



Terms and Conditions for Developer Works

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Applicability

The following terms and conditions apply to the construction of any particular 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 Developer 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 Developer's 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. Accredited Consultants and Accredited Contractors

2.1 Requirement to use Accredited Consultants and Accredited Contractors

- (a) Subject to subclause 2.1.(b), the Developer must only use Accredited Consultants and Accredited Contractors (holding Accreditation in the appropriate Accredited Category) to undertake the Works or Services or to undertake activities in relation to any part of the Developer's Water Infrastructure;
- (b) The Developer must ensure that as of 1.06.2018, the consultant used becomes an Accredited Consultant, otherwise the Developer must stop using the consultant and must, instead engage an Accredited Consultant.
- (c) The Developer must, 7 Business Days before the commencement of the respective Works or Services, notify Barwon Water, in writing, which Accredited Contractors it will use for the undertaking of the relevant Works or Services.
- (d) The Developer must, 7 Business Days before the commencement of the respective Works or Services by any sub-contractor of the Accredited Consultant or the Accredited Contractor, ensure that Barwon Water is notified in writing which sub- contractor was engaged.

2.2 Lapsed Accreditation / Change in Accredited Consultant or Accredited Contractor

- (a) If the Accreditation of any Accredited Consultants or Accredited Contractors lapses because it is terminated, revoked, suspended or ceased in any other way, the Developer must:
 - (i) not begin to use the Accredited Consultant or Accredited Contractor whose Accreditation has lapsed in relation to the undertaking of any Works or Services or any part of the Developer's Water Infrastructure; or
 - (ii) if the Developer for the purpose of the Deed has already used the party whose Accreditation has lapsed, the Developer must

- (A) at the direction of Barwon Water, cease to use that party and replace it with an appropriate Accredited Consultant or Accredited Contractor; and
 - (B) notify Barwon Water in writing of the replacement Accredited Consultant or Accredited Contractor engaged under subclause 2.2(a)(ii)(A) prior to the resumption of the Works or Services or any part of the Developer's Water Infrastructure.
- (b) If the Developer changes the Accredited Consultants or Accredited Contractors it intends to use or has engaged for the undertaking of the relevant Works or Services then it must promptly notify Barwon Water in writing of the new Accredited Consultants or Accredited Contractors.

3. Representatives

3.1 Developer's Representative

- (a) The Developer appoints the Accredited Consultant as its agent in all dealings with Barwon Water in respect of the Deed.
- (b) The Developer must nominate a further person from the Developer's Personnel to represent the Developer in all its dealings with Barwon Water.
- (c) The Developer may, subject to approval of the nominee by Barwon Water, by notice in writing to Barwon Water, nominate a replacement Developer's Representative.
- (d) The person nominated under subclause 3.1(b) and the Accredited Consultant are both acting as the Developer's Representatives.
- (e) Matters within the knowledge of the Developer's Representatives shall be deemed to be within the knowledge of the Developer.
- (f) Any notice, direction or other document given to or addressed to the Developer's Representatives shall be deemed to be given to 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 the Works or Services

- (a) The Developer must use Accredited Consultants and Accredited Contractors for undertaking the Works or Services. The Developer must procure that the undertaking of the relevant Works or Services is done:
 - (i) with the due skill, diligence, prudence, foresight and care that would be reasonably expected from an experienced and competent contractor or consultant;
 - (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 or becomes aware of any change in circumstances which may have an effect on the Specifications or the ability to comply with 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.

5. Developer's Responsibility for Accredited Consultants, Accredited Contractors and sub-contractors

- (a) The Developer must engage the Accredited Consultant to draft and submit the Design Package, and to audit the construction of the Works. The Developer must further procure that:
 - (i) the Accredited Consultant carries out the Design, or if the Accredited Consultant has not carried out the Design, the Accredited Consultant has verified and unequivocally adopted and endorsed the Design of a prior Accredited Consultant for the purpose of the Deed;
 - (ii) the Accredited Consultant is suitably qualified and experienced and exercises due skill, care and diligence in the carrying out the Works;
 - (iii) the Accredited Consultant designs the Works in accordance with the Specifications and fit for its purpose;

- (iv) the Accredited Consultant ensures that the construction of the Works complies with the Specifications and all other requirements contemplated by the Deed and any reasonable request of Barwon Water;
 - (v) the Accredited Consultant provides the documents as required in the Deed, including the Land Development and Administrative Process, or as otherwise reasonably required by Barwon Water, which certify that the Works or Services will be or have been carried out and completed in a proper and professional manner, in accordance with the Specifications and all other requirements contemplated by the Deed or as reasonably requested by Barwon Water, and that any statement in these documents are accurate and true.
- (b) After engaging the Accredited Consultant and before the commencement of the Works or Services, the Developer must provide the Accredited Consultant with a copy of the Deed.
- (c) The Developer acknowledges that:
- (i) Barwon Water at all times relies on the Developer's selection of an experienced and professional skilled consultant, and
 - (ii) the submission, receipt, consideration, or verification of the Design, or the approval, acceptance or verification of an application (including all documents accompanying or connected with the application), or endorsement of the Design or inspection of any stage of the Design by Barwon Water, does not amount to Barwon Water consenting to, ratifying or otherwise accepting liability in respect of the Design or construction of the Works.
- (d) The Developer must ensure that any of its Accredited Contractors and any sub-contractor is suitably experienced and qualified to perform the Works or Services according to the Deed.
- (e) In the event that Barwon Water reasonably considers that any staff member of the Developer, the Accredited Consultant, the Accredited Contractor or the sub-contractor which is appointed to undertake any aspect of the Works, is not satisfactorily skilled or is not complying, or will not comply, with the obligations under the Deed:
- (i) Barwon Water may on reasonable prior notice:
 - (A) request the Developer, to exchange, or ensure the exchange of, this staff member by a satisfactorily skilled staff member, or
 - (B) impose reasonable additional requirements in respect of supervising that staff member and verifying the compliance of the Works or Services undertaken by that staff member with the Deed, and
 - (C) refuse to provide its respective next consent to allow the Works or Services to progress until the exchange requested under subclause 5.2(e)(i) is carried out or the additional requirements under subclause 5.2(e)(ii) are fulfilled; and
 - (ii) the Developer must comply a request under paragraph 5(e)(i)(A).

