

(a) input as to how the Authority manages and operates the Public Domain; and

(b) discussion and development of additional Barangaroo-wide Climate Positive Initiatives beyond those already agreed and set out in the relevant Leases and in the PMS, including the manner in which any such Climate Positive Initiatives are to be funded; and

(c) administration of this Plan for the benefit of all Stakeholders.

2.2 Membership

(a) Each of the Authority, the Developer, the Co-Owners and the Tenants, will be entitled to appoint a representative to act as a member of the BMP Committee.

(b) Where a mortgagee goes into possession of the Premises of a member of the BMP Committee it will be entitled to appoint a representative to act as a member of the BMP Committee, but in that event the Tenant (including the Co-Owners) who granted the mortgage to that mortgagee will not be entitled to appoint a member or vote at meetings of the BMP Committee.

2.3 Functions of the BMP Committee

The BMP Committee will have such functions as it considers reasonably necessary for it to achieve the objectives referred to in section 2.1.

2.4 Voting rights

At any given time, there will be 1,000 votes which are able to be cast in relation to resolutions to be determined by the BMP Committee. The relevant representatives appointed to the BMP Committee, will have the following voting rights:

(a) *the representative appointed by the Authority*: may cast 51% of all votes able to be cast at a meeting of the BMP Committee;

(b) *the representative appointed by each Tenant*: may cast the number of votes at a meeting of the BMP Committee which is equal to the GFA of that Tenant's Premises as a percentage of the Authority's reasonable estimate of the aggregate GFA of the Premises of Commercial Tenants, the Green Utility Lots, Hotel Tenants, Residential Tenants and Retail Tenants within Barangaroo South multiplied by the 49% of votes able to be cast which do not rest with the Authority; and

(c) *the representative appointed by the Developer*:

(i) may cast the number of votes at a meeting of the BMP Committee determined as follows:

A. by reference to the unleased GFA from time to time of the estimated total GFA of Barangaroo South multiplied by the 49% of votes able to be cast which do not rest with the Authority; and

B. once Leases are granted to Tenants in relation to all of the GFA in Barangaroo South, the Developer's representative will cease to be able to cast any votes at meeting of the BMP Committee; and

(ii) until the time when the Developer's right to vote ceases in accordance with section 2.4(c)(i)B, in addition to the above votes, may cast a right of veto (**Developer Veto Right**), being the right to veto to any decision, which if implemented, would result in any of the following:

A. the Developer not being able to comply with any contractual obligation to the Authority; or

B. the Developer not being able to comply with any contractual obligation to Tenants, any individual strata lot owners and any sub-tenants under agreements for lease, in respect of which the Developer has obtained the Authority's approval for the purposes of this section 2.4(c), and where the Developer's request for approval nominates that approval will potentially activate the Developer Veto Rights under this section.

(d) Where the calculation of the number of votes which a Stakeholder can cast at meetings of the BMP Committee results in a number which is not an integer, the number of such votes will be rounded down to the nearest integer.

2.5 Decisions of the BMP Committee

(a) *Unanimous resolutions*: A decision which is specified by this Plan as requiring a Unanimous Resolution, may only be decided by a unanimous resolution of the BMP Committee;

(b) *Special resolutions*: A decision which is specified by this Plan as requiring a Special Resolution may only be decided by a Special Resolution of the BMP Committee; and

(c) *Ordinary resolution*: Any decision of the BMP Committee which does not require a Special Resolution or a Unanimous Resolution of the BMP Committee, can be decided by a simple majority decision of the BMP Committee.

2.6 BMP Committee reports

(a) For so long as the Developer remains entitled to cast a vote at BMP Committee meetings, the Developer must prepare:

(i) a notice and an agenda, not less than 5 business days prior to each meeting of the BMP Committee; and

(ii) a report of the matters dealt with at each BMP Committee within 5 business days after each such meeting

(b) When the Developer is no longer entitled to cast a vote in accordance with section 2.4(c)(i)B, each Stakeholder other than the Developer and the Authority must take it in turns to perform the Developer's obligations under clause 2.6(a) on a rotation basis for a period of 12 months for each rotation or otherwise as resolved by the BMP Committee.

2.7 Appointment of members

Each Stakeholder:

(a) is entitled to appoint:

(i) one member of the BMP Committee; and

(ii) an alternate member for each such member to exercise some or all of the appointed member's powers as set out in writing and given to the other members of the BMP Committee.

(b) is entitled to remove or replace any member of the BMP Committee, or alternate member, appointed by that Stakeholder; and

(c) must, within 20 Business Days of the relevant event, appoint a person to replace any member of the BMP Committee, or alternate member, appointed by that member who dies, resigns, is removed from or otherwise vacates their membership of the BMP Committee.

2.8 Instrument of appointment, removal or replacement

An instrument of appointment, removal or replacement of a member of the BMP Committee, including an alternate member:

(a) must be in writing signed by an Authorised Officer of the party which is entitled to make the appointment or effect the removal or replacement; and

(b) is effective when the instrument of appointment, removal or replacement is tabled at a meeting of the BMP Committee.

2.9 Tenure of appointment

Unless otherwise specified in the instrument of appointment, a member of the BMP Committee holds that position until he or she is no longer entitled to be a member of the BMP Committee, dies, resigns or is removed from or otherwise vacates his or her membership of the BMP Committee under this plan.

2.10 Vacation of membership

A person vacates his or her membership of the BMP Committee if the member:

(a) resigns from the BMP Committee by notice in writing to a Stakeholder or on such other basis as the BMP Committee accepts; or

(b) is absent, without the consent of at least 2 other members of the BMP Committee from more than 3 meetings of the BMP Committee held during a period of 12 consecutive months.

2.11 Meetings of BMP Committee

A meeting of the BMP Committee will be subject to the following:

(a) the BMP Committee will meet not less than quarterly and at such other times as may be required;

(b) unless the requirement for this notice is waived by all members of the BMP Committee, a meeting will be properly convened if the Authority has given at least 5 Business Days written notice to the members of the BMP Committee, provided such notice contains reasonable details of the business to be considered and voted upon at that meeting;

(c) the Developer may give a notice to the Authority:

(i) requesting the Authority to issue a notice to convene a meeting (pursuant to clause 2.11(b)) within 10 Business Days of receipt of the notice from the Developer; and

(ii) providing reasonable details of the business to be considered and voted upon at that requested meeting;

(d) if the Developer gives a notice in accordance with clause 2.11(c):

(i) the Authority must, within 10 Business Days of receipt of that notice, give a notice to convene a meeting as soon as is practicable pursuant to clause 2.11(b) to consider the points of business proposed by the Developer; and

(ii) if the Authority fails to convene the meeting in accordance with clause 2.11(d)(i), the Developer may serve a notice on the Authority requiring the Authority to comply with clause 2.11(c)(i) within 10 Business Days of service of the notice; and

(iii) if the Authority fails to convene the meeting within 10 Business Days after the Developer has served notice on the Authority pursuant to clause 2.11(d)(ii), the Developer may convene a meeting pursuant to this clause 2.11(d)(iii) by serving notice on each member of the BMP Committee:

A. specifying a date and time for the meeting which is not less than 10 Business Days after the date of service of notice; and

B. for the purpose only of considering the points of business proposed by the Developer as set out in the notice given to the Authority under clause 2.11(c);

(e) the quorum for any meeting of the BMP Committee is 2 voting members of which one must have been appointed by the Developer or where the Developer ceases to have voting rights another Stakeholder not being the Authority and the other must have been appointed by the Authority;

(f) the member of the BMP Committee appointed by the Authority will act as chairperson for the meeting with that member retaining their normal voting rights;

(g) if no quorum is present within half of one hour after:

(i) the time appointed for that meeting, then the meeting will stand adjourned until the next Business Day to the same time and place;

(ii) a meeting adjourned once under this clause is resumed pursuant to clause 2.11(g)(i), then the meeting will stand adjourned a second time until the next Business Day to the same time and place; and

(iii) a second meeting adjourned twice under this clause is resumed pursuant to clause 2.11(d)(ii), a quorum for the purposes of that meeting only is any 2 voting members;

(h) resolutions will be taken to be properly passed by a meeting of the BMP Committee in each of the following circumstances:

(i) where each member of the BMP Committee attending the meeting agrees that the meeting has been properly convened even if sufficient notice of the meeting has not been given as required by this section 2.11; or

(ii) a form of resolution has been signed by each member of the BMP Committee, and for this purpose, a form of resolution will be deemed to have been signed by members of the BMP Committee if an email is received by any member of the BMP Committee or any person nominated by any person of the BMP Committee for such purpose, purporting to have been sent by another member of the BMP Committee confirming that other member has approved that resolution.

(i) the Authority will arrange for minutes to be kept of all minutes and proceedings of the BMP Committee and will circulate copies of those minutes to all members not less than 5 Business Days after the relevant meeting, such minutes to be approved at the next BMP Committee meeting. All such secretariat functions will be provided by the Authority at its expense.

Part 3 - Public Domain

This part of the Plan deals with the management and operation of the Public Domain and the management of the Climate Positive Initiatives within Barangaroo South.

