

# **SCHEDULE 1**

## **DEVELOPMENT DEED STANDARD CONDITIONS**



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## DEVELOPMENT DEED STANDARD CONDITIONS

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this document.

**Acceptance of Works Certificate** has the meaning given in clause 7.2.

**Accredited Consultants and Contractors List Process** means the process by which suppliers are invited to submit an expression of interest to the Water Company for evaluation and for the purpose of obtaining accredited status, whether on a probationary or final basis and being included on a list of eligible suppliers approved to undertake one or more categories of land development related works or services.

**Accredited Consultant** means a consultant approved, whether on a probationary or final basis in accordance with the Water Company's Accredited Consultants and Contractors List Process.

**Accredited Contractor** means a contractor approved, whether on a probationary or final basis in accordance with the Water Company's Accredited Consultants and Contractors List Process.

**Approved Products List** means the list of products approved by the Water Company to be used in the Development Works, as provided by the Water Company at the Commencement Date and as updated from time to time.

**Accredited Status** means the status of being an Accredited Consultant or an Accredited Contractor in accordance with the Water Company's Accredited Consultants and Contractors List Process.

**Approved Unconditional Undertaking** means the form of unconditional undertaking set out in Schedule 7.

**As-Constructed Verification Form** has the meaning given in the Land Development Manual.

**Certificate of Completion** means a certificate of completion issued under clause 7.4.

**Change of Control** means in relation to a body corporate or entity (**the body**) where:

- (a) an entity that Controls the body ceases to Control the body; or
- (b) an entity that does not Control the body comes to Control the body,

however no Change of Control occurs if:

- (c) the entity that ceases to Control the body under paragraph (a)(i) was, immediately beforehand, a wholly-owned subsidiary of a body corporate that Controls the body; or
- (d) the entity that comes to Control the body under paragraph (a)(ii) is, immediately afterward, a wholly-owned subsidiary of a body corporate that previously Controlled and continues to Control the body.

**Claim** means, in relation to a person, any claim, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Commencement Date** means the date on which the Water Company executes the Formal Instrument.

**Consent to Statement of Compliance** means a notice issued by the Water Company to the appropriate Responsible Authority that it consents to the issuing of a Statement of Compliance under section 21 of the *Subdivision Act 1988* with respect to the Development.

**Construction Verification Form** has the meaning given in the Land Development Manual.

**Construction Requirements** means any construction requirements specified by the Water Company for the Development Works as described in Schedule 6.

**Contractor** means the Water Contractor and the Sewer Contractor.

**Control** means a power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.

**Corporations Act** means the *Corporations Act 2001*.

**Day** means calendar day.

**Defect** includes any work or material which is not in accordance with this document due to the act, omission or negligence of the Developer, Consultant or Contractor, including any fault, error, omission, shrinkage or other defect, but does not include ordinary fair wear and tear.

**Defects Liability Period** has the meaning given in clause 8.

**Deliverables** means all materials developed or supplied by each of the parties (except the Water Company) in carrying out the Development Works.

**Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like required by this document and created (and including, where the context so requires, those to be created by the Consultant or Contractor) for the construction of the Development Works.

**Design Requirements** means any design requirements specified by the Water Company for the Development Works as described in Schedule 4.

**Design Verification Form** has the meaning given in the Land Development Manual.

**Development Deed** means the deed entered into by the parties, by execution of the Formal Instrument, regarding the Development Works.

**Development** means the land development project being undertaken by the Developer as described in Schedule 3.

**Development Works** means the works to be designed and constructed under the Development Deed for the supply of water, recycled water (where applicable) and sewerage assets and infrastructure to service each Lot, and includes any works undertaken in response to a notice issued by the Water Company under clauses 8 (Defects Liability Period) or 9 (Warranty Period).

**Development Works Application** means the application by the Developer to the Water Company to undertake the Development Works, including the documents described in the Land Development Manual.

**Direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**End of Defects Liability Verification Form** has the meaning given in clause 5.2(i).

**Environmental Management Plan** means the environmental management plan referred to in clause 6.2(n), in the form accepted by the Water Company.

**ESC** means the Essential Services Commission.

**Extended Period** means the period of 12 months beginning on the day immediately following the last day of the Initial Period.

**Force Majeure Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, currency restriction, embargo, action or inaction by a Government Agency (other than the Water Company), or a failure of a supplier, public utility (other than the Water Company) or common carrier.

**Formal Instrument** means the formal instrument executed by the parties regarding the Development Works.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law.

