



Terms and Conditions for Private Works

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Applicability

The following terms and conditions apply to the construction of any particular Private Water Infrastructure which a developer desires to construct, or procures to construct, and in respect of which Barwon Water and the Developer have executed an Individual Private Works Deed Document.

1. Relationship between the parties

- (a) The Developer and Barwon Water will work together and mutually co-operate with a view to facilitating the undertaking of the Private Water Infrastructure.
- (b) The sentiment of subclause 1(a) will be given effect to within the confines and subject to the provisions of the Deed.
- (c) The Developer is not, and must not purport to act as the agent of Barwon Water.
- (d) The Deed, and the arrangements resulting from the Deed, do not give rise to a partnership, joint venture, trust or relationship of employment or any other relationship between the Developer and Barwon Water other than the contractual relationship established by the Deed.

2. Engagement of Plumbers to the satisfaction of Barwon Water

- (a) For the undertaking of the Private Works in relation to Sewer Connection Points, the Developer must only use plumbers which are Accredited Contractors (holding Accreditation in the appropriate Accredited Category to undertake the Private Works regarding Sewer Connection Points)
- (b) For the undertaking of the Private Works in relation to Private Assets, the Developer is entitled to use
 - (i) plumbers which are Accredited Contractors (holding Accreditation in the appropriate Accredited Category to undertake the Private Works regarding the Private Assets); or
 - (ii) Licensed Plumbers.
- (c) Three (3) Business Days before the commencement of the respective Private Works, the Developer must ensure that Barwon Water is notified, in writing, which Plumbers it will use for the undertaking of the relevant Private Works in relation to Sewer Connection Points using the form called '*Works on or near Barwon Water Assets Application*' or similarly called.

3. Representatives

3.1 Developer's Representative

- (a) The Developer must nominate a person from the Developer's Personnel to represent the Developer in all its dealings with Barwon Water.
- (b) The persons nominated under subclause 3.1(a) is acting as the Developer's Representative.
- (c) The Developer may, subject to approval of the nominee by Barwon Water, by notice in writing to Barwon Water, nominate a replacement of a Developer's Representative. Matters within the knowledge of the Developer's Representative shall be deemed to be within the knowledge of the Developer.

- (d) Any notice, direction or other document given to or addressed to the Developer's Representative shall be deemed to be given to the Developer.
- (e) Any statement or representation made by a Developer's Representative in respect of the subject matter of the Deed shall be deemed to have made with the consent of the Developer and shall be binding on the Developer.

3.2 Barwon Water's Representative

- (a) Barwon Water will nominate one or more contact people in the Particulars, or by notice to the Developer, to co-ordinate activities on this development and to act as Barwon Water's Representative.
- (b) Barwon Water may nominate a natural person or a position in Barwon Water as Barwon Water's Representative,
- (c) Barwon Water may, by notice in writing to the Developer, nominate a replacement of Barwon Water's Representative.
- (d) The appointment of any Barwon Water's Representative shall not prevent Barwon Water from exercising any function.
- (e) Any action by Barwon Water's Representative, in relation to a function it is entitled to exercise, shall be taken to be an action of Barwon Water.

4. Undertaking of the Private Works

- (a) The Developer must procure that the undertaking of the relevant Private Works is done:
 - (i) with the due skill, diligence, prudence, foresight and care that would be reasonably expected from an experienced and competent contractor;
 - (ii) in compliance with:
 - (A) the Specifications;
 - (B) Barwon Water's Land Development and Administrative Process;
 - (C) all Legislative Requirements;
 - (D) any reasonable written direction regarding the compliance with the Specifications of Barwon Water; and
 - (E) the requirements of Authorities.
- (b) In the event that the Developer or any of its Representatives becomes aware or expects that the Developer might not be able to fulfil or fulfil in time, all or part of its obligations under the Deed including any change in circumstances which may have an effect to the Specifications, the Developer is obliged to notify Barwon Water or ensure that Barwon Water will be informed immediately after the Developer or the Developer's Representatives gaining knowledge of the risk of likely non-compliance stating the reasons and the effect on the fulfilment of its

obligations and the likely time frame of a delay. This information does not release the Developer from its obligations under the Deed.

- (c) The Developer must ensure the proper supervision of all parties associated with the carrying out of the Private Works.

5. Developer's Responsibility for Plumbers

- (a) The Developer acknowledges that Barwon Water at all times relies on the Developer's selection of experienced and professional skilled Plumbers.
- (b) The Developer must ensure that any of its Plumbers are suitably experienced and qualified to perform the relevant part of the Private Works according to the Deed, and that all Accredited Contractors have the insurance necessary in order to sustain their Accreditation with Barwon Water, and all Licensed Plumbers have the insurance necessary in order to sustain their license relevant for the undertaking of the Private Works regarding Private Assets.
- (c) In the event that Barwon Water reasonably considers that any staff member of the Developer or the Plumbers which is appointed to undertake any aspect of the Private Works, is not satisfactorily skilled or is not complying, or will not comply with the obligations under the Deed, Barwon Water may on reasonable prior notice:
 - (i) request the Developer, to exchange, or ensure the exchange of, this staff member by a satisfactorily skilled staff member and the Developer must comply with such a request, or
 - (ii) impose reasonable additional requirements in respect of supervising that staff member and verifying the compliance of the Private Works undertaken by that staff member with the Deed, and
 - (iii) refuse to provide its respective consent to allow the Private Works to progress until the exchange requested under subclause 5.2(d)(i) is carried out or the additional requirements under subclause 5.2(d)(ii) are fulfilled.
- (d) The Developer must ensure that any contract with a Plumber contains terms that oblige the Plumber to perform its obligations under the contract in a way that ensures that the Developer complies with its obligations under the Deed.
- (e) When using a Plumber the Developer continues to be liable:
 - (i) for its obligations under the Deed; and
 - (ii) to Barwon Water for the acts and omissions of any Plumber as if they were the Developer's acts or omissions.
- (f) The Developer must provide the Plumbers with all information about the individual Specification, the Barwon Water Representatives, Barwon Water's Standards and Procedures and any other information which is relevant for Private Works.
- (g) The Developer acknowledges that the engagement of a Plumber does not release the Developer from any of its obligations under the Deed or arising from Legislative Requirements.

6. Payments

- (a) The Developer must pay to Barwon Water the Private Works Fees by the date as stipulated in (i) Schedule 6, or (ii) the respective invoice, or otherwise (iii) within 10 Business Days after the Commencement Date.
- (b) The Developer must pay, or must ensure the payment of, the New Customer Contributions by the date as stipulated in Schedule 6.
- (c) Payments must be made by cash, bank cheque, or electronic transfer.
- (d) Failure by the Developer to pay any amount owing to Barwon Water, or to ensure payment of any amount owing to Barwon Water (where the Developer is obliged to ensure such payment) by the date specified for payment of that amount, shall allow Barwon Water to do any one or more of the following:
 - (i) to withhold any consent or approval under the Deed;
 - (ii) to refuse to release of the Private Works Bond;
 - (iii) to call upon the Private Works Bond; and
 - (iv) to sue on the amounts as debts due and payable.
- (e) In any case where any monies are due to Barwon Water pursuant to the Deed, and such monies are owed by the Developer who is also the Landowner of any part or all of the Land, that debt is a charge on the Land, including pursuant to the Water Act 1989 Act in favour of Barwon Water.

7. Commencement and Completion of the Private Works

- (a) The Developer must ensure that no Private Works commence before
 - (i) the Developer has obtained all necessary Planning Permissions, statutory permissions and other permissions in respect of the Private Works; and
 - (ii) the Developer has made all due payments to Barwon Water, or has ensured payment of all due payments to Barwon Water (where the Developer is obliged to ensure such payment).
- (b) The Developer must reach the Completion of the Private Works within the period specified by Barwon Water in Schedule 6, or within some other period approved by Barwon Water, in writing.
- (c) If the construction of the Private Works is not completed within the time required under the Deed, Barwon Water may:
 - (i) terminate the Deed;
 - (ii) extend the time for Completion (as contemplated by paragraph 7(d));
 - (iii) unilaterally impose any reasonable additional requirements, including additional payments, changes to the nature of the construction of the Private Works; or

- (iv) require the execution of a new Private Works Deed.
- (d) Barwon Water may extend the time for Completion of the Private Works for a period determined by Barwon Water, provided:
 - (i) Barwon Water decides to extend the period, or
 - (ii) an act or omission of Barwon Water or its authorised representatives directly caused a delay in the Completion of the Private Works; and
 - (iii) the Developer requests Barwon Water in writing for an extension of time for Completion and evidences the facts of the act or omission and the caused delay set out in subclause 7(d)(i) within 28 days after the day the Developer should reasonably have become aware of the occurrence of the act or omission stipulated in subclause 7(d)(i).

8. Variation to the Private Works

8.1 No Variation without consent

- (a) The Developer must not vary the Private Works without the consent of Barwon Water.
- (b) Barwon Water may, in its absolute discretion, consent or decline to consent to a variation request from the Developer.

8.2 Variations requested by the Developer

- (a) If the Developer desires to vary the Private Works the Developer must lodge a request in writing with Barwon Water, with sufficient details for Barwon Water, in the opinion of Barwon Water, to review and assess the request.
- (b) In lodging the request the Developer warrants that the information required to be provided by subclause 8.2(a) is complete and accurate and is not misleading.
- (c) Upon lodging a request according to subclause 8.2(a), Barwon Water may impose additional requirements on the Developer.
- (d) The Developer is not entitled to take any benefit from any variation request before Barwon Water accepts the variation request in writing and, in case that Barwon Water has imposed additional requirements under subclause 8.2 (c), the Developer has accepted any imposed additional requirement in writing.
- (e) Subject to subclause 8.2 (d), the variation and any additional requirement imposed by Barwon Water will be regarded as included in the Private Works and the provisions of the Deed shall apply to the variation.
- (f) The Developer bears all costs in relation to the variation.

8.3 Variations requested by Barwon Water

- (a) Subject to Barwon Water's rights under subclause 14.2, Barwon Water may request in writing that the Developer varies the Private Works.
- (b) Unless Barwon Water requests otherwise, within 10 Business Days the Developer must:

- (i) indicate whether it is able to comply with the request under subclause 8.3(a); and
 - (ii) if it indicates it is able to comply with the request, describe the impact that the variation will have on the performance of the Private Works.
- (c) Upon the provision of the information required to be provided by subclause 8.3(b)(ii) Barwon Water may:
 - (i) confirm the variation within 20 Business Days; will after the accepted variation; or
 - (ii) advise that it does not desire to proceed with the variation.
- (d) The Developer must carry out the variation:
 - (i) if Barwon Water confirms the variation in accordance with subclause 8.3(c)(i), and provided the variation does not unreasonably increase the costs for the Developer; or
 - (ii) if Barwon Water and the Developer agree in writing to the terms of the variation following the discussions referred to in subclause 8.3(c)(iii) .
- (e) If the Developer is required to carry out the variation pursuant to subclause 8.3.(d) then the variation will be regarded as included in the Private Works and the provisions of the Deed shall apply to the variation.