3. The Public Domain

3.1 General obligation

The Authority will be responsible for:

(a) the management, operation and maintenance of the Public Domain so that it remains in good order and repair, but the Authority may contract with other parties to manage, operate and maintain various parts of the Public Domain on its behalf;

(b) promoting the use of the Public Domain for public access and enjoyment of Barangaroo; and

(c) the appointment and removal at the Barangaroo Precinct Manager, after consultation with the BMP Committee.

3.2 Standards

(a) Subject to Section 3.1(a), the Public Domain must be operated and maintained in good order and repair by the Authority to a standard which is commensurate with the standard required under the Public Domain Maintenance Plan.

(b) From time to time, the Authority will, in consultation with the BMP Committee, update the Public Domain Maintenance Plan, having regard to then prevailing conditions.

(c) Notwithstanding any other provision of this section 3.2, the Authority is not required to maintain the Public Domain (and other public domain areas of Barangaroo) to a standard which would require the Authority to incur costs on such maintenance which, when added to the amounts spent by the Authority from time to time on:

(i) the Climate Positive Initiatives;

(ii) the administration costs of the Authority; and

(iii) such other items determined by the Authority, acting reasonably, after consultation with the BMP Committee.

would exceed the amount of the Estate Levy collected by the Authority at that time (**Additional Costs**).

(d) if the Authority is of the view that it cannot maintain the Public Domain other than by incurring Additional Costs, then the following provisions will apply:

(i) the Authority must advise the Stakeholders that the Public Domain Maintenance Plan must be updated and invite them to make submissions to the Authority as to what should be taken into account in determining the updated Public Domain Maintenance Plan; and

(ii) the Authority, in consultation with the BMP Committee must, in good faith, consider each submission that is made by Stakeholders and must have reasonable regard to them in the updating of the Public Domain Maintenance Plan; and

(iii) until such time as a new Public Domain Maintenance Plan is prepared and approved by the Authority, after consultation with the BMP Committee;

(e) the Authority must maintain the Public Domain to such of the standards as are specified in the then current Public Domain Maintenance Plan as can be funded without incurring Additional Costs. Any Tenant may request that the Authority increases the standard to which any part of the Public Domain is operated and managed. The Authority may not reasonably withhold its consent to this request provided that:

(i) all of the Authority's additional costs and expenses are paid for by the relevant Tenant; and

(ii) the higher standard required by the Tenant is still in keeping with the amenity of the Precinct; and

(ii) neither the Authority nor any other Tenant has any reasonable objection to this proposal.

3.3 Activities

The Public Domain may be used by the Authority to stage special events provided those events are either consistent with the aims and objectives set out in section 1.3 and 1.4 or as otherwise approved by an Ordinary Resolution of the BMP Committee.

4. Climate Positive rights and obligations

4.1 Climate Positive Initiatives

(a) Any Stakeholder may propose Climate Positive Initiatives for the BMP Committee to consider and develop. These would be in addition to the climate positive requirements imposed on:

(i) the Tenants under their Leases; and.

(ii) the Developer's climate positive obligations under the PDA.

(b) The Stakeholders must co-operate with each other to procure that the BMP Committee considers, in good faith, any Climate Positive Initiatives which are proposed by Stakeholders and the manner in which they would be implemented if they are approved by a Special Resolution of the BMP Committee.

(c) All Stakeholders will co-operate with each other to procure the implementation of any Climate Positive initiatives which are duly approved by the BMP Committee.

(d) Each Tenant must use best endeavours to engage a waste operator who is willing to process and dispose of waste from the Tenant's Premises in accordance with such principles which most closely satisfy the Climate Positive Waste Principles.

(e) For the avoidance of doubt, the Authority and the Developer acknowledge and agree that the Developer's climate positive obligations under the PDA are separate from any obligations under this Plan and to the extent of any inconsistencies between the PDA and the requirements of this Plan in respect of the Developer's climate positive obligations, the provisions of the PDA prevail.

4.2 Carbon Neutral Instruments

(a) Each of the Leases requires the Tenant to either:

(i) buy and surrender to the Authority, or

(ii) fund the Authority to buy,

RECs and/or eligible Carbon Offsets sufficient to offset the carbon emissions from energy, transport and waste consumed within a Tenant's Premises, to the extent that these emissions exceed the benchmark rates for carbon emissions from energy and transport included in the relevant Lease. The acquisition of RECs and/or Carbon Offsets for these purposes, can be undertaken by a Tenant on its own account, by the Authority (or the delegate of the Authority, which must not be the BMP Committee).

(b) To the extent a Tenant, under its Lease, purchases and surrenders to the Authority RECs and/or Carbon Offsets, the Authority (or the delegate of the Authority, which must not be the BMP Committee) will, in satisfaction of the relevant part of a Tenant's obligation under its Lease, retire such RECs and/or Carbon Offsets as directed by that Tenant from time to time, to the extent the Tenant provides to the Authority sufficient RECs and/or Carbon Offsets for that purpose.

(c) To the extent a Tenant, under its Lease, funds the Authority to purchase and retire RECs and/or Carbon Offsets, the Authority (or the delegate of the Authority, which must not be the BMP Committee) will, in satisfaction of the relevant part of a Tenant's obligation under its Lease, acquire such RECs and/or Carbon Offsets as directed by that Tenant from time to time, to the extent the Tenant provides to the Authority sufficient funds for that purpose.

(d) The Authority (or the delegate of the Authority, which must not be the BMP Committee) will voluntarily retire any RECs and/or Carbon Offsets which it acquires in accordance with paragraph (b) or (c) and will provide details of the individual serial numbers associated with the RECs retired to the relevant Tenant.

(e) Without limiting any other provision of this Plan, the Authority agrees to apply such amounts as the Authority reasonably determines, in consultation with the BMP Committee, but not exceeding the Contribution Amount to help achieve the Climate Positive Initiatives by:

(i) firstly, acquiring and voluntarily retiring such RECs and Carbon Offsets (where the price and quality of the RECs and Carbon Offsets is determined by the Authority) contributing towards the achievement of a Carbon Neutral outcome for the Barangaroo Precinct (after taking into account those RECs and /or Carbon Offsets that have been purchased and voluntarily retired as required by paragraphs (a), (b), (c) and (d));

(ii) secondly, reimbursing the Developer for funding contributed in the previous year toward the purchase of RECs to meet the Developer's obligations under the PDA for that previous year, where the Authority has an express obligation to reimburse the Developer for such funding under the PDA;

(iii) thirdly, supporting on-site initiatives to reduce carbon emissions in contribution to a Carbon Neutral outcome on-site; and

(iv) fourthly such other matters as the Authority, after consultation with the BMP Committee, determines.

4.3 Further information

(a) A Stakeholder will provide the BMP Committee with such additional information concerning Climate Positive Initiatives as the BMP Committee reasonably determines is appropriate, to enable to the BMP Committee to produce such reports

as it reasonably determines, from time to time, to address issues in relation to Climate Positive Initiatives for Barangaroo South.

(b) Nothing in section 4.3(a) requires the Stakeholder:

(i) to provide information that has already been provided to the Authority or the 'Sustainable Building Management Committee' under its Lease; or

(ii) to provide any information that is subject to confidentiality restrictions or which is commercially sensitive; or

(iii) to incur any substantial additional costs in complying the BMP Committee determination.

4.4 Operation, Maintenance and Lifecycle Capital Replacement Report

(a) The Stakeholders will provide all information, reasonably required by the BMP Committee, to allow the BMP Committee produce at least once every 5 years, the Operation, Maintenance end Lifecycle Capital Replacement Report.

(b) The BMP Committee will determine acting reasonably, the year in which the first Operation, Maintenance and Lifecycle Capital Replacement Report will be produced and the financial contributions to be made by each Stakeholder for the preparation of that report (and the Stakeholders acknowledge that it is anticipated the contribution which each Stakeholder will be required to pay will generally be proportionate with the GFA of that Tenant's Premises as a percentage of the Authority's reasonable estimate of the aggregate GFA of the Premises of Commercial Tenants, the Green Utility Lots, Hotel Tenants, Residential Tenants and Retail Tenants within Barangaroo South and subject to any adjustment determined by the Authority acting reasonably).

(c) At any time, a Stakeholder may propose that an additional Operation, Maintenance and Lifecycle Capital Replacement Report be produced more frequently than every 5 years. if such a proposal is made to the BMP Committee, the BMP Committee will determine, by a Special Resolution whether such proposal is agreed and if so

(i) the manner of production of; and

(ii) the financial contributions to be made by each Stakeholder for the preparation of,

the Operation, Maintenance and Lifecycle Capital Replacement Report. The Operation, Maintenance and Lifecycle Capital Replacement Report is a statement of the Stakeholders' intentions concerning the matters referred to in section 4.4(c), current as at the date it is prepared. To ensure that it remains current from time to time, the Authority, acting reasonably, may procure that it be updated it at any time.

(d) The purpose of the Operation, Maintenance and Lifecycle Capital Replacement Report is to detail the manner in which the operation, maintenance and lifecycle capital replacement of buildings, plant and equipment located within Barangaroo South (excluding any plant relating to the supply of Green Utilities noting that Green Utilities are dealt with in the BMS) contributes and is proposed to contribute, on an on going basis, to the Barangaroo Precinct achieving World's Best Practice. It is acknowledged that the Stakeholders are only required to make a contribution which is commercially practicable having regard to the financial, contractual and physical constraints of them and their assets located within Barangaroo South.