**Initial Period** means 12 months.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**Intellectual Property** means all present and future rights conferred by statute, common law, equity or any corresponding Law in or in relation to any copyright (including, but not limited to copyright in computer programs, documentation, drawings, writings and art works), trade marks, designs, all rights in relation to inventions including but not limited to patents, modifications or improvements to the same, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights.

**Land Development Manual** means the Water Company's policies and procedures relating to land development and water, recycled water and sewerage supply, available on the Water Company's website and a copy of which is available from the Water Company upon request, and as may be amended by the Water Company from time to time.

**Law** means the law in force in Victoria including, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or any other legislative or regulatory measures and includes any amendment, modification or re-enactment of them.

**Liability** means in relation to a person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent and including any liability for consequential or indirect loss, economic loss or loss of profits.

**Water Company's Representative** has the meaning given in the Water Company Land Development Manual.

**Live Asset** means any pipe or other infrastructure which, at the relevant time:

- (a) is carrying water, recycled water or sewage; and
- (b) is in operation,

and has not been isolated from other Live Assets by means of a plug, break, other blocking device or otherwise in accordance with the Water Company's confined space procedure.

**Lot** means an area within the Development that is capable of being separately metered for water or recycled water supply purposes.

**OH&S** means occupational health and safety.

**OH&S Law** means OH&S laws, standards, codes and guidelines.

**OH&S Plan** means the OH&S plan referred to in clause 6.2(n), in the form accepted by the Water Company.

**Personnel** means employees, agents or contractors of the Developer, Consultant and Contractor engaged to provide any part of the Development Works.

**Plan of Subdivision** means the plan of subdivision relating to the Development.

**Pre-Construction Verification Form** has the meaning given in the Land Development Manual.

**Price Determination** means the ESC's price determination for the Water Company applicable at the Commencement Date, as amended from time to time within the period of the determination.

**Quality Assurance Requirements** means the quality assurance requirements set out in the Land Development Manual.

**Quality Plan** means the quality plan referred to in clause 6.2(n), in the form accepted by the Water Company.

**Registrar of Titles** has the meaning given in the Land Development Manual.

**Responsible Authority** means a responsible authority under the *Planning and Environment Act 1987* (Vic).

**Schedule** means a schedule to the Development Deed.

**Variation** has the meaning given in clause 17.

**Warranty Period** has the meaning given in clause 9.

**Water Company Information** means the Financial Contribution information set out in Schedule 4 to this Deed, planning information provided by the Water Company and Hydraulic Plans.

**Water Industry Act** means the *Water Industry Act (Vic) 1994*.

**Water Industry Technical Standards Survey Specifications** has the meaning given in the Land Development Manual.

**Works Warranty Bond** means the works warranty bond provided by the Developer in accordance with clause 4.8.

**WSAA Code** means the Water Services Association of Australia, "Water Supply and Sewerage Codes of Australia (Melbourne Retail Water Agencies Edition)".

## 1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept) such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document and the Development Deed.
- (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The words **body corporate, listed, wholly-owned subsidiary, entity, subsidiary, holding company** and **related body corporate** have the same meanings as in the Corporations Act.

## 1.3 Non Business Days

If the day on or by which a person must do something under this document is not a Business Day:

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

- (b) in any other case, the person must do it on or by the previous Business Day.

#### 1.4 Reference to Contractor

Where in this document:

- (a) an obligation is placed on the Contractor, then the obligation is placed on the Water Contractor and the Sewer Contractor severally;
- (b) a right is conferred in favour of the Contractor, then the right is held by the Water Contractor and the Sewer Contractor severally; or
- (c) there is any other reference to the Contractor, the term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately,

unless otherwise specified.

#### 1.5 Multiple parties

Subject to clause 1.4, if a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party, then unless otherwise specified in this document:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

## 2. OPERATION OF DOCUMENT

### 2.1 Commencement

The rights and obligations of the parties under the Development Deed begin on the Commencement Date.

### 2.2 Termination or extension

- (a) If the Developer fails to complete the Development Works within the Initial Period, the Water Company may, in its sole discretion:
  - (i) terminate the Development Deed;
  - (ii) terminate the Development Deed and, subject to clause 2.2(c), step in to complete so much of the Development Works as are required to provide water (including recycled water) and sewerage services to customers other than the Developer; or
  - (iii) subject to payment by the Developer of any further or revised fees, charges, or contributions assessed by the Water Company in accordance with the Price Determination and the Water Industry Act, agree to extend the operation of this document for the Extended Period on the same terms as are contained in this document.
- (b) If the Water Company terminates the Development Deed under clause 2.2(a)(i) or (ii), and the Developer subsequently wishes to proceed with the Development Works, the Developer must:

- (i) obtain the consent of the Water Company;
  - (ii) enter into a further development deed with the Water Company; and
  - (iii) pay to the Water Company any further or revised fees, charges and contributions assessed by the Water Company in accordance with the Price Determination and the Water Industry Act.
- (c) Where the Water Company exercises its rights under paragraph (a)(ii) above, the reasonable costs incurred by the Water Company in completing works, less any amounts that the Water Company has agreed to reimburse to the Developer, will be a debt due and payable by the Developer to the Water Company.
- (d) Termination of this Deed is without prejudice to any rights or liabilities of the parties accruing to the date of termination.