9. Audits

9.1 Quality audits and testing

- (a) In addition to any site attendances that may be carried out by the officers or agents of Barwon Water in relation to the Private Works, Barwon Water may at any time, during the performance of the Private Works, audit or procure and audit of the Private Works. If in the course of auditing, Barwon Water is not satisfied that the Private Works are in accordance with the Deed or will not have a Defect,
 - (i) the Developer must pay the costs of the audit, and
 - (ii) Section 11 (Defects) applies.
- (b) If tests are specified for the Private Works, the Developer shall inform Barwon Water not less than 3 business days in advance of the date on which the Private Works will be ready for testing and shall agree with Barwon Water a date for the tests. Barwon Water will not be responsible for the costs incurred in connection with those tests, including the Developer's or Plumbers personnel costs, and the costs will be borne by one of the Developer or the Plumber having regard to the agreements between them. Barwon Water will be responsible for Barwon Water's personnel costs incurred in connection with those tests unless the Private Works are not presented for testing on this date, in which case Barwon Water's personnel costs shall be borne by the Developer.
- (c) In the course of any kind of auditing, Barwon Water is entitled to take photographs.

- (d) Any inspection, testing or auditing by Barwon Water shall not relieve the Developer of any obligations contained in the Deed.

9.2 OHS audits for work on Barwon Water Assets

At any time, during the performance of the Private Works, Barwon Water may audit or procure an audit of the compliance with the OHS Law in relation to works undertaken on Barwon Water Assets. If in the course of auditing, Barwon Water is not satisfied that the manner of the Private Works undertaken at a Barwon Water Asset are or will comply with OHS Law,

- (a) the Developer must pay the costs of the audit; and
- (b) the Contractor must comply with any instruction given by Barwon Water under subclause 15.1(a) (iii).

10. Defects

10.1 Rights and obligations regarding Defects

At any time during the construction of the Private Works, Barwon Water may:

- (a) notify the Developer by notice in writing of any Defect that Barwon Water reasonably considers to exist;
- (b) require the Developer, at the Developer's cost, to remedy the Defect within the period set out in the notice which shall be determined by Barwon Water having regard to the nature of the Defect; and
- (c) at its discretion, undertake, or procure the undertaking of emergency works in respect of any such Defect.

10.2 Compliance with notice

- (a) The Developer must comply with any notice given under subclauses 10.1(a), 10.1(b), and 11.1(b) and must do so within the time nominated in that notice.
- (b) If the Developer does not comply with subclause 10.2(a) Barwon Water may
 - (i) remedy the Defect with own staff or by engaging a contractor, or
 - (ii) decline to issue a consent to an Application to Connect and, in case that the Private Works involve a Subdivision, to decline to issue the consent to the Statement of Compliance.

10.3 Costs incurred by Barwon Water

Any costs reasonably incurred by Barwon Water in:

- (a) undertaking or procuring the undertaking of emergency works as contemplated by subclause 10.1(c); or
- (b) remedying the Defect as contemplated by subclause 10.2(b),
 - shall be a debt due and payable to Barwon Water by the Developer.

11. Loss, Damage or Injury

11.1 Property damage

The Developer must ensure that Assets will not be damaged by reason of or in connection with the performance of the relevant Private Works, a breach of the Deed or any other action of the Developer or the Developer's Personnel. If loss or damage occurs to Assets, by reason of or in connection with the performance of the relevant Private Works, a breach of the Deed or any other action of the Developer or the Developer's Personnel, the Developer must, to the extent that such loss or damage is not caused by any negligent act or omission of Barwon Water or the owner of the Asset:

- (a) as soon as practicable, inform Barwon Water of the fact of that loss or damage and the circumstances resulting in the loss or damage;
- (b) at its cost, rectify such loss or damage within a time period as specified by Barwon Water and communicated to the Developer in a written notice, whereby subclauses 10.2 and 10.4 apply accordingly to the rectification of the damage; and
- (c) at its cost, compensate the owner of the Asset for any loss or damage and the consequences of such loss or damage in relation to any legal liability it may have in relation to the loss or damage to the Asset.

11.2 Injury

If a personal injury requiring medical treatment occurs or there is risk that it occurs by reason of or in connection with the performance of the relevant Private Works, a breach of the Deed or any other action of the Developer or the Developer's Personnel, the Developer must:

- (a) as soon as practicable, inform Barwon Water of the fact or the risk of that injury and the circumstances resulting in the risk or the injury; and
- (b) at its cost, compensate the person suffering the injury for any legal liability the Developer may have in relation to the personal injury requiring medical treatment.

12. Developer's Warranties

12.1 The warranties

The Developer warrants, represents and agrees that:

- (a) it has the legal right and power to enter into the Deed;
- (b) all of its internal requirements necessary to enter into the Deed and to perform its obligations under the Deed have been satisfied;
- (c) it has entered into the Deed in its own right and not as agent for any other entity;
- (d) it has, and will maintain, the capacity to comply with its obligations under the Deed;
- (e) it will comply with the provisions of the Deed.

12.2 Continuing and repeated warranties

The warranties and representations set out in subclause 12.1 of the Deed are repeated on each day from the Commencement Date until the termination or expiration of the Deed.

13. Indemnity

13.1 Provision of Indemnity

The Developer indemnifies and must keep indemnified Barwon Water against any loss, damage, cost, expense or liability suffered or incurred in relation to any breach of the Deed or any warranty provided for in the Deed. Any amount payable under this indemnity shall be a debt due and payable by the Developer to Barwon Water.

13.2 Reduction of Liability

The liability of the Developer pursuant to subclause 13.1 shall be reduced to the extent that any relevant loss, damage, cost, expense or liability was caused by the negligent or wilful act of Barwon Water.

13.3 Payment

- (a) Barwon Water may, in good faith, estimate the liability of the Developer pursuant to subclause 13.1 that arises in relation to rectification of a Defect and upon that estimate being provided to the Developer the estimate shall be a debt due and payable by the Developer to Barwon Water.
- (b) The debt arising pursuant to subclause 13.3(a):
 - (i) is payable upon the estimate being provided to the Developer;
 - (ii) is provisional only; and
 - (iii) may be adjusted as a result of the Developer taking proceedings to establish the final quantum of the liability in relation to rectification of the Defect.

14. Barwon Water's Land Development and Administrative Process

14.1 Compliance with Barwon Water's Land Development and Administrative Process

The Developer must comply with Barwon Water's Land Development and Administrative Process.

14.2 Amendment of Barwon Water's Land Development and Administrative Process

- (a) Barwon Water may amend any of Barwon Water's Land Development and Administrative Process from time to time.
- (b) If the Developer considers that the amendment to Barwon Water's Land Development and Administrative Process constitutes a variation to the Private Works it may notify Barwon Water within 10 Business Days and Barwon Water shall, if it agrees that the amendment constitutes a variation to the Private Works,

provide a request in writing to the Developer to vary the Private Works in accordance with subclause 8.3(a).

- (c) If the Developer does not provide a notice in accordance with subclause 14.2(b) then the amendment to Barwon Water's Land Development and Administrative Process shall form part of the Developer's obligations under the Deed.

15. OHS

15.1 OHS Obligations

- (a) The Developer must, in relation to the Private Works, be aware of and comply with and ensure that the Plumbers are aware of and comply with:
 - (i) any applicable OHS Law, including relevant state or federal requirements relating to the coronavirus (COVID-19) pandemic;
 - (ii) all Barwon Water's HSE Standards and Procedures applicable for the work on Barwon Water Assets; and
 - (iii) all lawful directions and orders given by Barwon Water's Representative or any person authorised by Barwon Water or by Legislative Requirements to give directions in relation to works on Barwon Water Assets;
- (b) The Developer must ensure and warrants that the Plumbers (i) have completed and maintain appropriate training and competency assessments in order to safely execute the Private Works, and (ii) are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (i) safe working practices;
 - (ii) safety and care of property; and
 - (iii) continuity of work.

15.2 Control of work site

- (a) The Developer acknowledges and agrees that the Developer and the Plumbers shall be the only parties who may exercise management and control over the area in which the Private Works are being undertaken.
- (b) Barwon Water appoints the Developer as the 'principal contractor' for the purposes of the OHS Law and acknowledges that the Developer may appoint the Plumbers to discharge the principal contractor duties for the purpose of the OHS Law. If requested by the Developer, Barwon Water may appoint the Plumbers as the principal contractor.
- (c) The Developer must not cause, permit or tolerate unacceptable actual or potential hazards or incidents relating to safety, health or the environment over which the Developer has control.

15.3 Access to work site

Barwon Water and any person authorised by Barwon Water or by law shall be entitled to access to the area in which the Private Works are being undertaken. The Developer must ensure that this access is safe at all times during the performance of the Private Works.

15.4 Examination of area / Works on Barwon Water Assets

The Developer must procure that the Accredited Contractor:

- (a) have received and read the Barwon Water's Standards and Procedures applicable for the work on Barwon Water Assets;
- (b) have carefully examined the area and its surroundings in which the Private Works are being undertaken and have fully informed themselves as to the means of access to the area in which the Private Works are being undertaken, and to its facilities; and
- (c) have made reasonable enquiries, examined all information, and satisfied themselves as to the local and other conditions relevant to the risks, contingencies and other circumstances having an effect on the Developer's obligations under the Deed.

15.5 Environment

The Developer must, in relation to the Private Works comply with, and procure compliance with the Environment Laws.

16. Incidents

16.1 Keeping of Records

- (a) The Developer must keep all documents and records relating to Incidents and must keep those records and documents for a period of 7 years after the Incident.
- (b) The Developer must allow Barwon Water, or a nominee of Barwon Water, to conduct an audit of any of the documents and records to which subclause 16.1(a) applies if requested to do so by Barwon Water.

16.2 Reporting of Serious Incidents

- (a) The Developer must, as soon as practicable after a Serious Incident, advise Barwon Water of:
 - (i) the occurrence of the Serious Incident;
 - (ii) the cause of the Serious Incident; and
 - (iii) the consequences of the Serious Incident.

16.3 Investigation of Serious Incidents

- (a) The Developer must:
 - (i) as soon as practicable after a Serious Incident, investigate the Serious Incident with a view to:
 - (A) fully understanding the cause of the Serious Incident; and
 - (B) taking steps to prevent the circumstances which gave rise to the Serious Incident from occurring in the future;
 - (ii) complete the investigation in accordance with this subclause 16.3 within 20 Business Days of the Serious Incident.