- (f) The Developer must ensure that any contract with an Accredited Consultant, an Accredited Contractor, and any sub-contractor contains terms that oblige the Accredited Consultant, the Accredited Contractor, and the sub-contractor to perform its obligations under the contract or subcontract in a way that ensures that the Developer complies with its obligations under the Deed.
- (g) When using Accredited Consultants, Accredited Contractors, or in case of any engagement of a sub-contractor, 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 Accredited Consultants, Accredited Contractors or any sub-contractor as if they were the Developer's acts or omissions.
- (h) The Developer must provide the Accredited Contractor with all information about the individual Specification, the Warranty Period, the Barwon Water Representatives, Barwon Water's Standards and Procedures and any other information which is relevant for Works or Services.
- (i) The Developer acknowledges that the Accreditation of consultants or contractors 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 Development Fees by the date as stipulated in:
 - (i) The Servicing Requirements and Costing Schedule; or
 - (ii) the respective invoice; or
 - (iii) otherwise within 10 Business Days after the Commencement Date.
- (b) The Developer must pay, or must ensure the payment of, the New Customer Contributions at the time as set out in the Servicing Requirements and Costing Schedule.
- (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 extend the Warranty Period and refuse to release of the Works Warranty Bond;
 - (iii) to call upon the Works Warranty 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 Works or Services

- (a) The Developer must ensure that no Works or Services commence before:
 - (i) the Developer has obtained all necessary Planning Permissions, statutory permissions and other permissions in respect of the Works or Services;
 - (ii) Barwon Water has verified that the Design complies with all relevant requirements set out in the Servicing Requirements and Costing Schedule and any applicable Standard and has notified the Developer about the acceptance of the Design;
 - (iii) 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); and
 - (iv) the Developer has all activity method statements in place necessary to ensure compliance with the Specifications, or as requested by Barwon Water.
- (b) The Developer must reach the Completion of the Works or Services within the period specified by Barwon Water in the Servicing Requirements and Costing Schedule, or within some other period approved by Barwon Water, in writing.
- (c) If the construction of the 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, amended Design requirements and changes to the nature of the construction of the Works or Services; or
 - (iv) require the execution of a new Development Deed.
- (d) Barwon Water may extend the time for completion of the Works or Services 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 Works or Services; 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 or the Accredited Consultant should reasonably have become aware of the occurrence of the act or omission stipulated in subclause 7(d)(i).

8. Variation to the Works or Services

8.1 No Variation without consent

- (a) The Developer must not vary the Works or Services 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 Works or Services 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 including requiring the Developer to submit a modified Design.
- (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 Works or Services 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 15.2, Barwon Water may request in writing that the Developer varies the Works or Services.
- (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:
 - (A) describe the impact that the variation will have on the performance of the Works or Services; and
 - (B) provide a modified Design if required by Barwon Water which will be subject to Barwon Water's acceptance in order to become an Accepted Design.
- (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.
- (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 Works or Services and the provisions of the Deed shall apply to the variation.

9. Works Warranty Bond

9.1 Provision of the Works Warranty Bond

The Developer must provide to Barwon Water the Works Warranty Bond at the time when submitting the Completion of Works Package at the latest.

9.2 Use of the Works Warranty Bond

Barwon Water is entitled to call upon the Works Warranty 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 Works Warranty Bond to meet the cost, or the likely cost, of doing so.

9.3 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 Works Warranty Bond under this clause, the Developer must reinstate the Works Warranty 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.

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

9.5 Interest

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

9.6 Return of Works Warranty Bond

Upon:

- (a) the expiration of the Warranty Period; and
- (b) provided the Developer is not in breach of any of its obligations under the Deed,

the Developer may apply to Barwon Water for the return of the Works Warranty 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 Works Warranty Bond to the Developer.

10. Audits

10.1 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 Works or Services, Barwon Water may at any time, during the performance of the Works or Services, audit, or procure an audit of the Works or Services. If in the course of auditing, Barwon Water is not satisfied that the Works or Services 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 Works or Services, the Developer shall inform Barwon Water not less than 3 Business Days in advance of the date on which the Works or Services 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, the Accredited Consultant's or the Contractor's personnel costs, and the costs will be borne by one of the Developer, the Accredited Consultant or the Contractor 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 Works or Services 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 or procured by Barwon Water shall not relieve the Developer of any obligations contained in the Deed.

10.2 OHS audits for work on Barwon Water Assets

At any time, during the performance of the Works or Services, Barwon Water may audit or procure an audit of the Developer's compliance with 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 Works or Services 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 Developer must advise Barwon Water how it intends to rectify the non-compliance or potential non-compliance with the OHS Law;
- (c) ensure that the Contractor complies with any measure implemented or direction given by the Developer to address non-compliance or potential non-compliance with the OHS Law;

- (d) if requested in writing from Barwon Water, provide evidence of compliance in the form of a report from an accredited specialist certifying compliance having reviewed the remedy measures.

11. Defects

11.1 Rights and obligations regarding Defects

At any time after commencement of the Works or Services and during the Warranty Period, 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;
- (c) at its discretion, undertake, or procure the undertaking of emergency works in respect of any such Defect; and
- (d) require the Developer to provide to Barwon Water a response letter, within the period set out in the notice, which must:
 - (i) set out the reasons for the Defect occurring or circumstance arising;
 - (ii) identify what steps the Developer will take in order to ensure that the Defect, circumstance and effect ceases;
 - (iii) identify what steps the Developer will take in order to prevent the Defect or circumstance occurring again in the future;
 - (iv) describe the steps the Developer proposes to take in order to rectify and resolve the effects of the Defect and/or the circumstances within the timeframe determined by Barwon Water under subclause 22.1(c); and
 - (v) set out the reasons why Barwon Water should not take further action under the Deed in relation to the Defect or circumstance.
- (e) At the absolute discretion of Barwon Water, Barwon Water may instead of requiring the Developer to remedy the Defect according to subclause 11.1.b), require that the Developer procures the modification of the plan of subdivision in the form as determined by Barwon Water, and require that the Developer submits this modified plan to Council for approval. The approval by the council of the modified plan of subdivision is a requirement for any Acceptance.

11.2 Compliance with notice

- (a) The Developer must comply with any notice given under subclauses 11.1(a), 11.1(b), 11.1(d), and 12.1(b) and must do so within the time nominated in that notices.
- (b) If the Developer does not comply with subclause 11.2(a) Barwon Water may
 - (i) remedy the Defect with own staff or by engaging a contractor, or
 - (ii) decline to issue an Acceptance of Works Certificate.