(e) To the extent relevant, the Operation, Maintenance and Lifecycle Capital Replacement Report may address the following matters and the impact, if any, that

each of those matters has had, or will have, on contributing to the Barangaroo Precinct achieving World's Best Practice:

(i) the ongoing operation, maintenance and lifecycle capital replacement of the assets within Barangaroo South;

(ii) the interface between the operation of various properties within the Barangaroo Precinct; and

(iii) such other matters as the BMP Committee agree from time, to time.

(f) The Stakeholders acknowledge their obligations under section 4.4 are subject to commercial exigencies, including any of their contractual commitments.

Part 4 — General

5. Amending this Plan

This Plan may only be amended by a Unanimous Resolution of the BMP Committee, as referred to in clause 2.5.

6. Dispute resolution

Unless the parties to the dispute otherwise agree, all disputes between Stakeholders, will be determined through the forum of the BMP Committee. This does not apply to a dispute:

(a) between the Authority, as landlord and a Tenant under a Lease (which will be determined under the Lease); or

(b) between the Authority and the Developer under the PDA (which will be determined under the PDA); or

(c) concerning any matter which this Plan provides is a matter to be determined by the Authority.

7. Notices

7.1 Form of Notice

A notice or other communication to a party under this Plan (Notice) must be:

(a) in writing and in English and signed by or on behalf of the sending party; and

(b) addressed to that party in accordance with the details nominated in:

(i) in the case of each of the Authority and the Developer, Schedule 2 (or any alternative details nominated to the sending party by Notice); and

(ii) in the case of all other Stakeholders, the details nominated in the relevant Accession Deed.

7.2 How Notice must be given and when Notice is received

(a) A Notice must be given by one of the methods set out in the table below or by such other method which is approved by the BMP Committee from time to time.

(b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given or received outside the period between 9.00am and 5.00pm (addressee's time) on Business Day (business hours period), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By prepaid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	At the time indicated by the sending party's transmission equipment as the time that the fax was

	sent in its entirety. However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission as illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.

Barangaroo Delivery Authority
NSW GOVERNMENT

Schedule 1 - Dictionary

The meanings of the terms used in this Plan are set out below.

Term	Meaning
Accession Deed	the Assignee's Deed of Accession, New Tenant's Deed of Accession or Mortgagee's Deed of Accession as the case may be.
Adoption Date	the date on which this Plan is binding on a Stakeholder, as determined in accordance with section 1.7 of this Plan.
Assignee's Deed of Accession	deed in the form Specified in Schedule 3 (or such other form as is approved by the BMP Committee) under which an assignee of the relevant Tenant's Lease assumes obligations with respect to this Plan.
Authorised Officer	means: (a) in the case of the Authority, the Chief Executive Officer of the Authority or a person performing the functions of that position or any other person appointed by the Authority and notified in writing to the other Stakeholders to act as an Authorised Officer for the purposes of this deed; and (b) in the case of each other Stakeholder, a person appointed by that party and notified in writing to the other Stakeholders to act as an Authorised Officer for the purposes of this deed.
Authority	Barangaroo Delivery Authority ABN 94 567 807 277, the New South Wales government agency constituted under the *Barangaroo Delivery Authority Act, 2009*.
Barangaroo	the meaning given to it under the *Barangaroo Delivery Authority Act 2009*.
Barangaroo Precinct	the parts of Barangaroo South which have achieved practical completion in accordance with the PDA.
Barangaroo Precinct Manager	the manager appointed by the Authority to manage such parts of the Public Domain as the Authority requires the manager to be responsible for.
Barangaroo South	that part of Barangaroo which comprises Folio Identifiers 1/876514, 3/876514, 5/876514 and 61876514 or any certificate of title in replacement of those titles.
BMP Committee	the committee established under section 2.2 of this Plan.
BMS	a building management statement, as contemplated by Division 3B of Part 23 of the Conveyancing Act) registered against the land comprising Barangaroo South.
Business Day	a day (not being a Saturday) on which trading banks are open for business in Sydney.
Carbon Neutrality or **Carbon Neutral**	has the meaning given to it in the National Carbon Offset Standard (or another standard adopted by the Authority acting reasonably).

Term	Meaning
Carbon Offsets	offsets purchased and retired to offset carbon dioxide equivalent greenhouse gas emissions generated from the consumption of energy, use of transport or management of waste that satisfy: 1 the National Carbon Offset Standard published by the Australian Department of Climate Change and Energy Efficiency (or another standard adopted by the Authority acting reasonably), or 2 the Gold Standard certified by the Gold Standard Foundation (registered as a non profit foundation under Swiss law).
Central Chilled Water Plant	the central chilled water plant located within Barangaroo South associated infrastructure, including reticulation pipework, metering equipment and other apparatus throughout the Barangaroo Precinct.
Central Chilled Water Plant Lot	the lot (the subject of a Lease) on which the Central Chilled Water Plant is to be located and which is shown on the Location Plan attached as Schedule 7.
Central Recycled Water Plant	the central recycled water plant located within Barangaroo South and any associated infrastructure, including pipework, metering ;equipment and other apparatus throughout the Barangaroo Precinct.
Central Recycled Water Plant Lot	The lot (the subject of a Lease) on which the Central Recycled Water Plant is to be located and which is shown on the Location Plan attached as Schedule 7.
Climate Positive Initiatives	1. the *environmental and social initiatives* within the Leases, the BMS and any future initiatives adopted under this Plan, as relevant to the Stakeholders; 2. in relation to *water*, aiming to be water positive – through reduced consumption and water reuse precinct wide (where 'precinct wide' means Barangaroo South together with 60,000 sqm of GFA comprised within Barangaroo Central) and by being capable of exporting more recycled water than the amount of potable water used in the Barangaroo Precinct; 3. in relation to *waste*, aiming to have zero waste – through prevention, minimisation, recycling and reuse; and potentially reducing to nil the quantity of waste going to landfill; 4. in relation to being *carbon neutral* – aiming to be Carbon Neutral through resource efficiency and by generating new renewable energy and retiring RECs and Carbon Offsets to cover the total net greenhouse emissions that are generated by the Barangaroo Precinct 5. in relation to *socially sustainability* – by inspiring community wellbeing, through learning and development programs, effective community infrastructure and a distinctive commitment to culture and the arts; and 6. the initiatives developed by the BMP Committee, to apply to the Stakeholders (other than the Developer) from time to time.

Term	Meaning
Climate Positive Waste Principles	1. a process which is capable of dealing with recyclable materials and mixed waste streams from Barangaroo South in a manner which maximises the recovery of recyclable material, minimises the diversion of non-recyclables to landfill so as to achieve a minimum 80% reduction in disposal of operational waste to landfill and minimises the net carbon emissions from the disposal of waste so as to mitigate 100% of greenhouse gas emissions, such as methane capture and conversion into energy; and 2. a willingness to work with the Authority to establish and implement a commercially feasible strategy with the objective of establishing Barangaroo as a zero waste community.
Commercial Building	Premises which is used principally for commercial purposes.
Commercial Tenants	those Tenants whose Premises are used principally for commercial purposes, but does not include subtenants or licensees occupying parts of a building used principally for commercial purposes.
Commonwealth Solar Credits Scheme	the mechanism within the Renewable Energy Target Scheme established by the *Renewable Energy (Electricity) Act* 2000 (Cth) which allows some small-scale solar PV, wind and hydro electricity systems to create multiple RECs per MWh generated.
Contribution Amount	an amount no greater than $4.90 per annum per m^2 of GFA (and which forms part of the Estate Levy paid by each of the Tenants).
Co-Owners	has the meaning given in clause 1.2(a).
Developer	Lend Lease (Millers Point) Pty Limited ABN 15 127 727 502.
Developer Veto Right	has the meaning given in clause 2.4(c)(ii).
Embedded Network Lot	The lot (the subject of a Lease) on which the Embedded Network Plant (other than cabling, metering equipment and other apparatus outside the Embedded Network Lot) is to be located and which is shown on the Location Plan attached as Schedule 7.
Embedded Network Plant	is the embedded network plant located within Barangaroo South, associated infrastructure, including cabling, metering equipment and other apparatus, throughout the Barangaroo Precinct
Estate Levy	has the meaning given to the term under the Lease.
GFA	means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of wall separating the building from any other building, measured at a height of 1.4 metres above the floor: (a) including: (i) the area of a mezzanine, and (ii) habitable rooms in a basement or an attic, and (iii) any shop, auditorium, cinema, and the like, in a basement or attic, and (b) excluding:

Term	Meaning
	(i) any area for common vertical circulation such as lifts and stairs; (ii) any basement: A. storage; B. vehicular access, loading areas, garbage and services; C. plant rooms, lift towers and other areas used exclusively for mechanical services or ducting; (iv) car parking to meet any requirements of the relevant public authority whose approval is required (including access to that car parking); (v) any space used for the loading or unloading of goods (including access to it); (vi) terraces and balconies with outer walls less than 1.4 metres high; and (vii) voids above a floor at the level of a storey or storey above.
GreenPower Program Manager	the Program Manager nominated by the NGPSG for the purposes of the National GreenPower Accreditation Program.
GreenPower Rules	the latest version of the National GreenPower Accreditation Program Rules published from time to time by the NGPSG.
Green Utilities	is the Central Chilled Water Plant, the Central Recycled Water Plant and the Embedded Network Plant.
Green Utility Lot Tenants	each Tenant of the following: 1 the Central Chilled Water Plant Lot; and 2 the Central Recycled Water Plant Lot; and 3 the Embedded Network Plant Lot.
Green Utility Lots	are the Central Chilled Water Plant Lot, the Central Recycled Water Plant Lot and the Embedded Network Lot.
Hotel Tenant	that Tenant whose Premises are used principally as a hotel.
Law	any statutory laws and all other laws from which legal rights and obligations may arise.
Lease	a lease of Premises from the Authority to a Tenant.
Location Plan	is the plan showing the area of the Public Domain and each of the Green Utility Lots attached as Schedule 7.
Mortgagee's Deed of Accession	a deed in the form specified in Schedule 5 (or such other form as is approved, by the BMP Committee) under which a mortgagee of the relevant Tenant's Lease assumes obligations under this Plan, if it enters into possession.
New Tenant's Deed of Accession	a deed in the form specified in Schedule 4 (or such other form as is approved by the BMP Committee) under which a Tenant assumes obligations with respect to this Plan on the grant of its Lease from the Authority.
National Carbon Offset	the document of the same name published from time to time by the

Term	Meaning
Standard	Australian Department of Climate Change' and Energy Efficiency which has as its objectives the provision of guidance on what is a genuine voluntary offset and the setting of minimum requirements for calculating auditing and offsetting the carbon footprint of an organization, product or event to achieve Carbon Neutrality, as amended and supplemented from time to time or any successor standard published.
National GreenPower Accreditation Program	the program of that name established by the Australian Government to facilitate renewable energy generation from government accredited sources.
NGPSG	the National GreenPower Steering Group which oversees management of the National GreenPower Accreditation Program.
Notice	the meaning given to the term in section 7.1.
Occupiers	the occupiers, lessees (to whom Tenants grant leases) or licensees of the land and improvements within Barangaroo South. For the avoidance of doubt, where a Tenant is a Residential Tenant, the lessees or occupiers of individual lots within its strata scheme will be Occupiers.
Operation, Maintenance and Lifecycle Capital Replacement Report	a report procured by or prepared by the BMP Committee in accordance with the provisions of section 4.4 of this Plan.
PDA or Project Development Agreement	the Barangaroo South Project Development Agreement between the Barangaroo Delivery Authority, Lend Lease (Millers Point) Pty Limited and Lend Lease Corporation Limited, dated 5 March 2010, as amended from time to time.
Plan	this Barangaroo Management Plan as amended from time to time.
Premises	land and improvements located within Barangaroo South which are leased by the Authority to a Tenant. For the avoidance of doubt, where any Tenant is a Residential Tenant, the relevant Premises will comprise all of the individual lots and the common property in its strata scheme.
Public Domain	the areas of public domain within Barangaroo south other than the areas which are, or are intended to become, the subject of a Lease and which as at the date of this Plan is as shown in the Location Plan.
Public Domain Maintenance Plan	the plan set out in Schedule 6.
RECs	large generation certificates created under the *Renewable Energy (Electricity) Act 2000* (Cth) and generated from assets which become operational after 5 March 2010 and which: (a) have not been created from electricity produced from the burning of wood waste; and (b) have been originally sourced from an Accredited Generator (as defined in the Renewal Energy (Electricity) Act 2000) operating in the National Electricity Market; and (c) where required in order to establish Carbon Neutrality under the National Carbon Offset Standard or another standard adopted by the Authority (acting reasonably) under which it is entitled to establish Carbon Neutrality: (i) have been approved by the GreenPower Program Manager

Term	Meaning
	under the GreenPower Rules; and (ii) are not from a source to which a multiplier has been applied under the Commonwealth Solar Credits Scheme.
Residential Tenants	where any of the leases of land and improvements within Barangaroo South are leases of a strata scheme, the owners corporation (under the *Strata Schemes Management Act, 1996*) of that strata scheme. For the avoidance of doubt, Residential Tenants does not include the individual strata lot owners.
Retail Tenants	those Tenants whose Premises are used principally for retail purposes.
Special Resolution	a resolution made with the approval of 75% of the votes passed at a meeting of the BMP Committee.
Stakeholders	the meaning given to the term in section 1.1.
Tenants	the tenants of leases granted by the Authority being the Green Utility Lot Tenants, Commercial Tenants, the Hotel Tenant, the Retail Tenant and the Residential Tenants, in each case of the land and improvements within Barangaroo South and their servants, agents and contractors.
Unanimous Resolution	a resolution made with 100% of the votes passes at a meeting of the BMP Committee.
World's Best Practice	the world's best practice standards in the area of environmental sustainability for a development of the size and complexity of the Barangaroo Precinct, having regard to the overall economic and environmental sustainability of the Barangaroo Precinct. World's Best Practice will be generally regarded as practice and operations in the top quartile of relevant standards for that time

Schedule 2 - Notice details

Authority

Name:	Barangaroo Delivery Authority
Address:	Level 26 201 Kent Street Sydney NSW 2000
For the attention of:	The Chief Executive Officer

Hotel Tenant

Name:	Crown Sydney Property Pty Limited
Address:	Level 3, Crown Towers 8 Whiteman Street Southbank VIC 3006
For the attention of:	The Company Secretary

Developer

Name:	Lend Lease (Millers Point) Pty Limited
Address:	Level 4, The Bond 30 Hickson Road Millers Point NSW 2000
Fax:	02 9383 8138
For the attention of:	The Company Secretary

Schedule 3 - Assignee's Deed of Accession

Barangaroo Management Plan Deed Poll
Assignee's Deed of Accession

Date

made by [*insert name and ABN*] of [*insert address*] (Assignee)

in favour of the Other Stakeholders (as defined in clause 1 below)

Background

A. The Assignee is the assignee of land within the Barangaroo Precinct.

B. The ongoing management of the Barangaroo Precinct is governed by the Plan.

C. The Assignee agrees that it will comply with all of the obligations contemplated for tenants under the Plan.

1. Definitions

The meanings of the terms used in this deed poll are set out below.

Barangaroo Precinct means the parts of the Land (including improvements) which are no longer part of the Development Site.

BDA means the Barangaroo Delivery Authority established by the Barangaroo Delivery Authority Act 2009 and its assignees or successors in title, being the owner of the Land.

BMP Committee means the management committee established under the Plan.

Developer means Lend Lease (Millers Point) Pty Limited ABN 15 127 727 502.

Development Site means those parts of the Land which are being developed for the BDA pursuant to the PDA.

Land means the land in certificate of title folio identifier [*insert*].

Lease means the lease between the [*insert name of assignor tenant*] and the BDA, and being assigned to the Assignee, for land within the Barangaroo Precinct, dated [*insert*], registered dealing number [*insert dealing number*].

Other Stakeholder means

(a) the BDA; and

(b) the Developer, until the Developer serves written notice under clause 7; and

(c) each of the assignees (other than the Assignee) from time to time of land within the Barangaroo Precinct.

PDA means the Project Development Agreement for Barangaroo Stage 1, dated [insert] entered into between the BDA, the Developer and Lend Lease Corporation Limited.

Plan means the plan developed pursuant to the PDA for the ongoing management of the Barangaroo Precinct and all other areas detailed by the plan. [**Drafting note: *depending on what the plan finally looks like, it could be an attachment to this deed poll.***]

Replacement Deed Poll means has the meaning ascribed to it in clause 4(a)(i).

Term means the term of the Lease.

2. Interpretation

In this deed poll:

(a) Headings and bold type are for convenience only and do not affect the interpretation of this deed poll.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of any gender include all genders.

(d) Other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning.

(e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.

(f) A reference to a clause, party or schedule is a reference to a clause of, and a party, schedule to, this deed poll.

(g) Specifying anything in this deed poll after the words 'include' or 'for example' or similar expressions does not limit what else is included.

(h) This deed poll includes any schedule.

3. Plan

(a) Subject to clause 4, for as long as the Assignee is an assignee of a lease in respect of land within the Barangaroo Precinct, the Assignee must comply with all of the obligations contemplated for it under the Plan and otherwise comply with its obligations as a member of the BMP Committee referred to in or contemplated by the Plan.

(b) Each Other Stakeholder may enforce the Assignee's obligation under or pursuant to clause 3(a).

4. Assignment

(a) As a pre-condition to any assignment of the Lease, the Assignee must procure that its assignee:

(i) enters into a deed poll in the same form as this deed poll (**Replacement Deed Poll**); and

(ii) delivers a signed copy of the Replacement Deed Poll to the BMP Committee.

(b) On execution and delivery of the Replacement Deed Poll to the BMP Committee:

(i) the Assignee will be released from its obligations and liabilities under the Plan except for those obligations and liabilities which arise before the earlier of the date of the Replacement Deed Poll to the BMP Committee and the date of the assignment of the Lease to the assignee; and

(ii) the assignee will assume all obligations and liabilities under the Plan except for those obligations or liabilities which the Assignee remains liable for under clause 4(b) of this deed poll.