- (b) The Developer must:
 - (i) advise Barwon Water of the arrangements for and the timing of the investigation;
 - (ii) allow Barwon Water, if it desires to do so, to contribute to or participate in the investigation;
 - (iii) record the investigation in writing in a manner which results in an auditable record of the investigation and the matters referred to in subclause 16.3(a)(i);
 - (iv) provide Barwon Water with a copy of the written record referred to in subclause 16.3(b)(iii) within 5 Business Days of the investigation being concluded.

16.4 Response to Serious Incidents

The Developer must implement reasonable steps to prevent the circumstances which gave rise to the Serious Incident from occurring in the future.

17. Insurances

17.1 Obligation to insure

The Developer must maintain or procure that its Accredited Contractors maintain:

- (a) the insurances specified in Schedule 4;
- (b) all insurances required by a Legislative Requirement; and
- (c) all other insurances which a reasonable prudent party in the position of the Developer would maintain

17.2 Developer's Personnel

In addition to any insurances procured by an Accredited Contractor under subclause 17.1, the Developer's must procure that the Developer's Personnel maintain all insurances required by a Legislative Requirement.

17.3 Status of insurer

The insurances required pursuant to subclause 17.1 must be taken out with an insurer which has a rating from Standard & Poor's (or if Standard & Poor's no longer provides such ratings, an equivalent entity to Standard & Poor's acceptable to Barwon Water) of not less than A - and which is permitted by the *Insurance Act 1973* (Cth) to undertake insurance in Australia.

17.4 Evidence of insurance

The Developer must, within 5 Business Days of the Commencement Date and, within 5 Business Days of each request from Barwon Water, provide to Barwon Water evidence satisfactory to Barwon Water of compliance with this clause 17 in the form of a copy of the respective insurance policy.

17.5 No undermining

The Developer must not, and must ensure that those who it can influence do not do any act or permit or suffer any circumstances by which a policy of insurance required to be taken out under this clause 17 may at any time become void or voidable.

17.6 Cancellation

The Developer must notify Barwon Water in writing whenever the insurer gives the Developer a notice of cancellation or any other notice in respect of a policy.

17.7 Indemnity

The Developer indemnifies Barwon Water in relation to any loss, cost, expense or liability incurred or suffered by Barwon Water by reason of or in connection with any failure by the Developer to comply with the obligations under this clause 17.

17.8 Claims

The Developer must:

- (a) notify Barwon Water in writing of any claims against the insurances effected by the Developer within 5 days after it becomes aware of the claims; and
- (b) provide such further information to Barwon Water in relation to the claim as Barwon Water may reasonably require.

17.9 Deferral of commencement

The Developer must not commence to undertake the Private Works or construct the Private Water Infrastructure until the Developer has complied with this clause 17.

18. Works Information

18.1 Provision of the Works Information

Before Completion of the Private Works and at any other time when requested by Barwon Water, the Developer must, provide Barwon Water with complete access to the Works Information as the case may be through arrangements with third parties, .

18.2 Form of the Works Information

The Works Information must be in a form approved by Barwon Water.

18.3 Accuracy of the Works Information

The Developer warrants that the Works Information will be accurate and complete and will not be misleading.

19. Barwon Water Information

19.1 Relevance of Barwon Water Information

The Developer:

- (a) acknowledges that it may come into possession of Barwon Water Information;
- (b) must in good faith seek to independently verify all Barwon Water Information; and
- (c) warrants that it will not rely upon any Barwon Water Information where it is possible to independently verify the Barwon Water Information.

19.2 No warranty

Barwon Water does not give any warranty or make any representation as to the accuracy or completeness of any Barwon Water Information.

19.3 No Claim

The Developer has no claim against Barwon Water in relation to or in connection with any Barwon Water Information.

19.4 Use of Barwon Water Information

- (a) The Developer must not:
 - (i) use any Barwon Water Information for any purpose other than the undertaking of the Private Works (as is relevant to the Developer);
 - (ii) must not pass any Barwon Water Information to any third party other than for the purpose of undertaking of the Private Works.
- (b) If the Developer passes any Barwon Water Information to any third party as permitted by subclause 19.4(a)(ii) the Developer must advise the recipient of that information of the matters set out in subclause 19.1 and subclause 19.2.

20. Land and Third Party Land

20.1 Developer's Access to Third Party Land

- (a) Where the Developer desires to access Third Party Land, then the Developer must, before the commencement of the Private Works, give to Barwon Water a letter of consent, from the owner of the Third Party Land regarding the Developer's access to the Third Party Land.
- (b) Where the Developer desires to access Third Party Land in order to undertake the Private Works or construct the Private Water Infrastructure but it is unable to procure consent from the owner of the Third Party Land in accordance with subclause 20.1(a), then the Developer may request Barwon Water's assistance.
- (c) Where Barwon Water considers that it is reasonable to do so it shall provide assistance in accordance with a request by the Developer under subclause 20.1(b). Any third party costs reasonably incurred by Barwon Water in providing such assistance will be at the cost of the Developer.

20.2 Barwon Water Access to land

The Developer must, at the Developer's cost and as required by Barwon Water, use its best endeavours to procure consent from the owner of Third Party Land, or if the Developer is the owner of relevant land then it must provide consent, for Barwon Water to access the Third Party Land or land during the performance of the Private Works.

20.3 Barwon Water Access to Barwon Water Assets

The Developer must ensure that Barwon Water employees and agents have access to Barwon Water Assets at all times.

20.4 Easements and freehold land

- (a) Upon request of Barwon Water, the Developer must, at the Developer's cost, grant or procure the grant of an easement or easements, in terms acceptable to Barwon Water, over the Land, to the benefit of such other entity or land as specified by Barwon Water with the purpose of securing the ability of continuous current and future supply of potable water, recycled water and/or sewer services to the benefited entity or land.
- (b) In the event that a Barwon Water Asset is located in or on the Land without an easement over the Land in favour of Barwon Water, in terms acceptable to Barwon Water, the Developer must, at the Developer's cost and as required by Barwon Water: grant or procure the grant of an easement or easements, in terms acceptable to Barwon Water, over the Land, to the benefit of .Barwon Water.
- (c) The Developer must, at the Developer's cost, procure the granting of any easement over land which is beyond the Land and that is necessary for the purpose of Barwon Water, its officers, contractors and persons authorised by it, entering the Land to inspect, construct, maintain, repair, decommission or remove the existing Barwon Water Asset.
- (d) Any easement or transferred land referred to in subclause 20.4(a) or subclause 20.4(b) must comply with any additional requirements set out in Barwon Water's Land Development and Administrative Process.
- (e) Provided that the Developer has used its best endeavours to obtain an easement referred to in subclause 20.4(c) over any Third Party Land then the Developer shall not be in breach of its obligations under subclause 20.4. (c).
- (f) Where the Developer has, in accordance with subclause 20.4(e), been unable to obtain an easement or reserve over any Third Party Land and Barwon Water obtains such an easement or reserve any costs reasonably incurred by Barwon Water in obtaining such an easement, including legal costs, valuation fees, fees of a land registry or land title office, mortgagee fees and any compensation payable will be at the cost of the Developer.

21. Affecting existing Barwon Water Assets

- (a) If the Servicing Requirements and Costing Schedule sets out that the Private Works include the disconnection, removal or decommissioning of existing Barwon Water Assets, Barwon Water is entitled to specify:
 - (i) the respective assets of the Barwon Water Assets that must be either disconnected, removed or decommissioned; and
 - (ii) any requirement in respect of the disconnection, removal or decommissioning of any of those assets.
- (b) The Developer must disconnect, remove or decommission the Barwon Water Assets specified by Barwon Water and comply with any requirements of Barwon Water in respect of the disconnection, removal or decommissioning of any of those assets.

- (c) The ownership of and all responsibility for any Barwon Water Asset which is decommissioned or disconnected and removed from the ground transfers to the Developer upon its decommissioning or disconnection.
- (d) In the case that the Barwon Water Asset remains in the ground, upon request of the Developer, Barwon Water may transfer the ownership of the Barwon Water Asset to the Developer.
- (e) The Developer is responsible and liable for:
 - (i) making good any impact to the land, any property including the remaining or to the remaining Barwon Water Assets relating to the disconnection, removal or decommissioning;
 - (ii) the risk arising out of the method of disconnection, removal or decommissioning of Barwon Water's Assets; and
 - (iii) any risk arising from or in connection with the decommissioning, disconnection, or removal.
- (f) The Developer must at its cost:
 - (i) remove any easement securing a former Barwon Water Asset that has been decommissioned; and
 - (ii) create any new easement required by Barwon Water over any replacement asset of a former Barwon Water Asset in accordance with subsections 20.4(b) to (f).

22. Lodgement of Private Works Plans / Testings

22.1 Private Works and Private Works Plans must comply with Specifications

- (a) As soon as Barwon Water reasonably considers the Private Works to be completed in accordance with the Deed, the Developer must procure that Barwon Water is provided with the complete Private Works Plans and any other information as reasonably requested by Barwon Water.
- (b) When submitting the Private Works Plans, the Private Works, and all test results, information, drawings, and data contained in or attached to the Private Works Plans must comply with the Specifications and any other requirement under the Deed.

22.2 Testings and Testing Equipment

- (a) Barwon Water may carry out or advise another party to carry out such testing and inspection of the Private Works as Barwon Water thinks fit to validate the information provided in the Private Works Plans.
- (b) Barwon Water may require verification that all of the equipment used for the testing, which has been carried out to provide data for the Private Works Plans, complied with the Standards.
- (c) If Barwon Water is not satisfied that the testing equipment described under subclause 22.2(b) did comply with the Standards,
 - (i) Barwon Water is entitled to carry out additional testing; or

- (ii) to instruct the Developer to procure the repetition of the testing with testing equipment complying with the Standards and to be carried out by the party as determined by Barwon Water, and
 - (iii) all costs of such testing under subclause 22.2(c)(i) and 22.2(c)(ii) shall be borne by the Developer and are a debt due and payable by the Developer to Barwon Water.
- (d) Barwon Water may request any other reasonable verification of the compliance with the Specification and other requirements under the Deed.

23. Barwon Water's consent to a Statement of Compliance

23.1 Conditions for provision of consent to a Statement of Compliance

In case that the Private Works involve a Subdivision, Barwon Water will provide its consent to the issuing of a Statement of Compliance for that Subdivision or the relevant stage thereof, provided Barwon Water has verified and confirmed that the following requirements are met:

- (a) the Developer has paid or has procured payment of any outstanding fees and any New Customer Contributions to Barwon Water;
- (b) in case of Private Works which do not involve a subdivision, the Developer has provided the Works Warranty Bond in accordance with the Deed;
- (c) the Developer has provided the Private Works Plans in electronic and/or hardcopy form or in another form, as required by Barwon Water;
- (d) the Developer has provided the Works Information according to clause 18;
- (e) the Developer has complied with any other obligation under the Deed;
- (f) the Developer has ensured that the Private Water Infrastructure is not damaged; and
- (g) the Private Water Infrastructure is reasonably clean.