11.3 Duration of Warranty Period

- (a) The Warranty Period commences on the date as set out in the Asset Transfer and Commencement of Warranty Period Letter in subclause 25.1(b) and applies for a period

of 24 months unless extended as set out in subclause 11.3.(b).

- (b) Where either repairs are required during the Warranty Period or Barwon Water considers, in its reasonable opinion, that it is likely that further Defects exist or will exist and that repairs to and/or replacement of the Works or part of the Works and/or a rectification of the Services or a part thereof will be required, Barwon Water is entitled to extend the Warranty Period for a period as specified by Barwon Water.

11.4 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 11.1(c); or
- (b) remedying the Defect as contemplated by subclause 11.2(b), shall be a debt due and payable to Barwon Water by the Developer.

12. Loss, Damage or Injury

12.1 Property damage

The Developer must ensure that Assets will not be damaged by reason of or in connection with the performance of the relevant Works or Services, 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 Works or Services, 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 11.2 and 11.4 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.

12.2 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 Works or Services, 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.

13. Developer's Warranties

13.1 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.

13.2 Continuing and repeated warranties

The warranties and representations set out in subclause 13.1 of the Deed are repeated on each day from the Commencement Date until the termination or expiration of the Deed.

14. Indemnity

14.1 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.

14.2 Reduction of Liability

The liability of the Developer pursuant to subclause 14.1 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.

14.3 Payment

- (a) Barwon Water may, in good faith, estimate the liability of the Developer pursuant to subclause 14.1 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 14.3(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.

15. Barwon Water's Land Development and Administrative Process

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

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

15.2 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 Works or Services it may notify Barwon Water within 10 Business Days and Barwon Water shall, if it agrees that the amendment constitutes a variation to the Works or Services, provide a request in writing to the Developer to vary the Works or Services in accordance with subclause 8.3(a).
- (c) If the Developer does not provide a notice in accordance with subclause 15.2(b) then the amendment to Barwon Water's Land Development and Administrative Process shall form part of the Developer's obligations under the Deed.

16. OHS

16.1 OHS Obligations

- (a) The Developer must, in relation to the Works or Services, be aware of and comply with and ensure that the Accredited Contractors, Accredited Consultants and sub- contractors are aware of and comply with:
 - (i) any applicable OHS Law, including relevant state or federal government requirements relating to the coronavirus (COVID-19) pandemic;
 - (ii) all Barwon Water's 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 Accredited Consultant, the Accredited Contractors and sub-contractors:
 - (i) have completed and maintain appropriate training and competency assessments in order to safely execute the Works or Services, and
 - (ii) are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (A) safe working practices;
 - (B) safety and care of property; and
 - (C) continuity of work.

16.2 Control of work site

- (a) The Developer acknowledges and agrees that the Developer, its Accredited Consultant

or Accredited Contractor shall be the only parties who may exercise management and control over the area in which the Works or Services are being undertaken.

- (b) Barwon Water acknowledges that the Developer may appoint its Accredited Consultant or Accredited Contractor as the 'principal contractor' for the purposes of the OHS Law.
- (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.

16.3 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 Works or Services are being undertaken. The Developer must ensure that this access is safe at all times during the performance of the Works or Services.

16.4 Examination of area / Works on Barwon Water Assets

The Developer must procure that the Accredited Consultant, the Accredited Contractors and sub-contractors

- (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 Works or Services are being undertaken and have fully informed themselves as to the means of access to the area in which the Works or Services 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.

16.5 Environment

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

17. Incidents

17.1 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 17.1(a) applies if requested to do so by Barwon Water.

17.2 Reporting of Serious Incidents

The Developer must, as soon as practicable after a Serious Incident, advise Barwon Water of:

- (a) the occurrence of the Serious Incident;
- (b) the cause of the Serious Incident; and
- (c) the consequences of the Serious Incident.

17.3 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 17.3 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 17.3(a)(i);
 - (iv) provide Barwon Water with a copy of the written record referred to in subclause 17.3(b)(iii) within 5 Business Days of the investigation being concluded.

17.4 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.

18. Insurances

18.1 Obligation to insure

The Developer must maintain or procure that its Accredited Consultant or Accredited Contractor 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.

18.2 Developer's Personnel

In addition to any insurances procured by an Accredited Consultant or Accredited Contractor under subclause 18.1, the Developer must procure that the Developer's Personnel maintain all insurances required by a Legislative Requirement.

18.3 Status of insurer

The insurances required pursuant to subclause 18.1 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.

18.4 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 18 in the form of a copy of the respective insurance policy.

18.5 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 18 may at any time become void or voidable.

18.6 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.

18.7 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 18.

18.8 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.

18.9 Deferral of commencement

The Developer must not commence to undertake the Works or Services or construct the Developer's Water Infrastructure until the Developer has complied with this clause 18.

19. Works Information

19.1 Provision of the Works Information

Before Acceptance, the Developer must, provide Barwon Water with complete access to the Works Information as the case may be through arrangements with third parties, .

19.2 Form of the Works Information

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

19.3 Accuracy of the Works Information

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

20. Barwon Water Information

20.1 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.

20.2 No warranty

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

20.3 No Claim

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

20.4 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 Works or Services (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 Works or Services.
- (b) If the Developer passes any Barwon Water Information to any third party as permitted by subclause 20.4(a)(ii) the Developer must advise the recipient of that information of the matters set out in subclause 20.1 and subclause 20.2.

21. Land and Third Party Land

21.1 Developer's Access to Third Party Land

- (a) Where the Developer desires to access Third Party Land then the Developer must ensure that the Consultant submits with the Design Package 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 Works or Services or construct the Developer's Water Infrastructure but it is unable

to procure consent from the owner of the Third Party Land in accordance with subclause 21.1(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 21.1(b). Any third party costs reasonably incurred by Barwon Water in providing such assistance will be at the cost of the Developer.

21.2 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 Works or Services.

21.3 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.