### **3. AMENDMENT AND ASSIGNMENT**

#### **3.1 Amendment**

This document can only be amended or replaced by another document signed by all of the parties.

#### **3.2 Assignment**

- (a) No party (except for the Water Company) may assign, transfer, dispose of, declare a trust over or otherwise create an interest in its right under this document without the prior written consent of the Water Company.
- (b) The parties acknowledges that the Water Company has entered into the Development Deed in reliance on the expertise and capability of the parties and may withhold its consent under clause 3.2(a) in its absolute discretion

### **4. THE DEVELOPER**

#### **4.1 Overall responsibility for Development Works**

The Developer must carry out and complete the Development Works in accordance with the Development Deed.

#### **4.2 Developer's warranties**

The Developer must ensure, and warrants to the Water Company, that:

- (a) the Developer will carry out and complete the Development Works and will have the primary responsibility for all obligations arising under or in connection with the design and construction of the Development Works in accordance with the Development Deed and will ensure that the Consultant and the Contractor comply with their respective obligations under the Development Deed;
- (b) in connection with the completion of the Development Works, it will only engage Accredited Consultants and Accredited Contractors;
- (c) that the Consultant and the Contractor:
  - (i) at all times will be suitably qualified and experienced, and will exercise due skill, care and diligence in the carrying out and completion of the Development Works;
  - (ii) effect and maintain the insurances, and observe the general requirements regarding insurance, set out respectively in clause 11; and

- (iii) will carry out their respective obligations relating to the Development Works in accordance with the Development Deed;
- (d) the Developer will procure that the Consultant and Contractor engaged by it be familiar with all current Laws affecting the Development Works, or which may affect the Development Works, and that there is nothing in the Design Requirements or Construction Requirements which is inconsistent with, or at variance with, any current Laws;
- (e) the Developer will procure that the Consultant and Contractor engaged by it examines and carefully checks any Design Requirements and Construction Requirements and that such Design Requirements and Construction Requirements:
  - (i) are consistent with and do, or will, conform with and meet all Laws; and
  - (ii) do not contain any material discrepancies, ambiguities or inconsistencies;
- (f) the Consultant or another Accredited Consultant (who is accredited to undertake audit activity) is appointed to undertake a reasonable program of audits of the construction of the Development Works by the Contractor. Without limitation, these audits must cover OH&S, environmental and quality performance of the Contractor; and
- (g) all materials for the Development Works:
  - (i) will be provided at the Developer's cost; and
  - (ii) are either materials specified in the Approved Products List or if they are not so specified, have been approved by the Water Company.

#### 4.3 **Warranties unaffected**

The Developer acknowledges that the warranties in clause 4.2 will remain unaffected notwithstanding:

- (a) any:
  - (i) receipt or review of;
  - (ii) comment on; or
  - (iii) acceptance of,
 the Design Documents by the Water Company;
- (b) the provision of any information and data concerning the Development by or on behalf of the Water Company; or
- (c) the granting by the Water Company of Accredited Status to the Consultant or the Contractor.

#### 4.4 **No warranty by Water Company**

- (a) Information made available to the Developer in the documents forming part of the Development Deed or prior to, or after the Development Works Application, will not constitute a warranty or representation of any kind by the Water Company, and the Developer acknowledges and agrees that such information will be checked and verified by it, the Consultant and the Contractor.

- (b) The Developer will not be entitled to any moneys or extension of the Initial Period on account of any alleged statement, warranty or representation with respect to the information referred to in clause 4.4(a) which may not prove correct.
- (c) The provisions in clauses 4.4(a) and (b) do not apply in respect of Water Company Information.
- (d) No warranty, express or implied, is given by the Water Company that the Design Requirements or Construction Requirements show all information which is or may be necessary or incidental to the Development Works.