24. Intellectual Property

24.1 Developer's obligations

The Developer:

- (a) warrants that the Private Works (as is relevant to the Developer) and the Works Information will not infringe the Intellectual Property Rights of any third party;
- (b) grants to Barwon Water an irrevocable, perpetual, royalty free, unconditional licence to use the Private Works (as is relevant to the Developer) and the Works Information in whatever manner Barwon Water finds convenient in respect of conducting its business and discharging its obligations. and
- (c) warrants that it is able to grant the licence provided for in subclause 25.1(b).

24.2 Barwon Water's intellectual property

- (a) The Developer acknowledges that the provision to it of any of Barwon Water's Information does not give to the Developer any Intellectual Property Rights in that information (other than in respect of the licence granted in subclause 25.2(b)).
- (b) Barwon Water grants to the Developer a royalty free licence to use Barwon Water's Information for the purpose of undertaking the Private Works.
- (c) The Developer may sub-licence the licence provided under subclause 25.2(b) to a Plumber for the purpose of undertaking the Private Works.

25. Confidentiality

25.1 Use of Confidential Information

- (a) Each party (**Recipient**):
 - (i) may use the Confidential Information of the disclosing party (**Disclosing Party**) only for the purposes of the Deed and, in the case of Barwon Water, also for the operation or maintenance by Barwon Water of Barwon Water's Asset;
 - (ii) must keep confidential all Confidential Information of a Disclosing Party except for a disclosure to persons who:
 - (A) are aware and agree that the Confidential Information must be kept confidential; or
 - (B) where the Disclosing Party is Barwon Water, have signed any confidentiality deed required by Barwon Water from time to time, and either:
 - (C) has a need to know (and only to the extent that each has a need to know); or
 - (D) has been approved by Barwon Water from time to time.
- (b) The Developer must ensure that the Developer's Personnel keep confidential all Confidential Information, other than in circumstances where disclosure is permitted by the Deed.
- (c) The Developer must ensure that the Developer's Personnel only use Confidential Information solely for the purpose of undertaking of the Private Works.

25.2 Breach of Confidence

- (a) A party must immediately notify the other party of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- (b) A party must provide assistance reasonably requested by the other party in relation to any proceedings taken against any person for unauthorised use, copying or disclosure of Confidential Information.
- (c) The parties acknowledges that damages will not be an adequate remedy in relation to any breach of this clause 25 and that a party may be entitled to take injunctive proceedings in relation to, or to prevent any such breach.

25.3 Limit of obligations

The obligations in this clause 25 to not apply:

- (a) to information already in the public domain (other than as a result of a breach of this clause 25);
- (b) any disclosure required by the listing rules of the Australian Stock Exchange; or
- (c) any disclosure required by law.

25.4 Survival

The obligations in this clause 25 survive the termination or expiration of the Deed.

26. Taking Over

26.1 Barwon Water's right to take over

- (a) Subject to subclause 30.1(c), if Barwon Water becomes entitled to terminate the Deed or has served a notice under subclause 31.1(c) then Barwon Water may, serve written notice to the Developer of the intention to take over all or part of the Private Works unless the Developer rectifies the events that entitle Barwon Water to terminate the Deed or serve the notice under subclause 31.1(c) within 10 Business Days from receipt of the notice.
- (b) If the Developer does not rectify the events that entitle Barwon Water to terminate the Deed or to serve a notice under subclause 31.1(c) within 10 Business Days from receipt of the notice under subclause 30.1(a), then Barwon Water may take over all or part of the Private Works for any such period it requires.
- (c) If Barwon Water becomes entitled to terminate the Deed or has served a notice under subclause 31.1(c) arising out of an emergency or material risk of personal injury then Barwon Water may, by notice in writing, take over all or part of the Private Works.

26.2 Consequence of taking over

If Barwon Water takes over all or part of the Private Works then:

- (a) the Developer must continue with the Private Works not taken over by Barwon Water in accordance with the Deed;
- (b) the Developer must resume the Private Works previously taken over by Barwon Water in accordance with the Deed if Barwon Water serves a notice on the Developer requiring it to do so;
- (c) the Developer must not remove any plant or equipment in the vicinity of the Private Works and which is relevant to the carrying out of the Private Works without the consent of Barwon Water;
- (d) Barwon Water may, without charge, use the plant and equipment set out in subclause 30.2(c) in order to complete the Private Works which have been taken over by Barwon Water;
- (e) Barwon Water may in its absolute discretion notify the Developer requiring novation of Plumbers providing the Private Works and, upon receipt of a notice

from Barwon Water under this subclause 26.2(e), the Developer must procure that the Plumbers are novated from the Developer to Barwon Water;

- (f) the Developer must cooperate with Barwon Water and assist Barwon Water in procuring the completion of the Private Works which have been taken over by Barwon Water;
- (g) the Developer must procure the cooperation of all contractors and consultants engaged by the Developer in relation to the carrying out of the Private Works such that those contractors and consultants, subject to the direction of Barwon Water, continue to carry out the activities which they were contracted to the Developer to carry out; and
- (h) the Developer must bear the cost of the cooperation and procuring the cooperation described in this subclause 26.2.

26.3 Financial adjustment

The Developer indemnifies Barwon Water in relation to any loss, cost, expense or liability incurred or suffered by Barwon Water in exercising its rights under this clause 26 and in connection with or arising out of the completion of the Private Works taken over by Barwon Water.

26.4 Preservation of right to terminate

- (a) Notwithstanding that Barwon Water may have deferred terminating the Deed and has taken over all or part of the Private Works, Barwon Water may at any time after such deferral and taking over, terminate the Deed.
- (b) The entitlement of Barwon Water under subclause 26.3 will not be prejudiced by any subsequent termination of the Deed.

27. Termination

27.1 Barwon Water's right to terminate

If:

- (a) there is a Change in Control without the consent of Barwon Water;
- (b) the Developer is subject to an Insolvency Event;
- (c) the Developer is in breach of the Deed or any warranty given by the Developer under the Deed which is capable of rectification and the Developer has not rectified the breach:
 - (i) in case of a Defect, within the period of time as determined by Barwon Water under the Deed; or
 - (ii) in any other case within 10 Business Days of a notice from Barwon Water requiring rectification of the breach;
- (d) the Developer is in breach of the Deed or any warranty given by the Developer under the Deed which is not capable of rectification; or
- (e) any of the conditions in subclause 5.4 of Schedule 5 arise,

then Barwon Water may by notice in writing, in its absolute discretion, terminate the Deed.

27.2 Consequence of termination

- (a) Upon termination of the Deed by Barwon Water the rights of Barwon Water shall be as if the Developer had repudiated the Deed and Barwon Water accepted that repudiation.
- (b) Upon termination, the Developer must not (i) carry out any further Private Works, or (ii) permit any further Private Works to be carried out.
- (c) The Developer is not entitled, in contract, tort or otherwise, to any payment or compensation for losses incurred as a result of the termination.
- (d) Termination is without prejudice to any rights or liabilities which have been unconditionally accrued at the date of termination.
- (e) Following the termination of the Deed the Continuing Provisions shall continue to apply and be given effect to.

28. Change in Control

28.1 Consent required

If there is to be a Change in Control the Developer must seek the consent of Barwon Water.

28.2 Actions required

If there is to be a Change in Control the Developer must demonstrate that the Change in Control will not adversely impact the Developer's ability to carry out the Private Works.

28.3 Consent not to be unreasonably withheld

Provided that the Contractor has complied with subclauses 33.1 and 33.2, Barwon Water may not unreasonably withhold its consent to a Change in Control.

28.4 Absence of consent

- (a) If there is a Change in Control without the consent of Barwon Water then Barwon Water may, in its Absolute Discretion terminate the Deed under clause 31.
- (b) A failure to terminate the Deed immediately following a Change in Control without the consent of Barwon Water shall not prevent Barwon Water from later terminating the Deed in its Absolute Discretion.

29. Dispute Resolution

29.1 Dispute process

- (a) The parties must follow this clause 29 in relation to any dispute or difference that arises between the parties which is in any way connected with the Deed or the undertaking of the Private Works (as is relevant to the Developer) (**Dispute**).
- (b) The parties may not commence litigation in relation to any Dispute (other than for urgent relief) unless and until it becomes entitled to do so under this clause 29.
- (c) The parties must continue to comply with the Deed notwithstanding the existence of a dispute.

29.2 Notice of Dispute

Any party wishing to progress the dispute must deliver by hand or certified mail to the other party, a written notice of dispute, which adequately identifies and provides details of the dispute (**Notice of Dispute**).

29.3 Meetings

If a party issues a notice of Dispute under subclause 29.2, the following process applies:

- (a) within 10 Business Days of the giving of a notice of Dispute, the Developer's Representative and Barwon Water's Representative must confer in a good faith attempt to resolve the Dispute; and
- (b) if the Dispute is not resolved within 10 Business Days of the giving of the notice of Dispute, the Developer, represented by a senior person having authority to agree a resolution of the Dispute (not being the Developer's Representative and being senior to the Developer's Representative) and Barwon Water represented by a senior person having authority to agree a resolution of the Dispute, (not being Barwon Water's Representative and being senior to Barwon Water's Representative) must confer in a good faith attempt to resolve the Dispute and must do so within 20 Business Days of the giving of a notice of Dispute.

29.4 Parties Obligations

The parties must use their reasonable efforts to resolve the Dispute through the process described in this clause 29, including arranging and attending meetings to discuss the Dispute.

29.5 Mediation

If the Dispute is not resolved within 20 Business Days of the giving of the notice of Dispute, either party may refer the Dispute to mediation.

29.6 Litigation

If:

- (a) the Dispute is not resolved within 60 Business Days of the giving of the notice of Dispute (or such longer period as may be agreed by the parties); and
 - (b) the parties have attended a mediation in accordance with subclause 29.5, then
- either party may refer the Dispute to litigation.

29.7 Performance during dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Accreditation Deed, pending the resolution of a Dispute under this clause 29.

29.8 Interlocutory relief

Nothing in this clause 29 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such Dispute.

29.9 Survival

This clause 29 survives the termination or expiration of the Deed.

30. Audit of Records

30.1 Retention of documents and records

The Developer must keep all documents and records relating to the performance of the obligations under the Deed and must do so for a period of 7 years after the expiration or termination of the Deed.