21.4 Easements and freehold land

- (a) Upon request of Barwon Water, the Developer must, at the Developer's cost, do either or both of the following:
 - (i) grant or procure the grant of an easement or easements in favour of Barwon Water, in terms acceptable to Barwon Water, over the Land including being for pipelines or ancillary purposes, for carriageway, or for access, maintenance, repair or replacement of Water Infrastructure, to the benefit of Barwon Water; or
 - (ii) transfer, or procure the transfer, to Barwon Water of freehold title to the Land.
- (b) 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 those assets.
- (c) Any easement or transferred land referred to in subclause 21.4(a) or subclause 21.4(b) must comply with the requirements set out in Barwon Water's Land Development and Administrative Process.
- (d) Provided that the Developer has used its best endeavours to obtain an easement referred to in subclause 21.4(a) or subclause 21.4(b) over any Third Party Land then the Developer shall not be in breach of its obligations under subclause 21.4.
- (e) Where the Developer has, in accordance with subclause 21.3(d), 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.
- (f) If any of the Developer's Water Infrastructure is not constructed within either existing easements or reserves, or easements or reserves created or procured by the Developer, the Developer will bear the costs of Barwon Water in acquiring the

required interest in the Third Party Land, or the Third Party Land, to protect the Developer's Water Infrastructure. These expenses include the legal costs, valuation fees, Land Title Office fees, mortgagee fees of Barwon Water or the owner of the Third Party Land and any compensation payable to an owner of the Third Party Land or any other party with an interest in the relevant Third Party Land. The Developer agrees to indemnify, keep indemnified and hold Barwon Water harmless in respect of any action, claim, costs, legal costs (on a full indemnity basis), compensation, interest and any other amount payable by Barwon Water, to an owner of Third Party Land or any other person having an interest in the relevant Third Party Land, with respect to an acquisition of that Third Party Land by Barwon Water.

22. Conditions for connection / Conditions for commissioning

- (a) The Developer must not connect the Works or Services to existing Barwon Water's Assets before complying with the requirements for connection as set out in Barwon Water's Land Development and Administrative Process, including providing Barwon Water with all required test results.
- (b) If the Works or Services involve Major Infrastructure, the Developer must comply with all additional requirements for Major Infrastructure as set out in Barwon Water's Land Development and Administrative Process.

23. Completion of Works Package and Testings

23.1 Completion of Works Package must comply with Specifications

- (a) Fifteen Business Days after the testing which follows the connection, the Developer must procure that Barwon Water is provided with the complete Completion of Works Package and any other information as reasonably requested by Barwon Water.
- (b) All test results, information, and data contained in or attached to the Completion of Works Package must comply with the Specifications and any other requirement under the Deed.

23.2 Testings and Testing Equipment

- (a) Barwon Water may carry out or advise another party to carry out such testing and inspection of the Works or Services as Barwon Water thinks fit to validate the information provided in the Completion of Works Package.
- (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 Completion of Works Package, complied with the Standards.
- (c) If Barwon Water is not satisfied that the testing equipment described under subclause 23.2(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 23.2(c)(i) and 23.2(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.

24. Acceptance

24.1 Conditions for Acceptance

The Acceptance is subject to Barwon Water's verification and confirmation that the following requirements are met:

- (a) the Developer has paid or procured payment of any outstanding payments to Barwon Water;
- (b) the Developer has provided the Works Warranty Bond in accordance with the Deed;
- (c) the Developer has provided the Completion of Works Package 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 19;
- (e) the Developer has complied with the requirements as set out in clause 22 and clause 23, and with any other obligation under the Deed;
- (f) Connection to Barwon Water's Assets must have occurred according to Barwon Water's Land Development and Administrative Process.
- (g) the Developer has ensured that the Developer's Water Infrastructure is not damaged (and has provided evidence of this to Barwon Water);
- (h) the Developer has ensured that Barwon Water's Assets are not damaged (and has provided evidence of this to Barwon Water);
- (i) the Developer has, in the case of a Development not including a Subdivision, ensured that any reserves or easements required on any land are transferred to Barwon Water or registered in favour of Barwon Water;
- (j) where Reimbursement Works are involved, Barwon Water has determined the Final Reimbursement Amount;
- (k) The Works or Services are reasonably clean.

24.2 Consequences of Acceptance for Development including a Subdivision

In the case that a Development does incorporate a Subdivision, Barwon Water will, upon Acceptance, provide its consent to the issue of a Statement of Compliance for that Subdivision or the relevant stage thereof.

25. Asset Transfer and Commencement of Warranty Period

25.1 Development without Subdivision

- (a) In case that the Development does not incorporate a subdivision, Barwon Water will upon Acceptance issue a second letter to the Developer in which it agrees to the transfer of ownership of the Works to Barwon Water and which constitutes the beginning of the Warranty Period (this letter is hereinafter referred to as 'Asset Transfer and Commencement of Warranty Period Letter').
- (b) Subject to subclause 25.2, on and from the date upon which Barwon Water issues an Asset Transfer and Commencement of Warranty Period Letter:
 - (i) The Warranty Period commences, and
 - (ii) all rights, title and interest in the Works or Services and the Developer's Water Infrastructure vests in Barwon Water, by virtue of this clause, without any further instrument of transfer or assignment.

25.2 Development involving Subdivision

- (a) In the case that the Development involves a Subdivision, Barwon Water may after being notified of a successful registration of the plan of subdivision
 - (i) audit the Works or Services, and
 - (ii) require any additional tests, cleaning or reworks to achieve that the Works or Services are compliant with the requirements set out in the Deed.
- (b) Provided that Barwon Water is satisfied that the Works or Services do still comply with the requirements as set out under subclause 24.1, Barwon Water will issue the Asset Transfer and Commencement of Warranty Period Letter.
- (c) Subject to subclause 25.3, from the date upon which Barwon Water issues that Asset Transfer and Commencement of Warranty Period Letter:
 - (i) the Warranty Period commences; and
 - (ii) all rights, title and interest of the and the Developer's Water Infrastructure (or the part thereof) which is located within that Subdivision or servicing that Subdivision, vests in Barwon Water, by virtue of this clause, without any further instrument of transfer or assignment.

25.3 Asset Transfer at another time

In addition to Barwon Water's rights under subclauses 25.1 and 25.2, Barwon Water is entitled to specify another date or occurrence upon which the Asset Transfer and the commencement of the Warranty Period shall occur.

26. End of Warranty Period

Towards the end of the respective Warranty Period as set out in subclauses 11.3(a) and 11.3(b), the Developer must lodge with Barwon Water a request to end the Warranty Period. Provided that

Barwon Water does not identify any Defects and that Barwon Water considers, in its reasonable opinion, that no further extension as set out in subclause 11.3(b) is necessary, Barwon Water will issue an End Of Warranty Period Certificate upon which the Warranty Period ends.