#### 4.5 **Obligations in relation to the Development Works**

The Developer must:

- (a) before commencing the Development Works, satisfy all applicable requirements of the *Planning and Environment Act 1987* (Vic);
- (b) before commencing the Development Works, at the Developer's cost, obtain all necessary permits, consents and other authorisations required by Law for the Development Works to proceed;
- (c) without limiting clauses 4.5(a) and 4.5(b) at all times meet the requirements of all relevant Laws relating to the commencement and completion of the Development Works;
- (d) at any time upon receipt of a written request from the Water Company, provide the Water Company with written evidence that the requirements of paragraphs (a) to (c) have been met; and
- (e) at any time where requested by the Water Company, coordinate the location and design of the proposed Development Works with any of the Water Company's or any other authority's existing or proposed works, operations or services.

#### 4.6 **Construction Verification Form**

The Developer acknowledges and agrees that:

- (a) it must procure that the Consultant will undertake those activities necessary to provide to the Water Company a Construction Verification Form; and
- (b) the Water Company will be under no obligation to issue an Acceptance of Works Certificate or a Consent to Statement of Compliance, until the Consultant provides to the Water Company a Construction Verification Form.

#### 4.7 **Development Works costs**

- (a) The Developer must:
  - (i) meet the full cost of designing, constructing, project-managing, supervising, auditing, surveying and asset recording all of the Development Works (except for any amounts which the Water Company expressly agrees to pay the Developer, as set out in Schedule 4); and
  - (ii) pay to the Water Company such fees, charges and contributions relating to the Development as are calculated by the Water Company in accordance with the Price Determination and the Water Industry Act as set out in Schedule 4 (Financial Contributions), and within the time specified in the Water Company's pricing manual (as amended from time to time).

- (b) The Developer may pay the fees, charges and contributions either:
  - (i) When lodging their 'Intention to proceed to a Development Deed' (Form B) or when executing the Development Deed Formal Instrument.
  - (ii) At any time after lodging their 'Intention to proceed to a Development Deed' (Form B) or executing the Development Deed Formal Instrument and requesting a consent to the issue of a Statement of Compliance.
  - (iii) If payment of fees, charges and contributions are deferred for more than 3 months from the date of the Issue Date of Schedule 3 of the Development Deed, contributions will be payable at the rates current of the time of payment.

#### 4.8 Works Warranty Bond

- (a) The Works Warranty Bond is for the purpose of ensuring that the Development Works are completed by the Developer in accordance with the requirements of the Development Deed, including the Warranty Period in accordance with clause 9.
- (b) The Developer must give the Water Company a Works Warranty Bond for an amount equal to the greater of:
  - (i) \$1,000; or
  - (ii) 5% of the value of the Development Works, as determined by the Water Company, before the Water Company may be required to issue an Acceptance of Works Certificate.
- (c) The Works Warranty Bond must be in the form of either:
  - (i) an Approved Unconditional Undertaking; or
  - (ii) any other form approved by the Water Company in its absolute discretion.
- (d) The Water Company may have immediate recourse, without notice, to the Works Warranty Bond and may convert into money any part of or the whole of the Works Warranty Bond:
  - (i) where the Water Company (acting reasonably) believes that the Water Company has become entitled to exercise a right under the Development Deed in respect of the Works Warranty Bond;
  - (ii) for a purpose referred to in any of clauses 7.1(b), 8(e)(v) and 9.3; or
  - (iii) where the Developer is indebted to the Water Company under this document.
- (e) The Water Company will not be liable for any loss to the Developer occasioned by recourse to the Works Warranty Bond.
- (f) 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:
  - (i) any issuer of the Works Warranty Bond contemplated in this clause 4.8 from paying the Water Company pursuant to the Works Warranty Bond; or
  - (ii) the Water Company from:
    - (A) taking any steps to obtain payment under the Works Warranty Bond; or

- (B) using the moneys received under the Works Warranty Bond.
- (g) The Water Company will own any interest earned on the Works Warranty Bond.
- (h) Upon the expiration of 2 years after the Water Company issues a Certificate of Completion, the Developer may apply to the Water Company for a return of the balance of the Works Warranty Bond then held by the Water Company (if any). The Water Company must return the balance of the Works Warranty Bond held by it (if any) promptly after receipt by it of the application.

#### 4.9 Consent of affected landowners

At least 7 Days before the Developer proposes to commence construction of any Development Works, the Developer must give to the Water Company a letter of consent, prepared at the cost of the Developer and signed by the owner of any land outside the boundaries of the Development (**landowner**), upon which Development Works are required to be constructed, under which the landowner:

- (a) consents to the construction of the relevant Development Works on the landowner's land; and
- (b) agrees that it will:
  - (i) grant an easement in favour of the Water Company, to allow it to have access to maintain, repair, replace or remove the relevant Development Works on the landowner's land, promptly upon the request of the Water Company, once the Development Works are complete;
  - (ii) execute any documents necessary for such an easement to be registered; and
  - (iii) allow any employee of, or person authorised by, the Water Company to have access to the land in order to inspect the relevant Development Works, at any time during their construction.