30.2 Entitlement to undertake audit

Upon reasonable notice from Barwon Water the Developer must allow Barwon Water, or a nominee of Barwon Water, to inspect the documents and records to which subclause 30.1 applies relating to the operation and maintenance of Barwon Water's Assets (including any part of the Private Works forming part or related to Barwon Water's Assets) and to conduct an audit of those documents and records.

31. Notices

31.1 Application of clause

In this clause 31 reference to notice means a notice, consent, approval or other communication.

31.2 Requirements for Notices

Any notice given under or in relation to the Deed must:

- (a) be in writing;
- (b) be signed by or on behalf of the party giving the notice;
- (c) be delivered to the Developer's Representative and the Group Manager Development at Barwon Water;
- (d) comply with the requirements of the Deed;
- (e) be delivered as provided for in the Deed; and
- (f) state on the face of the notice:
 - (i) that it is a notice pursuant to the Deed;
 - (ii) which clause or clauses of the Deed the notice relates to; and
 - (iii) what issue or issues the notice relates to.

31.3 Non-compliance with requirements

If a notice does not comply with this clause 31 it cannot be relied upon and will not be taken to be a valid notice under the Deed.

31.4 Mode of Service

A notice may be served by:

- (a) hand;
- (b) post;
- (c) facsimile; or
- (d) email.

31.5 Address for Service

- (a) The address for service (including the facsimile number) are set out in the Particulars.
- (b) The address for service (including the facsimile number) may be varied by a party upon the giving of notice in writing of that variation.
- (c) a notice must be given to the address for service (including the facsimile number) or by hand.

31.6 Time of Service

A notice will be taken to have been delivered as follows:

- (a) where the notice is permitted to be delivered by hand and is delivered by hand, when it has been delivered to the address of the addressee provided for in the Deed in which case it shall be deemed to have been given upon delivery;
- (b) where the notice is permitted to be sent by post and is sent by post, when it has been sent by pre-paid ordinary post to the address provided for in the Deed, in which case it shall be deemed to have been given on the third Business Day after posting; or
- (c) where the notice is permitted to be sent by facsimile, when it has been transmitted to the facsimile number of the addressee provided for in the Deed in which case if, at the conclusion of the transmission, the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages in the notice have been successfully transmitted it shall be deemed to have been given:
 - (i) if transmission was successfully completed before 4.00 pm on a Business Day, on the day it was sent; and
 - (ii) otherwise on the next Business Day.
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Accreditation Deed and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when the sender receives confirmation on its server that the message has been transmitted.

31.7 Validity of Notice

A notice is valid even if the intended recipient does not receive it or it is returned unclaimed to the sender provided it is sent in accordance with the Deed.

32. Private Works Bond

32.1 Provision of the Private Works Bond

For Private Works which do not involve a subdivision, the Developer must provide to Barwon Water a Private Works Bond prior to Barwon Water executing the Deed and sub-clauses 32.2 to 32.6 apply.

32.2 Use of the Private Works Bond

Barwon Water is entitled to call upon the Private Works Bond

- (a) whenever there is a debt due and payable by the Developer to Barwon Water, or
- (b) whenever Barwon Water is entitled to remedy a Defect or to rectify a damage or to undertake a similar action under the Deed, Barwon Water may before or after carrying out any such work, call upon the Private Works Bond to meet the cost, or the likely cost, of doing so.

32.3 Obligation to Reinstate

If at any time, including during the Warranty Period, Barwon Water has exercised its right to claim some part or all of the Private Works Bond under this clause, the Developer must reinstate the Private Works Bond to its original amount (or any modified amount specified by Barwon Water) and, if the Developer fails to do so, Barwon Water may terminate the Deed.

32.4 Developer not to seek an injunction

The Developer agrees that it will not at any time take steps to seek an injunction against or otherwise restrain, or attempt to seek an injunction against or otherwise restrain:

- (a) any issuer of the Private Works Bond from paying Barwon Water pursuant to the Private Works Bond; or
- (b) Barwon Water from:
 - (i) taking any steps to obtain payment under the Private Works Bond; or
 - (ii) using the monies received under the Private Works Bond.

32.5 Interest

Barwon Water will own any interest earned on the Private Works Bond.

32.6 Return of Private Works Bond

Provided the Developer:

- (a) has paid all outstanding payments to Barwon Water;
- (b) has provided the Private Works Plans to Barwon Water;
- (c) has provided all Works Information to Barwon Water;
- (d) has completed the Private Works in compliance with the Specification; and
- (e) is not in breach of any other of its obligations under the Deed,

the Developer may apply to Barwon Water for the return of the Private Works Bond then held by Barwon Water (if any) and within the later of 20 Business Days of receipt of such a request or Barwon Water being satisfied that the Developer is not in breach of any of its obligations under the Deed Barwon Water shall return the Private Works Bond to the Developer.

33. Miscellaneous

33.1 Governing Law

The Deed is governed by the laws of Victoria.

33.2 Jurisdiction

Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts that may hear appeals from such courts and waives any right it might have to claim that those courts are an inconvenient forum.

33.3 Entire deed

The Deed:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) supersedes all prior understandings or agreements between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in connection with that subject matter.

33.4 Alteration

The Deed may only be altered or varied in writing signed by the parties.

33.5 Consents and conditions

- (a) Where Barwon Water is called upon, or is able to give any approval or consent or exercise any discretion pursuant to the Deed, Barwon Water may, in its Absolute Discretion:
 - (i) give the approval or consent or exercise any discretion;
 - (ii) not give the approval or consent or exercise any discretion; or
 - (iii) give the approval or consent or exercise any discretion subject to conditions.
- (b) Where Barwon Water gives any approval or consent or exercises any discretion subject to conditions:
 - (i) the approval or consent or exercise of the discretion shall not be taken to be given or the discretion exercised until the conditions are fulfilled;
 - (ii) the person enjoying the benefit of the approval or consent or exercise of the discretion must comply with or fulfil the conditions;
 - (iii) if, at any time, the person enjoying the benefit of the approval or consent or exercise of the discretion fails to comply with or fulfil the conditions or is otherwise in breach of the conditions, approval or consent or exercise of the discretion will be void from the beginning and matters as between Barwon Water and the Developer will be as if the approval or consent had not been given or the discretion had not been exercised (save that Barwon Water will continue to enjoy the benefit of any compliance with the conditions).

33.6 Discretion

If Barwon Water is entitled to act in its ***Absolute Discretion*** then:

- (a) Barwon Water is entitled to act as it considers appropriate and is not obliged to consider the interests of the Developer;
- (b) Barwon Water may impose any conditions it considers appropriate in relation to the exercise of the discretion (and subclause 33.5 shall apply to any such conditions);
- (c) any obligation to act in good faith does not apply in respect of the exercise of the discretion;

- (d) the exercise of the discretion shall not be reviewable;
- (e) Barwon Water shall not be constrained from acting by any principle of common law or equity;
- (f) there shall be no time constraint on when Barwon Water may exercise that discretion (unless such a constraint arises through the particular provision of the Deed giving rise to the discretion); and
- (g) the Developer shall have no claim against Barwon Water in relation to the exercise of the discretion or the timing of the exercise of the discretion.

33.7 Claims

Where, in the Deed there is reference to the Developer having '*no claim*' against Barwon Water then:

- (a) the Developer must not bring any Claim against Barwon Water in relation to or in connection with the circumstances giving rise to the Claim;
- (b) the Developer releases Barwon Water from any Claim which the Developer has, or but for this provision may have had, against Barwon Water in relation to or connection with the circumstances giving rise to the Claim whether that Claim arises through negligence, breach of contract or any other obligation or any other means; and
- (c) the Developer indemnifies Barwon Water and will keep Barwon Water indemnified in relation to any liability arising in connection with the circumstances giving rise to any such Claim;

33.8 Indemnities

Where any indemnity is given under the Deed:

- (a) the indemnity is in respect of any loss damage, costs, expense, or liability including (without limitation);
 - (i) loss of profit,
 - (ii) consequential loss;
 - (iii) liability to third parties; and
 - (iv) legal costs (on a solicitor own client basis) in respect of enforcing the indemnity or defending any claim brought by a third party in respect of a matter which is the subject of the indemnity; and
- (b) the indemnity is given in respect of any such loss damage or expense arising from or in any way connected with the event or circumstance in respect of which the indemnity is given.
- (c) the indemnity is a continuing obligation, separate and independent from the other obligations of the Developer; and
- (d) the indemnity survives the termination of the Deed.

33.9 Debt due by Developer

Where there is a debt due and payable to Barwon Water by the Developer:

- (a) the amount must be paid within 10 Business Days of a request for payment or otherwise within such timeframe as determined by Barwon Water;
- (b) interest shall accrue at the rate of 5% above the penalty interest rate (as defined in the *Penalty Interest Rates Act 1983* (Vic)) on any amount outstanding beyond the due date with such interest compounding monthly.

33.10 Developer's breach

- (a) Any breach of the Deed by the Developer shall be taken to be committed afresh each day until the breach ceases.
- (b) Barwon Water's rights in relation to any breach of the Deed by the Developer shall accrue afresh each day until the breach ceases.
- (c) No indulgence or delay by Barwon Water shall prejudice Barwon Water in the exercise of its rights in relation to any breach of the Deed by the Developer or be taken to be a waiver or an election by Barwon Water.

33.11 Cumulative rights

Any specific right or remedy provided in the Deed will not be exclusive but will be cumulative of all other rights and remedies provided by law, agreement or otherwise.

33.12 GST

Unless otherwise stated the amounts shown in the Deed are exclusive of GST.

33.13 Private Works before Commencement Date

The Deed applies to the Private Works, whether any of the Private Works are undertaken before or after the commencement of the Deed but not for such Private Works undertaken under a former 'costing letter' executed by a Developer before the 16.03.2018.

33.14 No liability reduction

The obligations and the liability of the Developer under the Deed or at law are not limited by any equal or similar entitlements of Barwon Water towards any other party.

33.15 No Reliance

The Developer agrees that in entering into the Deed it has not relied upon any representation, warranty or inducement by Barwon Water.

33.16 Survival

The Continuing Provisions are independent and survive the termination or expiration of the Deed.

33.17 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

33.18 Severance

A term or part of a term of the Deed that is illegal or unenforceable may be severed from the Deed and the remaining terms or parts of the term of the Deed continue in force.

33.19 Counterparts

The Deed may be executed in counterparts. All executed counterparts constitute one document.

33.20 Costs

Each party must pay its own costs of negotiating, preparing and executing the Deed.

33.21 Trust

Except to the extent set out in Schedule 5 the Developer warrants and represents that it is not entering into the Deed as trustee of any trust or settlement.