27. Intellectual Property

27.1 Developer's obligations

The Developer:

- (a) warrants that the Works or Services (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 Works or Services (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 27.1(b).

27.2 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 27.2(b)).
- (b) Barwon Water grants to the Developer a royalty free licence to use Barwon Water's Information for the purpose of undertaking the Works or Services.
- (c) The Developer may sub-licence the licence provided under subclause 27.2(b) to an Accredited Consultant or Accredited Contractor for the purpose of undertaking the Works or Services.

28. Confidentiality

28.1 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, 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 Works or Services.

28.2 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 28 and that a party may be entitled to take injunctive proceedings in relation to, or to prevent any such breach.

28.3 Limit of obligations

The obligations in this clause 28 to not apply:

- (a) to information already in the public domain (other than as a result of a breach of this clause 28);
- (b) any disclosure required by the listing rules of the Australian Stock Exchange; or
- (c) any disclosure required by law.

28.4 Survival

The obligations in this clause 28 survive the termination or expiration of the Deed.

29. Reimbursement Works

29.1 Reimbursement Works

- (a) Subject to subclauses 29.2 until 29.5, Barwon Water may agree that it will reimburse the Developer for the whole or a part of the costs incurred by the Developer in the undertaking of the Works or Services or a part thereof, as determined in the Servicing Requirements and Costing Schedule (hereinafter referred to as 'Reimbursement Works').
- (b) Subject to subclauses 29.2 and 29.3, prior to commencing any Reimbursement Works, the Developer must provide Barwon Water with or must procure that Barwon Water will be provided with:
 - (i) all relevant components of any tender, expression of interest or fee proposal for the Reimbursement Works;

- (ii) details of any fees or payments quoted by the Contractor;
- (iii) a separate list detailing the component parts of the total cost of the Reimbursement Works, identifying the estimated reimbursement amount.

29.2 Costing Proposal / Tender Process where total estimated costs of Reimbursement Works exceed \$500,000.00

- (a) In the event that the total estimated costs of the Reimbursement Works exceed \$500,000.00 (including GST), or in any other case as determined by Barwon Water, the Developer must exercise, and adhere to, the Public Tender Process which is the tender process as determined by the Victorian Government Purchasing Board and as advised by Barwon Water, with the condition that any tender needs to be submitted by an Accredited Contractor.
- (b) Each such tender has to be submitted via Barwon Water's electronic tender portal 'Tenderlink' which is to be found on the Barwon Water's website.
- (c) The Developer must ensure that Barwon Water is provided with the details of the tender with the lowest rates. These lowest rates build the basis for any Agreed Reimbursement Amount, irrespective whether the Developer selects to engage the Accredited Contractor with the lowest rates or whether the Developer chooses any other Accredited Contractor to execute the Reimbursement Works.

29.3 Costing Proposal / Tender Process where total estimated costs of Reimbursement Works are below \$500,000.00

- (a) In the event that the total costs of the Reimbursement Works are below \$500,000.00 (including GST), the Developer shall, subject to subclause 29.4, request three or more Accredited Contractors to submit a tender to the Developer.
- (b) The Developer must ensure that Barwon Water is provided with the details of the tender with the lowest rates. These lowest rates build the basis for any Agreed Reimbursement Amount, irrespective whether the Developer selects to engage the Accredited Contractor with the lowest rates or whether the Developer chooses any other Accredited Contractor to execute the Reimbursement Works.

29.4 Costing Proposal / Tender Process for multistage developments and total estimated costs of Reimbursement Works below \$500,000.00

In the event that

- (a) the Reimbursement Works involve a multi stage development;
- (b) the total costs of the Reimbursement Works are below \$500,000.00 (including GST);
- (c) the Developer has, in a prior stage of the development, already executed either a Public Tender Process or has selected the rates of at least three Accredited Contractors according to subclause 29.3(a); and
- (d) Barwon Water has in either case accepted these rates for the prior stage,

the Developer is entitled to provide Barwon Water with the rates of the prior stage, also for the upcoming stage without the need of again exercising a tender process for the upcoming stage.

29.5 Cap for Consultancy Fees.

Barwon Water may agree to reimburse the Developer for the whole or a part of the costs, which the Developer incurs by paying consultancy fees to the Accredited Consultant. The amount will be a certain percentage, determined by Barwon Water, of the sum of the lowest tendered rates of the Accredited Contractor as described in subclause 29.2(c), 29.3(b), and 29.4.

29.6 Agreed Reimbursement Amount

The Developer is not entitled to commence with the Reimbursement Works unless Barwon Water has:

- (a) considered all information provided to it under subclauses 29.1(b), 29.2(c), 29.3(b), and 29.4;
- (b) added the amount of money that Barwon Water agrees to reimburse the Developer for consultancy expenses as set out in subclause 29.5.
- (c) deducted any bring forward charges as set out in the Servicing Requirements and Costing Schedule if any; and
- (d) provided notice to the Developer whether it accepts the resulting estimated reimbursement amount (the accepted reimbursement amount is hereinafter referred to as 'Agreed Reimbursement Amount').

29.7 Increase Limitations

- (a) Barwon Water is not obliged to pay to the Developer a higher amount than the Agreed Reimbursement Amount unless approved by Barwon Water in its Absolute Discretion in writing.
- (b) Any increase requested by the Developer will only be considered provided that complete and accurate information about the reason for the relevant increase is provided to Barwon Water, to its satisfaction, together with proof that the relevant increase does not relate to a Defect, or the negligence of the Developer or its Representatives, or to some matter otherwise within the reasonable control of the Developer.
- (c) At any time the Developer shall render its best endeavours to not incur unnecessary costs irrespective that the Agreed Reimbursement Amount would not be exceeded.