5. Mortgage and granting security

The Assignee must procure that any financier which takes security over the Lease, agrees that if it exercises its power of sale over the Lease under any security, it must as a condition of that sale, comply with all of the conditions of clause 4, mutatis mutandis, as if the financier was the Assignee.

6. Indemnity

The Assignee indemnifies each Other Stakeholder in respect of any costs, damage, expense, loss or liability which any Other Stakeholder suffers or incurs to the extent such costs, damage, expense, loss or liability are caused or contributed by any breach of this deed poll by the Assignee or the negligent, reckless or wilful act or omission of the Assignee, except to the extent caused or contributed to by the breach of this deed poll by that Other Stakeholder or the negligent, reckless or wilful act or omission of that Other Stakeholder.

7. Developer notice

(a) At the end of the Developer's obligations under the PDA, the Developer must serve notice to this effect on the BMC. On receipt of that notice by the BMC, the Developer will cease to be an Other Stakeholder for the purposes of this deed poll.

(b) Nothing in clause 7(a) affects any rights which have accrued to or obligations owed by the Developer prior to the service of that notice.

8. Operation of this deed poll

To the extent permitted by law, this deed poll continues without limitation in time.

9. General

9.1 Governing law and jurisdiction

(a) This deed poll is governed by the law in force in New South Wales.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.

9.2 Invalidity and enforceability

If any provision of this deed poll is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

Executed by [insert Assignee's name and ACN] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director	Signature of Director or Sole Director and Secretary
Name of Secretary/other Director in full	Name of Director or Sole Director and Secretary in full

Schedule 4 - New Tenant's Deed of Accession

Barangaroo Management Plan Deed Poll
New Tenant's Deed of Accession

Date

made by **[*insert name and ABN*] of [*insert address*] (New Tenant)**

in favour of **the Other Stakeholders (as defined in clause 1 below)**

Background

A. The New Tenant is (or will soon become) the lessee of land within the Barangaroo Precinct.

B. The ongoing management of the Barangaroo Precinct is governed by the Plan.

C. **The New Tenant agrees that it will comply with all of the obligations contemplated for tenants under the Plan.**

1. Definitions

The meanings of the terms used in this deed poll are set out below.

Barangaroo Precinct means the parts of the Land (including improvements) which are no longer part of the Development Site.

BDA means the Barangaroo Delivery Authority established by the Barangaroo Delivery Authority Act 2009 and its assignees or successors in title, being the owner of the Land.

BMP Committee means the management committee established under the Plan.

Developer means Lend Lease (Millers Point) Pty Limited ABN 15 127 727 502.

Development Site means those parts of the Land which are being developed for the BDA pursuant to the PDA.

Land means the land in certificate of title folio identifier [***insert***].

Lease means the lease between the New Tenant and the BDA for land within the Barangaroo Precinct, dated [***insert***], registered dealing number [***insert dealing number***].

Other Stakeholder means

(a) the BDA; and

(b) the Developer until the Developer serves written notice under clause 7; and

(c) each of the lessees (other than the New Tenant) from time to time of land within the Barangaroo Precinct.

PDA means the Project Development Agreement for Barangaroo Stage 1, dated [insert] entered into between the BDA, the Developer and Lend Lease Corporation Limited.

Plan means the plan developed pursuant to the PDA for the ongoing management of the Barangaroo Precinct and all other areas detailed by the plan. **[Drafting note: *depending on what the plan finally looks like, it could be an attachment to this deed poll.*]**

Replacement Deed Poll means has the meaning ascribed to it in clause 4(a)(i).

Term means the term of the Lease.

2. Interpretation

In this deed poll:

(a) Headings and bold type are for convenience only and do not affect the interpretation of this deed poll.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of any gender include all genders.

(d) Other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning.

(e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.

(f) A reference to a clause, party or schedule is a reference to a clause of, and a party schedule to, this deed poll.

(g) Specifying anything in this deed poll after the words 'include' or 'for example' or similar expressions does not limit what else is included.

(h) This deed poll includes any schedule.

3. Plan

(a) Subject to clause 4, for as long as the New Tenant is a lessee of land within the Barangaroo Precinct, the New Tenant must comply with all of the obligations contemplated for it under the Plan and otherwise comply with its obligations as a member of the BMP Committee referred to in or contemplated by the Plan.

(b) Each Other Stakeholder may enforce the New Tenant's obligation under or pursuant to clause 3(a).

4. Assignment

(a) As a pre-condition to any assignment of the Lease, the New Tenant must procure that its assignee:

(i) enters into a deed poll in the same form as this deed poll (**Replacement Deed Poll**); and

(ii) delivers a signed copy of the Replacement Deed Poll to the BMP Committee.

(b) On execution and delivery of the Replacement Deed Poll to the BMP Committee:

(i) the New Tenant will be released from its obligations and liabilities under the Plan except for those obligations and liabilities which arise before the earlier of the date of the Replacement Deed Poll to the BMP Committee and the date of the assignment of the Lease to the assignee; and

(ii) the assignee will assume all obligations and liabilities under the Plan except for those obligations or liabilities which the New Tenant remains liable for under clause 4(b) of this deed poll.

5. Mortgage and granting security

The New Tenant must procure that any financier which takes security over the Lease, agrees that if it exercises its power of sale over the Lease under any security, it must as a condition of that sale, comply with all of the conditions of clause 4, mutatis mutandis, as if the financier was the New Tenant.

6. Indemnity

The New Tenant indemnifies each Other Stakeholder in respect of any costs, damage, expense, loss or liability which any Other Stakeholder suffers or incurs to the extent such costs, damage, expense, loss or liability are caused or contributed by any breach of this deed poll by the New Tenant or the negligent, reckless or wilful act or omission of the New Tenant, except to the extent caused or contributed to by the breach of this deed poll by that Other Stakeholder or the negligent, reckless or wilful act or omission of that Other Stakeholder.

7. Developer notice

(a) At the end of the Developer's obligations under the PDA, the Developer must serve notice to this effect on the BMC. On receipt of that notice by the BMC, the Developer will cease to be an Other Stakeholder for the purposes of this deed poll.

(b) Nothing in clause 7(a) affects any rights which have accrued to or obligations owed by the Developer prior to the service of that notice.

8. Operation of this deed poll

To the extent permitted by law, this deed poll continues without limitation in time.

9. General

9.1 Governing law and jurisdiction

(a) This deed poll is governed by the law in force in New South Wales.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.

9.2 Invalidity and enforceability

If any provision of this deed poll is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

Executed by [insert New Tenant's name and ACN] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director	Signature of Director or Sole Director and Secretary
Name of Secretary/other Director in full	Name of Director or Sole Director and Secretary in full

Schedule 5 - Mortgagee's Deed of Accession

Barangaroo Management Plan Deed Poll Mortgagee's Deed of Accession

Date

made by **[*insert name and ABN*] of [*insert address*] (Mortgagee)**

in favour of **the Other Stakeholders (as defined in clause 1 below)**

Background

A. The Mortgagee is the registered proprietor of the freehold estate in Barangaroo South.

B. The ongoing management of the Barangaroo Precinct is governed by the Plan.

C. The Other Tenants and the Mortgagor Tenant are the Tenants pursuant to Leases of Barangaroo South.

D. The Mortgagor Tenant wishes to mortgage its rights, title and interest in the Lease to the Mortgagee, having first complied with the procedures specified in section 1.7(d)(ii) of the Barangaroo Management Plan.

E. Section 1.7(b)(v) of the Barangaroo Management Plan obliges each Tenant to procure any mortgagee of its right, title or interest in its Lease to enter into an accession deed in the form of this deed.

F. The parties have agreed to enter into this accession deed for the purposes of satisfying section 1.7(d)(ii) of the Barangaroo Management Plan.

G. The Mortgagee agrees that, if it enters into possession of the premises, the subject of the Lease, it will comply with all of the obligations contemplated for tenants under the Plan.

1. Definitions

The meanings of the terms used in this deed poll are set out below.

Barangaroo Precinct means the parts of the Land (including improvements) which are no longer part of the Development Site.

BDA means the Barangaroo Delivery Authority established by the Barangaroo Delivery Authority Act 2009 and its assignees or successors in title, being the owner of the Land.

BMP Committee means the management committee established under the Plan.

Developer means Lend Lease (Millers Point) Pty Limited ABN 15 127 727 502.

Development Site means those parts of the Land which are being developed for the BDA pursuant to the PDA.

Land means the land in certificate of title folio identifier [***insert***].

Lease means the lease between the Mortgagor and the BDA for land within the Barangaroo Precinct, dated [***insert***].

Mortgagor Tenant means [***insert name of tenant***] being the tenant under registered dealing number [***insert dealing number***].

Other Stakeholder means

(a) the BDA; and

(b) the Developer, until the Developer serves written notice under clause 5; and

(c) each of the mortgagees (other than the Mortgagor) from time to time of land within the Barangaroo Precinct.

PDA means the Project Development Agreement for Barangaroo Stage 1, dated [insert] entered into between the BDA, the Developer and Lend Lease Corporation Limited.

Plan means the plan developed pursuant to the PDA for the ongoing management of the Barangaroo Precinct and all other areas detailed by the plan. [**Drafting note: *depending on what the Plan finally looks like, it could be an attachment to this deed poll.***]

Replacement Deed Poll means has the meaning ascribed to it in clause 4(a)(i).