33.22 Inconsistency with other documents

If the Deed is inconsistent with any other document or agreement between the parties, the Deed prevails to the extent of the inconsistency.

33.23 Amendment

The Deed can only be amended or replaced by another document signed by the Developer and Barwon Water. It is not necessary for the amending document to be a deed.

33.24 Assignment

The Developer must notify Barwon Water if it assigns its rights under the Deed.

33.25 Electronic Signing of Agreement

- (a) The parties acknowledge and agree that prior to the signing of this Agreement both Barwon Water and the Developer consented to the Agreement being electronically signed using DocuSign.
- (b) This Agreement may be validly created by counterparts electronically signed by each party using DocuSign and shall together be deemed to constitute one and the same instrument.
- (c) It is agreed that the delivery of a counterpart of the Agreement bearing an electronic signature rather than a 'wet' signature shall be deemed to bind the party whose signature is so represented.
- (d) For the avoidance of doubt, no witnessing of a party's signature is required.
- (e) The parties agree to be bound by copies of this Agreement which has been electronically signed using DocuSign in accordance with this clause.
- (f) The parties agree that they will be bound by, have complied with and will comply with the Electronic Transactions (Victoria) Act 2000, in relation to the execution of this Agreement.
- (g) In this clause, Docusign means the secure electronic signature technology system operated by Docusign Inc.

Schedule 1 - Interpretation

1. Defined terms

In the Deed:

Absolute Discretion shall have the meaning as set out in subclause 33.6.

Accreditation means the holding of an accreditation from Barwon Water pursuant to arrangements between Barwon Water and the relevant person or company and pursuant to which the relevant person or company is permitted to undertake work or provide services relevant to Water Infrastructure;

Accredited Category means a category of Accreditation relevant to the Private Works to be undertaken by the relevant person, organisation or company and which, having regard to the arrangements between the Accredited Contractor and Barwon Water, permits the undertaking of the relevant Private Works by the Accredited Personnel;

Accredited Contractor means a contractor (being a person or company) holding Accreditation in the appropriate Accredited Category, and is, as at the Commencement Date, the person described as such in the Particulars;

Asset/s means Barwon Water's Asset/s or Third Party Asset/s;

Authorities means any person or body having jurisdiction over or in relation to the Private Works or the activity of the Developer in the execution of the Private Works;

Barwon Water's New Customer Contributions Framework is Barwon Water's framework regarding new customer contributions as updated from time to time and approved by the Essential Services Commission, a body established under the *Essential Services Commission Act 2001*;

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

Barwon Water means Barwon Region Water Corporation;

Barwon Water's Assets or Barwon Water Assets means any property, plant equipment or other asset owned by or under the control of Barwon Water;

Barwon Water's Land Development and Administrative Process means the processes and requirements set out in Schedule 3 and as amended pursuant to subclause 14.2;

Barwon Water's Information means any information provided to the Developer or the Developer's Personnel by or on behalf of Barwon Water or sourced from material held by Barwon Water;

Barwon Water's Representative means the person or persons representing Barwon Water or exercising some or all of the functions of Barwon Water under the Deed and being the person or persons as described in subclause 3.2(a) and is, as at the Commencement Date, the person or persons described as the contact person contained in the Particulars;

Barwon Water’s Standards and Procedures means the standards, specifications, policies, procedures and matters listed in Schedule 7 and any updates or any other guidelines, rules or requirements notified to the Developer or the Plumbers in writing from time to time.

Barwon Water’s Terms and Conditions for Private Works means these terms and conditions, all attached Schedules, as published on Barwon Water’s website under “Barwon Water’s Terms and Conditions for Private Works”, <website>.

Change in Control means a change in the Control of the Developer other than a Permitted Change in Control;

Claim means any claim, demand, remedy, injury, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise;

Commencement Date means the date described as such and set out in the Particulars;

Completion / Completion of the Private Works means the point in time when

- (a) in case that the Private Works involve a Subdivision, Barwon Water provides its consent to the Statement of Compliance, or
- (b) in case that the Private Works do not involve a Subdivision, Barwon Water has verified the compliance with subsections 23.1(a) – (f) and subsection 23.2(b).

Confidential Information means all information held or the property of a party (including Barwon Water Information) which is, under general principles of law, confidential whether in documentary, visual, oral, machine-readable or other form other than information in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality); **Continuing Provisions** means the following provisions:

- (a) a provision of the Deed which is described in the Deed as continuing to be in effect following the termination or expiration of the Deed;
- (b) any provisions relating to:
 - (i) the giving of a warranty by the Developer;
 - (ii) the granting of an indemnity by the Developer;
 - (iii) the granting of a release by the Developer;
 - (iv) the use of Confidential Information;
 - (v) Intellectual Property Rights; or
- (c) any provision which, having regard to the nature of the provision or the subject matter of the provision, it is appropriate for the provision to continue to be in effect following the termination or expiration of the Deed;

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Developer, whether through ownership of voting securities, by contract or otherwise;

Deed means the Individual Deed Document, these Barwon Water’s Terms and Conditions for Developer Works, Barwon Water’s Land Development and Administrative Process and any other provision to which this document refers to;

Defect means any defect, deficiency or non-compliance in any Private Works;

Developer means the entity described as such in the Parties Section of the Individual Deed Document and in the Particulars of the Individual Deed Document;

Developer's Personnel means Developer's contractor, officers, employees and other persons engaged by the Developer in connection with the undertaking of the Private Works (as is relevant to the Developer);

Developer's Representative means the persons representing the Developer as described in subclauses 3.1(a) and 3.1(b) and are, as at the Commencement Date, the persons described as such in the Particulars;

Dispute has the meaning as set out in subclause 29.1(a);

Environment Laws means the *Environment Effects Act 1978* (Vic), the *Environment Protection Act 1970* (Vic), the *National Environment Protection Council (Victoria) Act 1995* (Vic), the *Planning and Environment Act 1987* (Vic), the *Planning and Environment Regulations 2005* (Vic), as amended from time to time and any directions, statements, protocols, guidelines or other similar material issued or published under the Act or the Regulations;

Group Manager Development means the person holding that title, or an equivalent title, at Barwon Water from time to time;

GST means the goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Incident means any event or circumstance which is related to or in any way connected to the Private Works, and which:

- (a) gives rise to a:
 - (i) risk (other than a negligible or fanciful risk) of damage to Assets;
 - (ii) material risk to injury of persons (other than a trivial injury);
- (b) constitutes a breach (other than a trivial breach) of the Deed; or
- (c) results in minor damage to an Asset where that damage is immediately repaired or made good by the Developer;

Individual Private Works Deed Document means the individual deed document for Private Works including the Particulars and the Servicing Requirements and Costing Schedule which is executed by Barwon Water and by the Developer for the construction of a particular Private Water Infrastructure.

Insolvency Event means any of the following events:

- (a) for a corporation:
 - (i) an order is made:
 - (A) that the corporation be wound up; or
 - (B) appointing a liquidator or provisional liquidator in respect of the corporation, or one of them is appointed, whether or not under an order;
 - (ii) a resolution is passed to appoint an administrator or an administrator is appointed to the corporation;

- (iii) a receiver or a receiver and manager is appointed to the corporation;
 - (iv) the corporation enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (v) the corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so or is otherwise wound up or dissolved;
 - (vi) the corporation is, or states that it is, insolvent;
 - (vii) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand;
 - (viii) the corporation is, or makes a statement from which the other party may reasonably conclude that the corporation is, the subject of an event described in section 459C(2)(a) to (f) inclusive or section 585 of the *Corporations Act 2001* (Cth);
 - (ix) the corporation takes any step to obtain protection, or is granted protection, from its creditors under any applicable law;
 - (x) a mortgagee takes possession of any one of the assets or undertakings of the corporation; or
 - (xi) anything analogous or having a substantially similar effect to any of the events specified above happens under any law;
- (b) means for a natural person:
- (i) if the person commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth);
 - (ii) dying or losing capacity to manage his own affairs; or
 - (iii) anything analogous or having a substantially similar effect to any of the events specified above happens under any law;

Intellectual Property Rights means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;

Land means the land on which the Developer will undertake the Private Works;

Landowner means the entity or the person described as such in the Particulars;

Land Registry means the register at the Department of Environment, Land, Water and Planning of the Victorian State Government;

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Victoria;

- (b) without limiting the generality of this definition, the OHS Law and the Environmental Laws;
- (c) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Private Works; and
- (d) fees and charges payable in connection with the foregoing;

Licensed Plumber means a plumber holding a relevant license for the undertaking of Private Works regarding Private Assets;

New Customer Contributions means charges including the non-scheduled charges and the scheduled charges as defined in Barwon Water's New Customer Contributions Framework in its most current version as amended from time to time;

Notice of Dispute has the meaning as set out in subclause 29.2;

Notifiable Incident means an incident which is related to or in any way connected to the Private Works, and which must be notified to the relevant Authority pursuant to any Legislative Requirement and includes an incident to which Part 5 of the *Occupational Health and Safety Act 2004* applies;

OHS Law means the *Occupational Health and Safety Act 2004* (Vic), *Dangerous Goods Act 1985* (Vic) and all regulations made under that Act, the *Equipment (Public Safety) Act 1994* and all regulations made under that Act, and the *Occupational Health and Safety Regulations 2017* (Vic) (all together the 'Acts and Regulations'), any policies published by WorkCover available online at www.worksafe.vic.gov.au, as amended from time to time and any directions, statements, protocols, guidelines or other similar material issued or published under the Acts and Regulations;

Particulars means the information set out in the particulars pages at the beginning of the Individual Private Works Deed Document.

Permitted Change in Control means the transfer of Control in the Developer to a 'related body corporate' as that term is defined in the *Corporations Act 2001* (Cth);

Planning Permission means any relevant planning permit or other planning permission pursuant to a municipal planning scheme and the *Planning and Environment Act 1987* (Vic);

Plumber or Plumbers means any Accredited Contractor and any Licensed Plumber engaged by the Developer to undertake the Private Works.

Private Assets means potable water supply, recycled water supply and/or sewerage assets, which will not be owned by Barwon Water;

Private Water Infrastructure means the particular water infrastructure as set out in the Servicing Requirements and Costing Schedule to be constructed by the Developer including

- (a) Private Assets, and
- (b) as the case may be, Sewer Connection Points..

Private Works means:

- (a) any works in relation to or in connection with the construction of the Private Water Infrastructure; and
- (b) the documentation or supervision or project management or any other action in relation to the construction of the Private Water Infrastructure or the provision of advice in relation to such documentation or supervision.