29.8 Final Reimbursement Amount

- (a) Upon Barwon Water's Acceptance of the Reimbursement Works Barwon Water will determine and will notify the Developer about the final amount to be reimbursed to the Developer (hereinafter referred to as the 'Final Reimbursement Amount') in accordance with the following:
 - (i) the Developer must provide Barwon Water with accurate and complete details of the actual final costs of the Reimbursement Works, including all invoices relating to plant, equipment, materials, Accredited Consultant's costs, Accredited Contractor's costs and any subcontractor's costs, as required by Barwon Water;

- (ii) Barwon Water may, in its discretion, and at its cost, appoint an independent quantity surveyor or similarly qualified professional to review the costs incurred by the Developer, and in case of any inconsistencies between the information provided by the Developer under subclause 29(a)(i) and the outcome of the independent assessment, the Developer must reimburse to Barwon Water the assessment costs; and
- (iii) Barwon Water will calculate the Final Reimbursement Amount by
 - (A) using either the information provided by the Developer under subclause 29(a)(i) or the outcome of the assessment under subclause 29(a)(ii),
 - (B) taking into account any bring forward costs charged by Barwon Water, and
 - (C) deducting any amount which would exceed the Agreed Reimbursement Amount.
- (b) The Developer must issue to Barwon Water a valid tax invoice for the Final Reimbursement Amount, inclusive of GST.

30. Taking Over

30.1 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 Works or Services 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 Works or Services 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 Works or Services.

30.2 Consequence of taking over

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

- (a) the Developer must continue with the Works or Services not taken over by Barwon Water in accordance with the Deed;
- (b) the Developer must resume the Works or Services 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 Works or Services and which is relevant to the carrying out of the Works or Services 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 Works or Services which have been taken over by Barwon Water;
- (e) Barwon Water may in its absolute discretion notify the Developer requiring novation of Accredited Consultants or Accredited Contractors providing the Works or Services and, upon receipt of a notice from Barwon Water under this subclause 30.2(e), the Developer must procure that the Accredited Consultants or Accredited Contractors 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 Works or Services 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 Works or Services 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 30.2.

30.3 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 30 and in connection with or arising out of the completion of the Works or Services taken over by Barwon Water.

30.4 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 Works or Services, Barwon Water may at any time after such deferral and taking over, terminate the Deed.
- (b) The entitlement of Barwon Water under subclause 30.3 will not be prejudiced by any subsequent termination of the Deed.

31. Termination

31.1 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 4.4 of Schedule 5 arise,
- then Barwon Water may by notice in writing, in its absolute discretion, terminate the Deed.

31.2 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 Works or Services, or (ii) permit any further Works or Services 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.

32. Change in Control

32.1 Consent required

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

32.2 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 Works or perform the Services.

32.3 Consent not to be unreasonably withheld

Provided that the Developer has complied with subclauses 32.1 and 32.2, Barwon Water may not unreasonably withhold its consent to a Change in Control.

32.4 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.

33. Dispute Resolution

33.1 Dispute process

- (a) The parties must follow this clause 33 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 Works or Services (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 33.
- (c) The parties must continue to comply with the Deed notwithstanding the existence of a dispute.

33.2 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**).

33.3 Meetings

If a party issues a notice of Dispute under subclause 33.2, 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.

33.4 Parties Obligations

The parties must use their reasonable efforts to resolve the Dispute through the process described in this clause 33, including arranging and attending meetings to discuss the Dispute.

33.5 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.

33.6 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 33.5, then
- either party may refer the Dispute to litigation.

33.7 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 33.

33.8 Interlocutory relief

Nothing in this clause 33 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such Dispute.

33.9 Survival

This clause 33 survives the termination or expiration of the Deed.

34. Audit of Records

34.1 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.

34.2 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 34.1 applies relating to the operation and maintenance of Barwon Water's Assets (including any part of the Works forming part of Barwon Water's Assets) and to conduct an audit of those documents and records.

35. Notices

35.1 Application of clause

In this clause 35 reference to notice means a notice, consent, approval or other communication.

35.2 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.

35.3 Non compliance with requirements

If a notice does not comply with this clause 35 it cannot be relied upon and will not be taken to be a valid notice under the Deed.

35.4 Mode of Service

A notice may be served by:

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

35.5 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.

35.6 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.

35.7 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.

36. Miscellaneous

36.1 Governing Law

The Deed is governed by the laws of Victoria.

36.2 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.

36.3 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.

36.4 Alteration

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

36.5 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).

36.6 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.

36.7 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;

36.8 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.

36.9 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;
- (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.

36.10 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.

36.11 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.

36.12 GST

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

36.13 Works or Services before Commencement Date

The Deed applies to the Development and the Works or Services, whether any of the Works or Services are undertaken before on or after the commencement of the Deed but not for such Works or Services undertaken under a former 'letter of offer' issued by Barwon Water before the 16.03.2018 and accepted by the Developer within the timeframe stipulated in the relevant 'letter of offer'.

36.14 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.

36.15 No Reliance

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

36.16 Survival

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

36.17 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.

36.18 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.

36.19 Counterparts

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

36.20 Costs

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

36.21 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.

36.22 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.

36.23 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.

36.24 Assignment

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

36.25 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 36.6.

Acceptance means the issuing of a certificate by Barwon Water to the Developer indicating that Barwon Water accepts the Works or Services.

Acceptance of Works Certificate means a certificate of that name (or similar name) issued by Barwon Water to the Developer which constitutes the Acceptance of the Works or Services

Accepted Design means the Design submitted to Barwon Water and verified by Barwon Water;

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 Works or Services to be undertaken by the relevant person, organisation or company and which, having regard to the arrangements between the Accredited Contractor or Accredited Consultant and Barwon Water, permits the undertaking of the relevant Works or Services by the Accredited Contractor or Accredited Consultant, as is relevant;

Accredited Consultant means a consultant (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;

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;

Agreed Reimbursement Amount has the meaning as set out in subclause 29.3.

Assets means Barwon Water's Assets or Third Party Assets;

Asset Transfer means the transfer of all rights, title, and interest in the Works or Services to Barwon Water according to clause 25.

Asset Transfer and Commencement of Warranty Period Letter has the meaning as set out in subclause 25.1.

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

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 Land Development and Administrative Process means the processes and requirements set out in Schedule 3 and as amended pursuant to subclause 15.2;

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 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 item 2 of the Particulars;

Barwon Water's Standards and Procedures means the standards, specifications, policies, procedures and matters listed in Schedule 3 and any updates or any other guidelines, rules or requirements notified to the Developer or Accredited Consultant in writing from time to time.

Barwon Water's Terms and Conditions for Developer Works means these terms and conditions as published on Barwon Water's website under "Barwon Water's Terms and Conditions for Developer Works", <website>, including all Schedules, and any provision to which the terms and conditions refer to.

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 of the Works or Services means the point in time when Barwon Water issues the Acceptance of Works Certificate.

Completion of Works Package means the completed forms together with accompanying information, as detailed in Barwon Water's Land Development and Administrative Process and otherwise required by Barwon Water.