Term means the term of the Lease.

2. Interpretation

In this deed poll:

(a) Headings and bold type are for convenience only and do not affect the interpretation of this deed poll.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of any gender include all genders.

(d) Other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning.

(e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.

(f) A reference to a clause, party or schedule is a reference to a clause of, and a party, schedule to, this deed poll.

(g) Specifying anything in this deed poll after the words 'include' or 'for example' or similar expressions does not limit what else is included.

(h) This deed poll includes any schedule.

3. Plan

(a) Subject to clause 4, for as long as the Mortgagee is a mortgagee of land within the Barangaroo Precinct, the Mortgagee must comply with all of the obligations contemplated for it under the Plan and otherwise comply with its obligations as a member of the SMP Committee referred to in or contemplated by the Plan.

(b) Each Other Stakeholder may enforce the Mortgagee's obligation under or pursuant to clause 3(a).

4. Assignment

(a) As a pre-condition to any assignment of the Lease, the Mortgagee must procure that its assignee:

(i) enters into a deed poll in the same form as this deed poll (**Replacement Deed Poll**); and

(ii) delivers a signed copy of the Replacement Deed Poll to the BMP Committee.

(b) On execution and delivery of the Replacement Deed Poll to the BMP Committee:

(i) the Mortgagee will be released from its obligations and liabilities under the Plan except for those obligations and liabilities which arise before the earlier of the date of the Replacement Deed Poll to the BMP Committee and the date of the assignment of the Lease to the assignee; and

(ii) the assignee will assume all obligations and liabilities under the Plan except for those obligations or liabilities which the Mortgagee remains liable for under clause 4(b) of this deed poll.

5. Developer notice

(a) At the end of the Developer's obligations under the PDA, the Developer must serve notice to this effect on the BMC. On receipt of that notice by the BMC, the Developer will cease to be an Other Stakeholder for the purposes of this deed poll.

(b) Nothing in clause 5(a) affects any rights which have accrued to or obligations owed by the Developer prior to the service of that notice.

6. Operation of this deed poll

To the extent permitted by law, this deed poll continues without limitation in time.

7. General

7.1 Governing law and jurisdiction

(a) This deed poll is governed by the law in force in New South Wales.

(b) Each party irrevocably submits to the non exclusive jurisdiction of courts exercising jurisdiction in New South Wales.

7.2 Invalidity and enforceability

If any provision of this deed poll is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

Executed by **[insert Mortgagee's name and ACN]** in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director	Signature of Director or Sole Director and Secretary
Name of Secretary/other Director in full	Name of Director or Sole Director and Secretary in full

Schedule 6 - Draft Public Domain Maintenance Plan

BARANGAROO SOUTH PUBLIC DOMAIN MAINTENANCE PLAN

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Contents

1 Overview and scope 2

1.1 Introduction 2

1.2 Public Domain Maintenance Objectives of the Authority 2

1.3 Scope 2

1.4 Overview and Scope 2

2 Public Domain Maintenance Services 3

2.1 Generally 3

2.2 General Ground Maintenance Requirements 4

Annexure A – Barangaroo Maintenance Standards 7

1. Overview and scope

1.1 Introduction

The Public Domain Maintenance Services are to provide the maintenance of all components of the Public Domain within Barangaroo. The Public Domain Maintenance Services shall support the sustainment of high quality visual amenity and Public Domain performance.

1.2 Public Domain Maintenance Objectives of the Authority

The Public Domain maintenance objectives of the Authority include:

(a) Quality: world class precincts with a superior Public Domain;

(b) Utilisation: maximised utilisation of the Public Domain and therefore be a prime attractor of visitors to Barangaroo;

(c) availability: the Public Domain remains available for use and fully functional at all times;

(d) aesthetics: the Public Domain remains aesthetically appropriate and commensurate with Barangaroo; and

(e) whole of life: reducing whole of life Public Domain costs through reduced requirements for reactive maintenance, refurbishment and replacements.

1.3 Scope

The Public Domain must be maintained to achieve the Authority's Public Domain maintenance objectives and in order to do so the following must be done:

(a) provide a superior level of service to maximise the stakeholder and visitor satisfaction level;

(b) maintain the Public Domain such that it carries a reputation as a high quality and pleasant environment; and

(c) provide effective and efficient maintenance having regard to the objectives set out in this clause.

1.4 Overview and Scope

Maintenance services for the Public Domain include:

(a) maintenance management;

(b) planned routine maintenance and refurbishment;

(c) reactive maintenance;

(d) replacement;

(e) the Public Domain Maintenance Plan;

(f) Asset Register.

(g) Public Domain handover; and

(h) performance monitoring and reporting.

2. Public Domain Maintenance Services

2.1 Generally

(a) The Public Domain Maintenance Service will include all activities required to maintain the Public Domain to the standard required by the approved design and the agreed service levels.

(b) The Public Domain Maintenance Service shall be delivered on a planned and reactive basis.

(c) The Public Domain Maintenance Service shall comprise:

(i) a planned and ad-hoc horticulture service;

(ii) a planned and reactive maintenance program for all external structures, plant and equipment, artworks and hard and soft surfaces; and

(iii) emergency call-out service to address occurrences such as fallen trees, local settlement, safety hazards, service breakdown, and defective lighting in the Public Domain.

(d) Full horticulture service must be provided across the Public Domain. This shall include, but not be limited to:

(i) pruning and cutting shrubs, hedges, trees etc;

(ii) lawn care including mowing and edging;

(iii) replacement of dead or damaged shrubs, trees and flower beds;

(iv) weeding; and

(v) planting, including shrubs, trees, flower beds.

(e) A comprehensive grounds maintenance service must be provided which must include but not be limited to maintenance of:

(i) roads, bike paths and pathways of the Public Domain;

(ii) signage;

(iii) electrical and lighting, including replacement of light fittings, lamps and elements;

(iv) close circuit television system;

(v) public address and emergency evacuation system;

(vi) fire safety systems, including fire hydrants;

(vii) water features and related plant and equipment;

(viii) fire services;

(ix) water, sewer and stormwater;

(x) boundary walls and fences not part of a Development Lot;

(xi) street furniture; including seating, bollards, water bubblers, rubbish bins, banner poles and flag poles;

(xii) handrails and balustrades;

(xiii) lawns, open areas; and

(xiv) paved areas and hard standings.

2.2 General Ground Maintenance Requirements

(a) A planned and reactive horticulture service must be provided that meets the Barangaroo condition and performance standards and that ensures the overall appearance of all landscaped and outdoor areas is consistent with the maintenance objectives including:

planting and maintaining low water demand plants, shrubs and vegetation;

(ii) keeping plants, gardens, trees and shrubs in a healthy condition;

(iii) regularly cultivate, water, fertilise and compost in accordance with seasonal requirements;

(iv) undertaking planting and plant replacement programs;

(v) design, install, and replace or replant (as applicable) garden beds;

(vi) keeping plants, trees and shrubs in accordance with a layout agreed;

(vii) keeping outside and indoor pot plants healthy;

(viii) trimming vines to prevent spreading across other plants and public areas;

(ix) providing mulch for all shrubs annually;

(x) removing and disposing of all residue from pruning, clipping and trimmings;

(xi) ensuring lawns and grass areas are kept in a horticulturally sound condition;

(xii) repairing damage to lawns by top dressing and reseeding;

(xiii) ensuring lawns are kept at an appropriate height;

(xiv) ensuring the lawn areas are clean and free of leaves, debris, paper and rubbish;

(xv) ensuring the shrubs and bushes are cut cleanly and brought to a condition as uniform in height as is practicable and consistent with the ground surface;

(xvi) ensuring trees and obstacles are trimmed at the base and free of weeds;

(xvii) ensuring the Public Domain is free from weeds and Pest infestation;

(xviii) ensuring any damage to stems, branches, bark or foliage of trees and shrubs is treated;

(xix) providing tree surgery and repairs such as crown thinning, pruning, removing dead wood and cable bracing of stressed boughs.

(xx) undertaking any replanting works required as a result of any damage including replacing trees, shrubs and hedges in the event of any irreparable damage caused by vandalism, disease, storm damage or similar cause;

(xxi) removing leaves throughout the year; and

(xxii) ensuring street frontages, nature strips, and easements are free from weeds, litter and leaves;

(b) provide a vegetation rubbish, debris and litter off site removal service including:

(i) removing excess clippings from mown sites on Barangaroo;

(ii) removing and disposing of all rubbish, debris, leaves, and litter from the roadways of the Public Domain, all entranceways, pavements, pathways, road gutters, culverts, stormwater pits, grilles, fence lines, sumps, grassed areas, garden beds and the Facilities surrounds;

(iii) mulching and compost suitable debris and litter; and

(iv) emptying and clean all outdoor smokers' trays and outdoor rubbish bins.

(c) All external hard and soft areas, roads, paths, bike paths and walkways of the Public Domain are to be maintained to a sound, safe and tidy standard and area in accordance with the requirements of this specification.