Private Works Bond means, the bond as described in clause 32 in the form as set out in Schedule 6, and securing an amount as set out in Schedule 6;

Private Works Fees means the fees as set out in Schedule 6 and any other charges determined by Barwon Water for necessary activities undertaken by Barwon Water and associated with the Private Works;

Private Works Plans means the

- (a) sewer drainage plan;
- (b) the house connection sewer point cut-in plan;
- (c) the water tapping plan including tapping and meter details;
- (d) any photos as required by Barwon Water,
- (e) and any other plan or accompanying information, as required by Barwon Water.

Serious Incident:

- (a) includes a Notifiable Incident; and
- (b) otherwise means:
 - (i) an event or circumstance which is related to or in any way connected to the Private Works, and which results in damage to an Asset (other than damage described in the definition of Incident);
 - (ii) a breach of the Deed (other than a trivial breach and other than a breach described in the definition of Incident); or
 - (iii) an event or circumstance which is related to or in any way connected to the Private Works, and which results in personal injury requiring treatment by a medical practitioner.

Servicing Requirements and Costing Schedule the servicing and costing requirements as set out in Schedule A of any Individual Developer Works Deed Document;

Sewer Connection Point/s means the asset, which connects the private sewer pipeline with Barwon Water's Assets, and which will be owned by Barwon Water upon construction;

Specifications means

- (a) all technical requirements, design requirements and other requirements, (except for the costing) set out by Barwon Water in Schedule 6;
- (b) any applicable Standard; and
- (c) any other requirement or detail as identified by Barwon Water and communicated by Barwon Water to the Developer in writing.

Standards means

- (a) any design and construction standards adopted or developed by Barwon Water as set out in Barwon Water's Land Development and Administrative Process which are relevant to the Private Works, as amended from time to time.
- (b) any other code, standard or requirement adopted by Barwon Water and advised to the Developer, directly or via publishing on Barwon Water's website, as applying to the Private Works.

Statement of Compliance means the statement issued by a municipal council indicating that all conditions of a planning permit for a Subdivision have been met;

Subdivision means the division of land into two or more lots (or a reserve), which can be sold or transferred separately;

Third Party Assets means assets by a party other than Barwon Water and includes Third Party Land;

Third Party Land means land which is not owned or under the control of Barwon Water or the Developer and on which the Developer will undertake the Private Works or construct the Private Water Infrastructure, or which the Developer desires to access in order to undertake the Private Works or construct the Private Water Infrastructure;

Water Infrastructure means any infrastructure which is, or will become, Barwon Water's Asset and which relates to the discharge of Barwon Water's obligations in relation to the construction, operation and maintenance of infrastructure relevant to potable water supply, recycled water supply and/or sewerage;

WorkCover means the Victorian WorkCover Authority, being the body established by section 18 of the *Accident Compensation Act 1985* (Vic);

Works Information means all information, plans, materials, documents and records in relation to (i) Private Works, and (ii) any land affected by the Private Works, which is required by Barwon Water to operate or maintain Barwon Water's Asset (including any part of the Private Works that form part of Barwon Water's Asset);

2. Rules of Interpretation

In the Deed:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has, when capitalised, a corresponding meaning;
- (d) a reference to a clause, subclause, schedule or annexure is to a clause or subclause of, or schedule or annexure to, the Deed, and a reference to the Deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to a party is to a party to the Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other enforceable instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples that follow them and which may be introduced by "such as", "for example", "including" or "otherwise";
- (j) the meaning of general words is not limited merely because more specific words precede them;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Deed or any part of it or benefits from the relevant provision; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

Schedule 2– Approved form of Guarantee

APPROVED UNCONDITIONAL UNDERTAKING

Barwon Region Water Corporation, ABN 86
348 316 514
55–67 Ryrie Street, Geelong VIC 3220

At the request of

.....ABN('the Owner') and in consideration of BARWON REGION WATER CORPORATION ABN 86 348 316 514 ('the Principal') of 55-67 Ryrie Street, Geelong, accepting this undertaking in respect of Barwon Region Water Corporation's "Developer Deed", reference number, for the proposed subdivision at in the Municipality of

.....ABN ('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of \$ (Amount in figures)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing by the Principal's duly authorised officer for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Owner and notwithstanding any notice given by the Owner not to pay the same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$ less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

The Deed, and any disputes arising out of or related hereto, shall be governed exclusively by the laws of the state of Victoria, Australia.

DATED at this day of 20__

BANK
STAMP/OFFICIAL
BANK DOCUMENT
PAPER

.....
Bank Authorised Officer

.....
Witness

.....
Title

.....
Title

On expiry or when no longer required, please return this document to :

The Manager, (Title in Full)

..... (Address in Full)

Schedule 3– Barwon Water's Land Development and Administrative Process (for Private Works)

Explanation:

- The Private Works Deed and the Accreditation Deeds already set out the main processes during the private works project.
- “Barwon Water’s Land Development and Administrative Process for Private Works” sets out more details (e.g. the process of testing, or requirements for a shut-down, etc.).

1. Barwon Water's Land Development and Administrative Process for Private Works

- (a) Barwon Water’s Land Development and Administrative Process for Private Works may contain or describe:
 - (i) obligations to be discharged by the Developer, or the Accredited Contractors;
 - (ii) actions to be undertaken by the Developer, or the Accredited Contractors;
 - (iii) preconditions to certain events occurring or steps being taken; and
 - (iv) consequences of certain events occurring or steps being taken (including consequences in the nature of releases, warranties or indemnities).
- (b) The obligations, actions, preconditions and consequences referred to in the Private Works Deed, the Contractor Accreditation Deed and the Barwon Water’s Land Development and Administrative Process will be given effect to between the parties in addition to the obligations, actions, preconditions and consequences set out in this Schedule.
- (c) If there is any conflict between the provisions of this Schedule and any of the Deeds referred to in paragraph 1(b) then the provisions of the relevant Deed shall prevail..

2. Developer’s obligations regarding Barwon Water’s Land Development and Administrative Process

- (a) The Developer must comply, and must procure that the Accredited Contractors and the Licensed Plumbers comply, with Barwon Water’s Land Development and Administrative Process, and must complete, and must procure that the Accredited Contractors and the Licensed Plumbers complete, all the documents which Barwon Water’s Land Development and Administrative Process calls for the Developer, the Accredited Contractors, and the Licensed Plumbers to complete, must do so within the time as determined by Barwon Water, and must, upon request of Barwon Water

resubmit any form if it did not comply with stipulations of the Private Works Deed or Barwon Water's Land Development and Administrative Process for Private Works.

- (b) The Developer warrants that:
 - (i) It, its Accredited Contractors and its Licensed Plumbers will take care in completing any documents required to be completed by Barwon Water;
 - (ii) the documents which it, its Accredited Contractors, and its Licensed Plumbers complete, which are required by Barwon Water, will be accurate and complete and will not be misleading; and
 - (iii) neither it nor its Accredited Contractors nor its Licensed Plumbers will complete such documents unless it has sufficient knowledge of the circumstances the subject of the documents to enable it to complete those documents in accordance with Barwon Water's requirements.

3. The Accredited Contractors' obligations regarding Barwon Water's Land Development and Administrative Process

- (a) The Accredited Contractors must comply with Barwon Water's Land Development and Administrative Process and must complete all the documents which Barwon Water's Land Development and Administrative Process calls for the Contractor to complete, must do so within the time provided for in Barwon Water's Land Development and Administrative Process, and must, upon request of Barwon Water resubmit any form if it did not comply with stipulations of the Private Works Deed or Barwon Water's Land Development and Administrative Process.
- (b) The Accredited Contractor warrants that:
 - (i) they will take care in completing the documents required to be completed by Barwon Water;
 - (ii) the documents which they complete will be accurate and complete and will not be misleading; and
 - (iii) they will not complete such documents unless they have sufficient knowledge of the circumstances that are the subject of the documents to enable it to complete such documents in accordance with Barwon Water's requirements.

4. Preliminary Servicing Advice

Any information given in a preliminary servicing advice or otherwise by Barwon Water is not binding upon Barwon Water and the Developer shall not undertake any commitment based on any information given until a formal execution of the Private Works Deed.

5. Deed application and execution

- (a) After having received the application for a Private Works Deed, if Barwon Water decides to offer to the Developer to execute a Private Works Deed, Barwon Water will send to the Developer:
 - (i) a cover letter;
 - (ii) two copies of the Private Works Deed executed by Barwon Water; and
 - (iii) two copies of the Service Requirements and Costing Schedule which will form part of the Private Works Deed.
- (b) The Developer execute both copies of the Private Works Deed, complete the particulars page of the Private Works Deed, and send both copies of the Private Works Deed and the Service Requirements and Costing Schedule back to Barwon Water within three months from the issue date of the Service Requirements and Costing Schedule.

6. Payments of fees to Barwon Water

All fees Barwon Water requests the Developer to pay for services or actions of Barwon Water, have to be paid upfront. Barwon Water will not undertake any action or render any service until full payment of the respective fee has been made.

7. Engagement and Details of Accredited Contractors for the Private Works

The Developer must engage an Accredited Contractor for Private Works regarding a Connection Point before the commencement of the construction and must immediately after the engagement provide Barwon Water with the details of the Accredited Contractor. The Developer may engage additional Accredited Contractors at any time during the provision of the Private Works. Immediately, after engaging an additional Accredited Contractor, the Developer must provide Barwon Water with the details of the additional Accredited Contractor.

8. Details of Representatives

- (a) The Developer must provide Barwon Water with the details of the Developer's Representatives when executing the Private Works Deed.
- (b) The Accredited Contractor must provide Barwon Water with the details of their appointed representatives before the commencement of any Private Works.

9. Easements and freehold land

Easements and/or reserves are to be created in accordance with Barwon Water's Developer Servicing Requirements Manual to be found on Barwon Water's website.

10. Work on or near Barwon Water Assets

Three (3) business days before any work on or near Barwon Water Assets, the Accredited Contractor must, and the Developer must ensure that the Licensed Plumber does:

- (a) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Application to perform Works on or near Barwon Water Assets'; and
- (b) complete and submit that online form.

11. Activity Method Statement

Barwon Water may, at its discretion, review an activity method statement, or may simply retain the statement as a record. The Developer will be informed if Barwon Water has reviewed or approved the activity method statement in any way, and will be advised of the outcome of that review. The Developer is not otherwise entitled to assume that Barwon Water has reviewed or otherwise approved the content of the activity method statement.

12. Testing Procedure

- (a) The Accredited Contractor must, and the Developer must ensure that the Private Works relating to Connection Points are tested by another Accredited Contractor who did not undertake the Private Works relating to Connection Points at the times and in a manner as requested by Barwon Water and according to all applicable industry standards. These testings may include vacuum testing or pressure testing. The Developer must ensure that the Works or Services are tested by another Accredited Contractor who did not undertake the Works or Services to be tested,
- (b) Three (3) Business Days before any testing any aspect of the Private Works the Accredited Contractor must, and the Developer must ensure that the Licensed Plumber does:
 - (i) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Notification – Commencement of Testing'; and
 - (ii) complete and submit that online form.