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 Developer Deed Document and Barwon Water's Terms and Conditions for Developer Works including but not limited to Barwon Water's Land Development and Administrative Process;

Defect means any defect, deficiency or non-compliance in any Works or Services or the Developer's Water Infrastructure;

Design means the detailed engineering design of the Works or Services prepared by the Accredited Consultant;

Design Package means the design documents as specified in the Land Development and Administrative Process or otherwise requested by Barwon Water in writing;

Developer means the entity described as such in the Parties Section of the Individual Developer Deed Document and in the Particulars of the Individual Developer 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 Works or Services (as is relevant to the Developer);

Developer's Representative means the Accredited Consultant and the person 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 item 5 and item 3 in the Particulars;

Developer's Water Infrastructure means the particular Water Infrastructure specified in the Servicing Requirements and Costing Schedule to be constructed by the Developer;

Development means the undertaking of the Works or Services or activities in relation to any part of the Developer's Water Infrastructure;

Development Fees means the fees as set out in the Servicing Requirements and Costing Schedule, and any other charges determined by Barwon Water for necessary activities undertaken by Barwon Water and associated with the Development;

Dispute has the meaning as set out in subclause 35.1(a);

End of Warranty Period Certificate means a certificate of that name (or similar name) issued by Barwon Water, when it is satisfied, that any Defects have been remedied and that the Warranty Period has ended;

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;

Final Reimbursement Amount has the meaning as set out in subclause 29.5(a);

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 Works or Services; 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 Developer Deed Document means the individual deed document 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 Developer's 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 Works or Services or construct the Developer's Water Infrastructure;

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 Works or Services; and
- (d) fees and charges payable in connection with the foregoing;

Major Infrastructure has the meaning as set out in Barwon Water's Land Development and Administrative Process.

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 33.2;

Notifiable Incident means an incident which is related to or in any way connected to the Works or Services; 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 Developer 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);

Reimbursement Works has the meaning as set out in subclause 31.1;

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 Works or Services; 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 Works or Services; and which results in personal injury requiring treatment by a medical practitioner;

Services means the design, documentation or supervision or project management or any other action in relation to any Works or the Developer's Water Infrastructure or the provision of advice in relation to such design, documentation or supervision;

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

Specifications means

- (a) all technical requirements, design requirements and other requirements, (except for the costing) set out by Barwon Water in the Servicing Requirements and Costing Schedule;
- (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 Works or Services, 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 Works or Service.

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 Works or Services or construct the Developer's Water Infrastructure, or which the Developer desires to access in order to undertake the Works or Services or construct the Developer's Water Infrastructure;

Warranty Period is the period as set out in subclauses 11.3.(a), and 11.3(b).

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;

Works means any works in relation to or in connection with the construction of the Developer's Water Infrastructure;

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:

- (a) Works or Services; and
- (b) any land affected by the Works or Services, which is required by Barwon Water to operate or maintain Barwon Water's Asset (including any part of the Works that form part of Barwon Water's Asset);

Works Warranty Bond means, the bond as described in clause 9 in the form as set out in the Servicing Requirements and Costing Schedule, and securing an amount as set out in the Servicing Requirements and Costing Schedule.

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 Developer Works)

Explanation:

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

1. Barwon Water's Land Development and Administrative Process

- (a) Barwon Water’s Land Development and Administrative Process for Developer Works may contain or describe:
 - (i) obligations to be discharged by the Developer, or the Accredited Consultants or Accredited Contractors;
 - (ii) actions to be undertaken by the Developer, or the Accredited Consultants or 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 Developer Deed, the Consultant Accreditation Deed, 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 Consultants or Accredited Contractors comply, with Barwon Water’s Land Development and Administrative Process, and must complete, and must procure that the Accredited Consultants or Accredited Contractors complete, all the documents which Barwon Water’s Land Development and Administrative Process calls for the Developer, the

Accredited Consultants or Accredited Contractors 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 Developer Deed or Barwon Water's Land Development and Administrative Process.

- (b) The Developer warrants that:
 - (i) it or its Accredited Consultants or Accredited Contractors will take care in completing any documents required to be completed by Barwon Water;
 - (ii) the documents which it or its Accredited Consultants or Accredited Contractors completes which are required by Barwon Water will be accurate and complete and will not be misleading; and
 - (iii) neither it nor its Accredited Consultants or Accredited Contractors 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 Consultant's and Accredited Contractors' obligations regarding Barwon Water's Land Development and Administrative Process

- (a) The Accredited Consultant and the Accredited Contractor 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 Consultant and Contractor to complete, must do so within the time provided for in Barwon Water's Administrative Process, and must, upon request of Barwon Water resubmit any form if it did not comply with stipulations of the Developer Deed or Barwon Water's Land Development and Administrative Process.
- (b) The Accredited Consultant and the Accredited Contractor warrant 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 Developer Deed.

5. Deed application and execution

- (a) After having received the application for a Developer Deed, if Barwon Water decides to offer to the Developer to execute a Developer Deed, Barwon Water will send to the Developer:
 - (i) a cover letter;
 - (ii) two copies of the Developer Deed executed by Barwon Water; and
 - (iii) two copies of the Service Requirements and Costing Schedule which form part of the Developer Deed.
- (b) The Developer must execute both copies of the Developer Deed, complete the particulars page of the Developer Deed, and send one copy of the Developer 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 Consultants and Accredited Contractors for the Works or Services

- (a) The Developer must engage an Accredited Consultant before executing the Developer Deed and must provide Barwon Water with the details of the engaged Accredited Consultant either, if already known, by filling them into the Form 'Application for Developer Deed and Service Requirements and Costing Schedule' or, at the latest, into the Particulars of the Deed before sending the executed copies of the Developer Deed to Barwon Water. .
- (b) The Developer must engage an Accredited Contractor before the commencement of the construction and must immediately after the engagement provide Barwon Water with the details of the Contractor. The Developer may engage additional Accredited Contractors at any time during the provision of the Works or Services.

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 Developer Deed.
- (b) The Accredited Consultant and the Accredited Contractor must provide Barwon Water with the details of their appointed representatives before the commencement of any Works or Services (relevant to the Accredited Consultant and the Accredited Contractor).

9. Completion and Submission of the Design Package

- (a) For the submission of the Design Package, the Accredited Consultant must:
 - (i) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Design Package Submission Form'; and
 - (ii) complete and submit that form.
- (b) Barwon Water may at any time request additional information from the Accredited Consultant and the Accredited Consultant must provide Barwon Water with this information without undue delay.