(d) The following must also be provided:

(i) maintain and clean all external furniture on Barangaroo including but not limited to signage and lights to the extent that this is required as part of the Public Domain . This shall include replacement of light elements;

(ii) clean and maintain and chemically treat as required all water features and ensure water features remain safe and secure at all times;

(iii) minimise the number of potential locations for vermin habitation;

(iv) remove any dead animals, trees, shrubs, grasses or garden refuse from Barangaroo;

(v) regularly inspect non-cultivated areas for damage and carry out remedial work as required to ensure that the areas are free from potholes, cracks and debris;

(vi) clean roads, paths, bike paths and paved areas, maintain them in a clean and safe condition and ensure walking paths and bike paths are not obstructed by overhanging tree limbs or branches and are free from any form of trip hazard; and

(vii) ensure external roads are clearly identifiable and free from potholes, cracks, (except hairline cracks) debris and litter.

(viii) Litter collection, graffiti and cleaning of the Public Domain as required.

(e) No toxic chemicals are to be used on Barangaroo in the provision of the Public Domain Maintenance Service.

Annexure A - Barangaroo Maintenance Standards

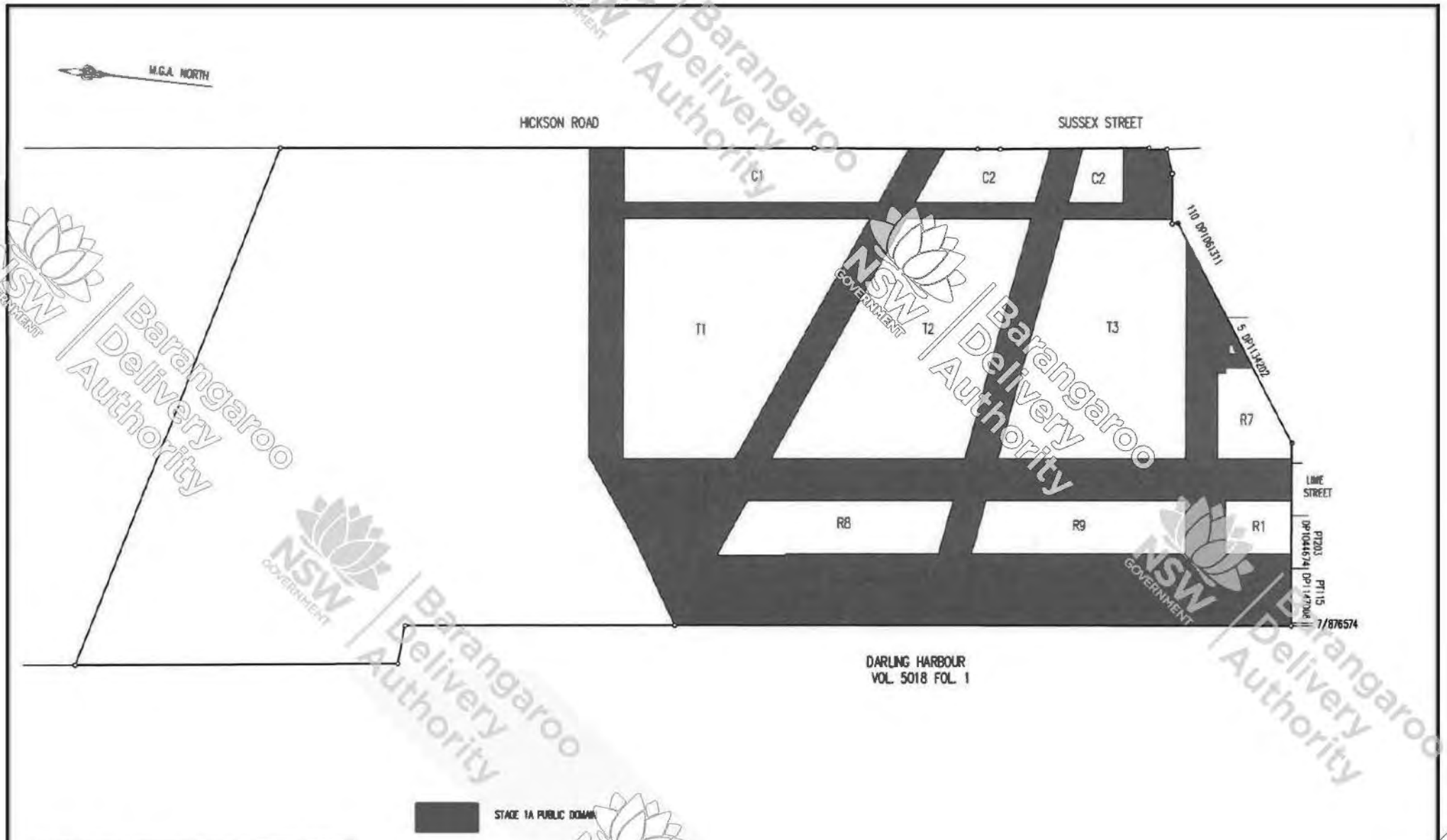
At all times that the Public Domain must meet the minimum standards (Condition and Performance Standards) as set out in the table below:

Element reference	Performance and Condition Standards	
a. Generally	i.	Complies with all codes, laws and Australian Standards.
	iiiv.	Complies with all relevant manufacturers' maintenance specifications such that warranties and guarantees are maintained.
	v.	Plants to be live, healthy, aesthetically attractive and vibrant in growth (taking into account prevailing weather conditions, seasonal requirements and functional use).
	vi.	Free of weeds, pest infestation and disease affecting plant life, performance or safety.
	vii.	Free of litter or foreign matter such as stones, brick, glass, cigarette butts and animal faeces.
	viii.	Free of noxious weeds and substantially free of all other weeds in well-established and prominent grassed areas such as high use public and Facility User areas.
	ix.	Free from clippings and fallen leaves.
	x.	Disperses water to drains.
b. Grassed areas and paved / hardstand areas	i.	Prominent live grassed areas such as high use public and Facility User areas have substantial grass coverage at all times.
	ii.	Edges are neat and in trimmed condition.
	iii.	Lawns are damage free and have an even surface appropriate for its relevant use.
	iv.	Free from lifting of turf.
	v.	Edge of any borders are neat and to a length appropriate for its function.
	vi.	Line markings are legible.
c. Garden Beds	i.	Maintained to appropriate size.
	ii.	There are no damaged stems, branches, bark or foliage.
	iii.	Uniform covering of mulch (where required).
	iv.	Where adjacent to windows, ensure height of growth is below the sill height.

Element reference	Performance and Condition Standards
d. Trees and Shrubs	i. Growth should not adversely affect the ground or building elements with no trip hazard from roots. ii. No damage to stems, branches, bark or foliage of trees and shrubs iii. Trimmed so as to minimise the risk of fire, interference of natural light, obstruction of security and to maintain healthy growth iv. Shrub growth to be kept within garden beds and below sill height where adjacent to windows v. Trees and shrubs must not obstruct signage or other way finding fixtures
e. Paved / Hardstand Areas	i. Must be stable, even surfaced and safe (including no potholes or cracks) ii. Maintain Site access for Facility Users (including persons with disabilities such as visually impaired and wheelchair users) in accordance with all applicable Service Delivery Requirements. iii. Free from damage. iv. Line marking to be legible. v. Subsidence within industry tolerances vi. Pedestrian pathways free of trip hazard vii. Pedestrian pathways meet slip resistance requirements
f. Water Features (includes indoor and outdoor)	i. No leakages. ii. Pumps and systems operating to manufacturers and design requirements. Equipment mounted within dry plant rooms where practicable iii. Are safe (including so as not to cause a hazard). iv. Clean and maintained to a tidy appearance with no build up and staining.
g. Handrails and Balustrades	i. Clean without blemishes or other contaminants ii. Structurally Sound iii. Meeting all relevant codes and standards
h. Signage	i. Uniform covering Clean and visible ii. Clear and prominent

Element reference	Performance and Condition Standards
	iii. Associated lighting working
i. Street Furniture and bubblers	i. Clean and free from dirt, bird droppings and alike ii. Structurally sound and usable iii. Bubblers working, clean with appropriate water pressure iv. No leakage
j. Electrical and Lighting	i. Safe to operate and appropriately earthed ii. Working iii. All bulbs operational iv. Not overloaded
k. Life Service	i. Appropriately certified ii. Clean and operating iii. Signage in place
l. Stormwater and Sewerage	i. Clear with unrestricted flow ii. Drains and traps clear from debris iii. No odours iv. Infrastructure in place and not damaged

Schedule 7 - Public Domain Location Plan



REV.	REVISION DESCRIPTION	DATE
01	INITIAL ISSUE	13/1/15

LOCATION PLAN
STAGE 1A – PUBLIC DOMAIN
PODIUM LEVEL – BARANGAROO SOUTH

LEND LEASE (Millers Point) PTY. LTD.