13. Connection of the Works to existing Barwon Water's Assets

Prior to the connection of the Private Works to existing Barwon Water Assets the Developer and the Accredited Contractor must ensure that all testings required in the Servicing Requirements and Costing Schedule are complete and that the testing process and the test results do comply with the requirements as set out in the Servicing Requirements and Costing Schedule.

14. Water/ Recycled Water Shutdown before connection

- (a) In addition to the requirements set out in the preceding clause (Connection of the Works to existing Barwon Water Assets), Barwon Water may determine that a shutdown of the Barwon Water Asset is required before the newly constructed assets are connected to Barwon Water Assets.
- (b) Barwon Water may alternatively determine that no shutdown is required but that the Accredited Contractor must, or if applicable the Developer must ensure that the Licensed Plumber does, seek the consent to execute the tapping under pressure.
- (c) In both cases, shutdown or tapping under pressure, the Accredited Contractor must or if applicable the Developer must ensure that the Licensed Plumber does:
 - (i) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Request for Water Main Shutdown or Pressure Tapping'; and
 - (ii) complete and submit that online form.
- (d) Barwon Water is entitled to reject a Request for Water Main Shutdown or Pressure Tapping if there is any unresolved or non-remedied Defect or if the Developer otherwise breached the Private Works Deed.

15. Provision of Works Information to Barwon Water

Barwon Water is entitled to specify any Works Information in the Servicing Requirements and Costing Schedule.

16. Provision of the Private Works Plans to Barwon Water

When providing Barwon Water with the Private Works Plans, the Accredited Contractor or the Developer must ensure that

- (a) the sewer drainage plan is based on the Block Plan previously provided by Barwon Water to the Plumber or the Developer

- (b) for submission of the house connection sewer point cut-in plan and of the water tapping plan to Barwon Water, the new 'Sewer/ Water Connection Point Details Form' is used which is published on Barwon Water's website.

17. Build over consents

The Developer must ensure that all works and services comply with Barwon Water's Asset Protection Policy, if applicable, as published on Barwon Water's website.

18. Application for Accreditation and for Re-Accreditation

- (a) For the first application for Accreditation, the contractor must complete the Accreditation Application Form and follow the process as described in section 7 of the Accreditation Deed.
- (b) For the Re-Accreditation and compliance with subsection 7.5(a)(iii) of the Contractor Accreditation Deed, the Contractor must
 - (i) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form "Application / Renewal for Accreditation"; and
 - (ii) complete and submit that form.
- (c) After receiving the application for Accreditation or Re-Accreditation, Barwon Water will send to the contractor a letter informing the contractor about the outcome of the application for Accreditation or application for Re-Accreditation. Barwon Water is at any time entitled to request further information from the contractor before proceeding with the application process.

19. Breach of a provision in a deed – Filing and issuing of Non-Conformances

- (a) Any breach of the Private Works Deed or the Contractor Accreditation Deed entitles Barwon Water to file a "Non-Conformance" under Barwon Water's safety quality and environment management system, and, as the case may be, to serve to the Developer or the Accredited Contractor a request to remedy the breach (which may also be called "Request For Corrective Action") under the respective stipulation of the respective deed.
- (b) Barwon Water will take any filed Non-Conformance into consideration for the performance review of the respective party, and depending on the frequency and the severity of the filed Non-Conformances, Barwon Water may request a Performance Discussion or serve a Show Cause Notice under the Contractor Accreditation Deed, or may execute its other rights resulting from a breach of the

Contractor Accreditation Deed or the Developer Deed, including the termination of the deed or the Accreditation itself.

20. Test Prior

- (a) This clause only applies if the Developer also entered into a Developer Deed with Barwon Water.
- (b) Any words in this clause beginning with capital letters shall have the meaning as set out in the Developer Deed unless otherwise defined herein.
- (c) In the event that the Developer has undertaken or is undertaking any Developer Works under a Developer Deed on the same Land on which the Private Works (as defined in the Private Works Deed) will be undertaken, the Developer is, subject to the following subclause, not entitled to commence with the undertaking of the Private Works before Acceptance of the Developer Works which have to be delivered under the Developer Deed.
- (d) The Developer is entitled to commence with the undertaking of the Private Works before the Acceptance of the Developer Works which have to be delivered under the Developer Deed, provided that
 - (i) Barwon Water has accepted the Design for the Developer Works under the Developer Deed;
 - (ii) the Developer has paid or procured payment of all outstanding payments due under the Developer Deed;
 - (iii) the Developer has satisfied all requirements, has followed all instructions and has attached all additional documentation as prompted in the online form 'Test Prior Application Form';
 - (iv) has completed and submitted the 'Test Prior Application Form';
 - (v) Barwon Water has, at its Absolute Discretion, consented to the commencement of the Private Works;
 - (vi) the part of the Private Works undertaken already before Acceptance of the Developer Works, which have to be delivered under the Developer Deed, does only involve the construction of the internal section of the 'under-slab' property drain; and
 - (vii) the Developer ensures that it does comply with the clearances between the Developer Works and the Private Works as required under the Standards.

With Barwon Water's consent to commence the Private Works under the preceding subclause Barwon Water does not waive any condition for Acceptance under the Developer Deed.

21. Standards

The relevant Standards are set out in the Servicing Requirements and Costing Schedule.

Schedule 4 – Required Insurances

Public Liability Insurance

The public liability insurance must:

- (a) be in the name of the Developer and note Barwon Water's interest;
- (b) cover Barwon Water and the Developer and all Plumbers employed from time to time by the Developer in relation to Private Works for their respective rights and interests;
- (c) cover Barwon Water and the Developer for their liabilities to third parties, including the Developer's liability to Barwon Water or any third party;
- (d) cover loss of damage to property death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance);
- (e) provide that failure by the Developer to observe and fulfil the terms of the policy will not prejudice the insurance with regard to Barwon Water;
- (f) provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against Barwon Water;
- (g) be for an amount in respect of any one occurrence not less than \$20 million; and
- (h) be maintained until the expiration of the Warranty Period

Schedule 5 – Trust

1. Application

- (a) This Schedule 5 applies if the Developer is executing the Deed, and becoming a party to the Deed, as a trustee of a trust.
- (b) If this Schedule 5 applies, it is deemed to form part of the Deed.
- (c) The balance of this Schedule 5 applies to the Trustee in respect of the Trust to which it has been appointed pursuant to the Trust Deed.

2. Definitions and Interpretation

2.1 Definitions

Terms defined in the Deed have the same meaning in this Schedule 5.

2.2 Interpretation

- (a) Unless otherwise specified in the Deed, a reference in the Deed to a transaction, asset, act or liability of any nature of the Trustee includes its transactions, assets, acts or liabilities as trustee of the Trust.
- (b) The Trustee acknowledges that it enters into the Deed in its capacity as trustee of the Trust and that the Deed is binding on it personally and in its capacity as trustee of the Trust.
- (c) A reference to a related body corporate of the Trustee includes a related body corporate of the Trust.

3. Capacity

The Trustee is entering into the Deed as trustee of the Trust.

4. Trustee Provisions

4.1 Trustee representations and warranties

The Trustee (both in its own right and as trustee of the Trust) represents and warrants to Barwon Water that:

- (a) **(status of the Trust)** the Trust is validly constituted and has not terminated, nor has any action been taken to wind up, terminate or resettlement the trust, nor has the date or any event occurred for the vesting of the assets of the Trust (Trust Fund);
- (b) **(status as trustee)** it is the sole trustee of the Trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee of the Trust;

- (c) **(trust power)** it has power under the Trust Deed to enter into the Deed and to perform its obligations under the Deed;
- (d) **(trust authority)** all action has been taken that is necessary or desirable under the Trust Deed or at law to authorise its entry into the Deed and to perform its obligations under the Deed;
- (e) **(benefit of beneficiaries)** it is entering into the Deed as part of the proper administration of the Trust, for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) **(right of indemnity):**
 - (i) it has the right to be indemnified out of the Trust Fund in relation to any liability arising under or in connection with the proper performance of its rights and obligations under the Deed;
 - (ii) the Trust Fund is sufficient to satisfy that right in full; and
 - (iii) it has not released or disposed of its equitable lien over the Trust Fund;
- (g) **(terms of the Trust)** it has disclosed to Barwon Water full particulars of the Trust and of any other trust or fiduciary relationship affecting the Trust Fund and has given Barwon Water a complete and up-to-date copy of the Trust Deed; and
- (h) **(no breach)** it is not in breach of any material obligations imposed on it in its capacity as trustee of the Trust, whether under the Trust Deed or otherwise.

4.2 Repetition

The warranties in clause 4.1 of this Schedule 5 are taken to be made:

- (a) on the date the Deed is signed; and
- (b) on the last Business Day of each month after the date of the Deed.

4.3 Provision of Information

The Trustee must give Barwon Water promptly on request (and in any event within 10 days of receipt of the request) either;

- (a) any information relating to the financial condition (including the financial accounts) business, assets and affairs of the Trust, including a copy of the Trust, that Barwon Water reasonably requests; or
- (b) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust, including a copy of the Trust, and the trustee of the Trust.

4.4 Trustee Events of Default

Each of these events or circumstances gives Barwon Water the right to terminate for cause pursuant to clause 27 of the Deed:

- (a) **(breach of warranty)** a warranty under clause 5.1 made or taken to be made by the Trustee is incorrect or misleading when made or taken to be made and, if capable of remedy, is not remedied within 10 Business Days of being made or taken to be made;
- (b) **(amendment of the Trust Deed)** the Trust Deed is amended in any material respect without the prior written consent of Barwon Water;

- (c) **(failure to provide information)** any of the information required to be provided under clause 5.3 is not provided within the time specified in that clause or if the information provided is incorrect, incomplete or misleading in any material respect;
- (d) **(distributions)** any distributions of the capital of the Trust are made out of the Trust without Barwon Water's prior written consent; and
- (e) **(dealing with units)** if the Trust is a unit trust, any unit is issued, transferred, redeemed, encumbered or otherwise dealt with, without notification being given to Barwon Water.

Schedule 6 – Servicing Requirements and Costing

As attached as Schedule A in the relevant Individual Developer Deed Document.

Schedule 7 – Barwon Water’s Standards and Procedures

Barwon Water’s Standards and Procedures are:

- (a) the Barwon Water Contractor Handbook as published and amended from time to time at Barwon Water’s website; and
- (b) any other standard and procedure as communicated by Barwon Water.