10. Resubmission of the Design Package

- (a) Upon Barwon Water's request, the Accredited Consultant must resubmit the Design Package. In this case, the Consultant must:
 - (i) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Design Package Resubmission Form' or as otherwise requested by Barwon Water; and
 - (ii) complete and submit that form.
- (b) In case that Barwon Water has requested the Accredited Consultant to resubmit the Design Package for the fourth time, and provided that the fourth and any former request to resubmit is/was related to defects in the Detailed Design Package, Barwon Water is entitled to charge the ACO for the fourth design audit.

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. Easements and freehold land

- (a) 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.
- (b) If Barwon Water requests further easements after having accepted the Design, the Accredited Consultant must, and the Developer must ensure that the Accredited Consultant does, at the Developer's costs, amend the Accepted Design in accordance with the new easements and submit the amended Design to Barwon Water for verification. The amended Design only becomes an Accepted Design under the Deed if Barwon Water confirms that the amended Design complies with all requirements of the Developer Deed and any other requirement for easements requested by Barwon Water.

13. Commencement of Works

- (a) Five (5) Business Days before the commencement of the Works or Services, the Accredited Consultant on behalf of the Developer must:
- (b) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Notification of Works'; and
- (c) complete and submit that online form.

14. Work on or near Barwon Water Assets

Three (3) business days before any work on or near Barwon Water Assets, the Accredited Contractor must:

- (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.

15. Testing Procedure

- (a) 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, at

the times and in a manner as requested by Barwon Water and according to all applicable industry standards. These testings may include swab testing, hydrostatic testing, pressure testing, ovality testing, water quality testing, dual pipe service testing, etc.

- (b) Three (3) Business Days before any testing any aspect of the Works or Services the Accredited Consultant must:
 - (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.
- (c) After the satisfactory completion (as determined by Barwon Water) of any testing, the Consultant must submit the test results to Barwon Water within the timeframes as set out in the Servicing Requirements and Costing Schedule.

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

Prior to the connection of the Works to existing Barwon Water Assets the Accredited Consultant 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.

17. 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 seek the consent to execute the tapping under pressure.
- (c) In both cases, shutdown or tapping under pressure, the Accredited Contractor and the Accredited Consultant must
 - (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 Developer Deed.

18. Commissioning of Works for Major Infrastructure

- (a) Some Developer's Water Infrastructure Works include 'Major Infrastructure'. Major Infrastructure means either
 - (i) a water main,
 - (ii) a water pump station,
 - (iii) a sewer pump station,
 - (iv) pressure reducing valves, or
 - (v) a water tank.
- (b) The following Major Infrastructure requires electric power supply:
 - (i) water pump stations,
 - (ii) sewer pump stations,
 - (iii) pressure reducing valves or flow meters, and
 - (iv) water tanks.
- (c) In addition to the conditions for Acceptance of the Works or Services as set out in clause 24 of the Developer Deed, if the Works or Services include Major Infrastructure requiring electric power supply, the Acceptance is subject to a successful prior 'Commissioning' of this Major Infrastructure.
- (d) For a successful Commissioning the Accredited Consultant must:
 - (i) inform Barwon Water about any application for power supply which has been lodged with a power supplier within undue delay;
 - (ii) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the form 'Pre-Commissioning Checklist'; and
 - (iii) complete and submit the form 'Pre-Commissioning Checklist'; and
 - (iv) at the commissioning date complete the form 'Commissioning Checklist'.

19. Provision of the Completion of Works Package to Barwon Water

When providing the Completion of Works Package according to subclause 23.1(a) of the Developer Deed, the Accredited Consultant must:

- (a) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Completion of Works Package'; and
- (b) complete and submit that online form.

20. Affecting existing Barwon Water Assets

- (a) If the Service Requirements and Costing Schedule sets out that the Works or Services 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 principal requirement in respect of the disconnection, removal or decommissioning of any of those assets.
- (b) The ownership of and all responsibility for any Barwon Water Asset which is decommissioned or disconnected transfers to the Developer upon its decommissioning or disconnection.
- (c) 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.
- (d) 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.
- (e) 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 21.4(b) to (f) of the Developer Deed.

21. Provision of Works Information to Barwon Water

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

22. Build over consents

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

23. Joint response by Consultant and Contractor to Show Cause Notices

Barwon Water may serve the Consultant and the Contractor with respective Show Cause Notices relating the same issue which inflicts a respective breach of the Consultant's and of the Contractor's obligation. The Consultant and the Contractor may provide to Barwon Water a joint response to the Show Cause Notices but must ensure that it addresses both, the breach of the Contractor's obligation (e.g. non-compliance with Specification) and the Consultant's obligation (e.g. lack of proper supervision or auditing)

24. Additional duties Consultant

Upon reasonable prior notice by Barwon Water, the Consultant must attend on site at the date and time as required by Barwon Water.

25. Application for Accreditation and for Re-Accreditation

- (a) For the first application for Accreditation, the contractor / consultant 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 and 7.5(a)(iii) of the Consultant Accreditation Deed, the contractor / consultant 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 / consultant a letter informing the contractor / consultant 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 / consultant before proceeding with the application process.

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

- (a) Any breach of the Developer Deed, the Contractor Accreditation Deed, or the Consultant 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, the Accredited Consultant, 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 the Consultant Accreditation Deed, or may execute its other rights resulting from a breach of the Contractor Accreditation Deed, the Consultant Accreditation Deed or the Developer Deed, including the termination of the deed or the Accreditation itself.

27. Early release of consent to a Statement of Compliance

Barwon Water does principally not give its consent to a Statement of Compliance before Acceptance. In case that the Developer in exceptional circumstances desires that Barwon Water gives a consent to a Statement of Compliance before Acceptance, the Developer must contact Barwon Water and has to follow an application process as determined by Barwon Water.

28. 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 Accredited Contractors, Accredited Consultants, and sub-contractors employed from time to time by the Developer in relation to Works or Services 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 (as these terms are defined in the Annexure to this Schedule 5)

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 resettle 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) (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) (ii) the Trust Fund is sufficient to satisfy that right in full; and
 - (iii) (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 31 of the Deed:

- (a) **(breach of warranty)** a warranty under clause 4.1 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 4.3 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 HSE 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.