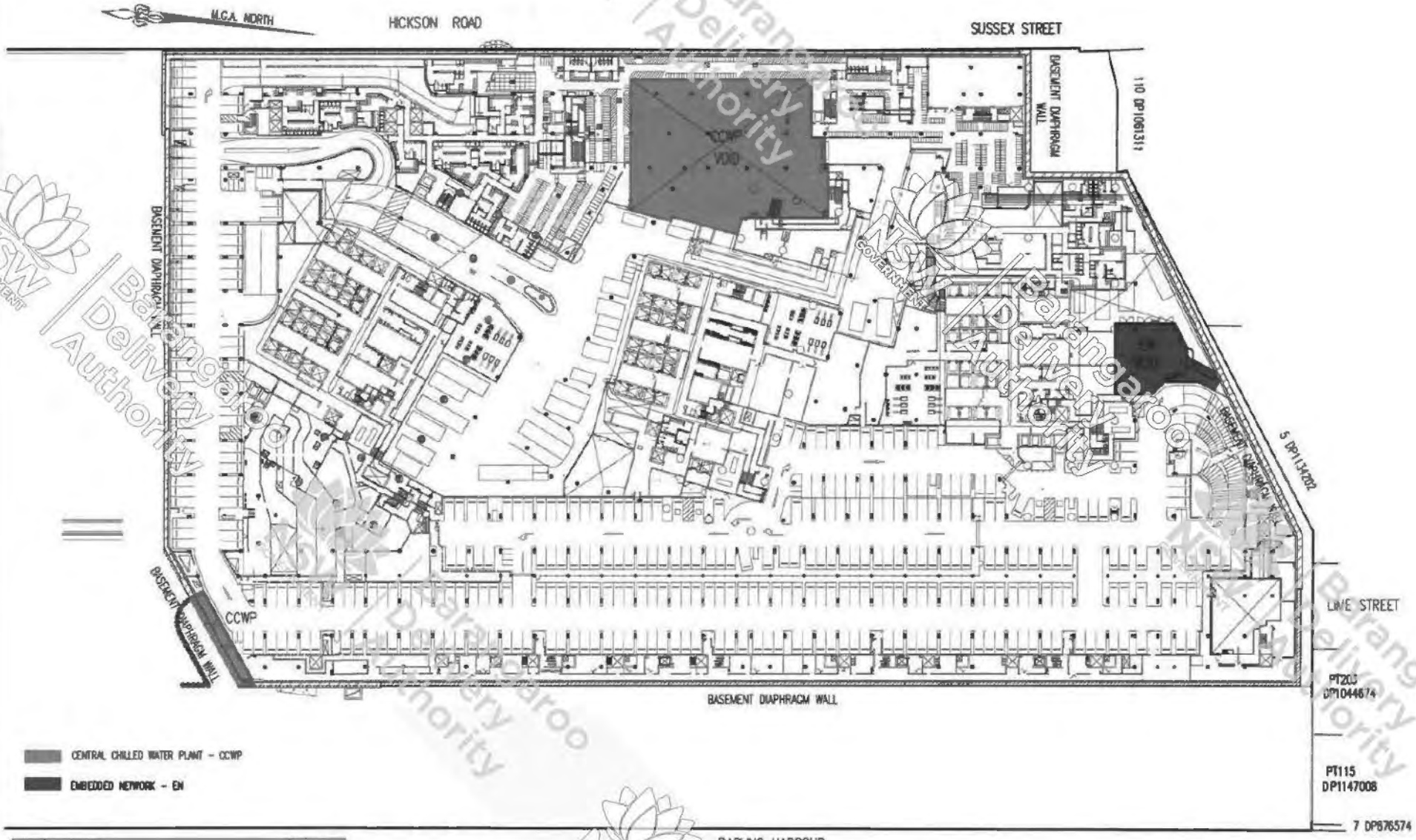
LOCALITY: BARANGAROO

SCALE: 1:1250 | DATE: 12/5/2015

SHEET SIZE: A3 | REVISION: 01

DRAWING No. 1400 PUBLIC DOMAIN

Barangaroo Delivery Authority NSW GOVERNMENT



01	INITIAL ISSUE	13/1/15
REV.	REVISION DESCRIPTION	DATE

DARLING HARBOUR
VOL. 5018 FOL. 1

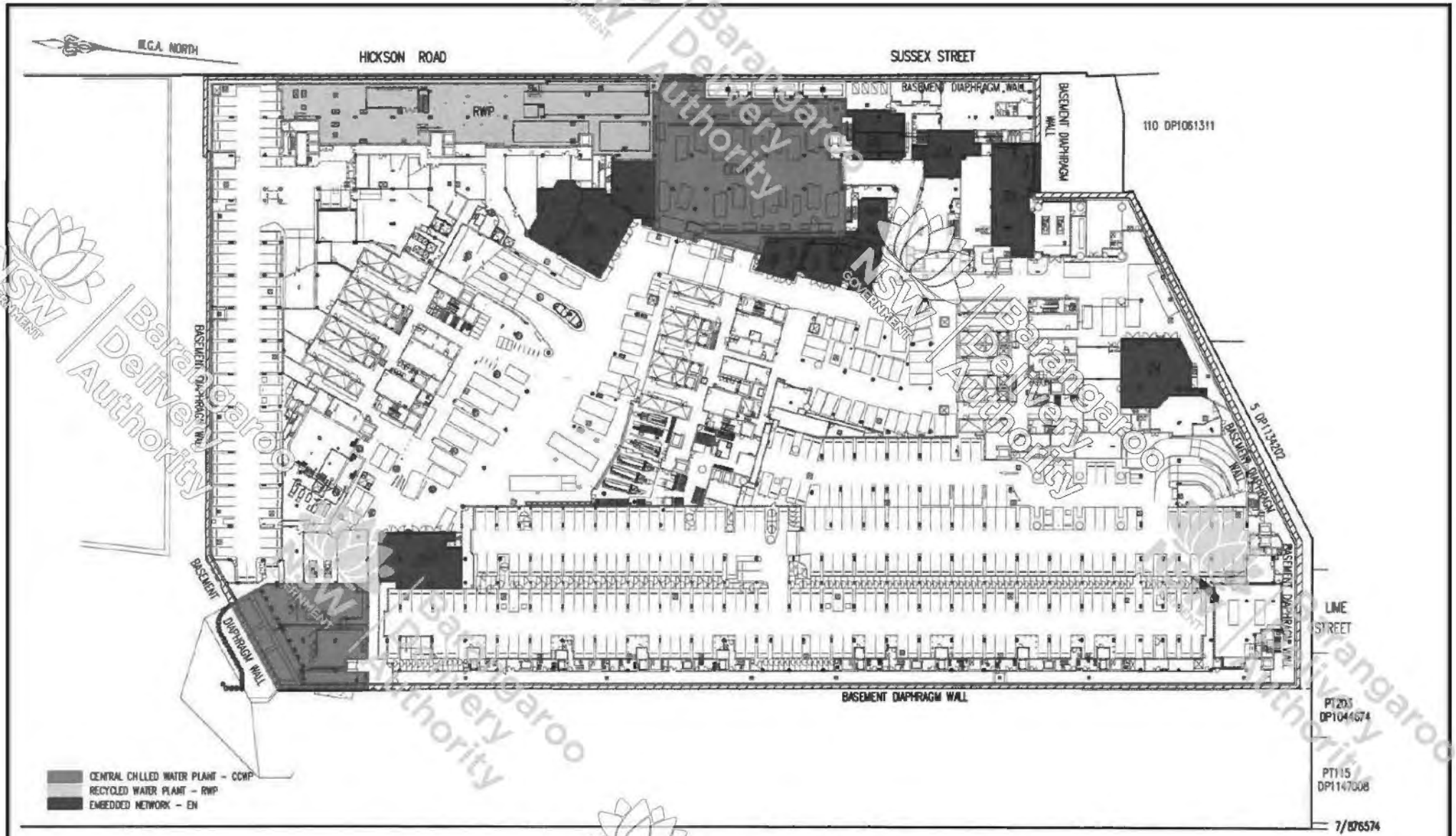
LOCATION PLAN
STAGE 1A – CENTRAL INFRASTRUCTURE
BASEMENT LEVEL 1 – BARANGAROO SOUTH

LEND LEASE (Millers Point) PTY. LTD.

LOCALITY: BARANGAROO

SCALE: 1:800 | DATE: 12/5/2015
SHEET SIZE: A3 | REVISION: 01
DRAWING No. 1400 CENTRAL INFRASTRUCTURE B1

Barangaroo Delivery Authority NSW GOVERNMENT



01	INITIAL ISSUE	13/1/15
REV.	REVISION DESCRIPTION	DATE

LOCATION PLAN
STAGE 1A – CENTRAL INFRASTRUCTURE
BASEMENT LEVEL 2 – BARANGAROO SOUTH

LEND LEASE (Millers Point) PTY. LTD.

SCALE: 1:800 | DATE: 12/5/2015

SHEET SIZE: A3 | REVISION: 01

LOCALITY: BARANGAROO

DRAWING No. 1400 CENTRAL INFRASTRUCTURE B2

Executed as a deed

Dated: _____

LLMP

Signed sealed and delivered for
Lend Lease (Millers Point) Pty Ltd
by their attorney under power of attorney registered book no. 4686 No 712

sign here ▶ _____
Attorney

print name Sonya Louise Harris

in the presence of

sign here ▶ _____
Witness

print name KIM E. SWEI

print address 30 HICKSON RD, MILLERS POINT 2000

Dated: _____

Barangaroo Delivery Authority

SIGNED by)
)
as delegate of **BARANGAROO DELIVERY AUTHORITY** in the presence of:)
)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))

.....)
Signature of)

By executing this instrument the delegate states that the delegate has received no notice of revocation of the delegation.

Exhibit 1 - Hotel Resort DA

Exhibit 2 - Early Works DA