#### 4.10 Easements and other land

- (a) The Developer must, at the Developer's cost and as required by the Water Company, do either or both of the following:
  - (i) grant or procure the grant of an easement or easements in favour of the Water Company over such land within the boundaries of the Development as is, or is to be, occupied by the Development Works, the easement being for the purpose of the Water Company, its officers, contractors and persons authorised by it, entering the land to inspect, construct, maintain, repair, decommission or remove any works relating to water supply, recycled water supply or sewerage; or
  - (ii) transfer, or procure the transfer, to the Water Company of freehold title to such land within the boundaries of the Development as is, or is to be, occupied by the Development Works.
- (b) The Developer must, at the Developer's cost, procure the granting of any easement over land beyond the boundaries of the Development which is or will be occupied by Water Company assets supplying water, recycled water or sewerage services to the Development, that is necessary for the purpose of the Water Company, 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 clauses 4.10(a) or 4.10(b) must be of sufficient dimensions to accommodate any excavations and any soil resulting from such

excavations, as may from time to time be necessary to construct, maintain, repair, decommission or remove the relevant works.

- (d) Without limiting its remaining rights under the Development Deed, the Water Company will not be required to issue a Consent to Statement of Compliance until the requirements of this clause 4.10 have been met.

#### **4.11 Water Company Request for information**

If requested in writing by the Water Company, the Developer must provide the Water Company with information in relation to the progress, status and completion of the Development Works. The Water Company must not issue a request under this clause more than once per month.

#### **4.12 Replacement of Consultant or Contractor**

- (a) If at any time during the Development Works, the Consultant or the Contractor wishes to resign, the Consultant or Contractor (as the case may be) must agree on a replacement Accredited Consultant or Accredited Contractor with the Developer and arrange for each of the parties to sign a document in the form set out in Schedule 8 under which the Consultant or the Contractor effectively assigns its rights and novates its obligations under this document to the replacement Accredited Consultant or Accredited Contractor.
- (b) If at any time the Developer wishes to replace the Consultant or the Contractor, the Developer must identify a replacement Accredited Contractor or Accredited Consultant and arrange for each of the parties to sign a document in the form set out in Schedule 8 under which the Consultant or the Contractor (as the case may be) effectively assigns its rights and novates its obligations under this document to the replacement Accredited Consultant or Accredited Contractor.
- (c) If at any time the Consultant or the Contractor's rights are terminated under clause 20, the Developer must identify a replacement Accredited Contractor or Accredited Consultant and arrange for the replacement party to sign a document in the form set out in Schedule 8 under which the replacement assumes the Contractor or Consultant's (as the case may be) obligations under this document for the completion of the Development Works.

### **5. THE CONSULTANT**

#### **5.1 Consultant's confirmations**

The Consultant confirms to the Water Company, that:

- (a) the Consultant is an Accredited Consultant and is prepared, and appropriately qualified, to undertake each of the obligations of the Consultant set out in this document; and
- (b) any person nominated by the Consultant to perform any function (including signing any document) relating to things contemplated by the Development Deed, is duly authorised to perform that function.

#### **5.2 Consultant's obligations**

The Consultant agrees, for the benefit of the Water Company that the Consultant will:

- (a) maintain its Accredited Status at all times during the term of the Development Deed, and continue to meet all requirements of the Water Company to achieve and maintain Accredited Status;
- (b) comply with:
  - (i) all Laws; and

- (ii) the Land Development Manual as it affects the design of the Development Works;
- (c) except with the Water Company 's prior written consent, design the Development Works in accordance with:
  - (i) any Design Requirements; and
  - (ii) any reasonable Directions given to the Consultant by the Water Company.
- (d) unless the Water Company agrees in writing to the contrary, mark by survey pegs the boundary of each Lot or street, in accordance with the Water Company's requirements;
- (e) at least 10 Days before the Contractor proposes to commence construction of the Development Works, provide to the Water Company in accordance with the Water Company's lodging requirements, a completed Design Verification Form. The Design Verification Form must be accompanied by a complete set of Design Documents for the Development Works;
- (f) comply with any request made by the Water Company after receiving a Design Verification Form that the Consultant provide to the Water Company such other information as the Water Company reasonably requires regarding the design of the proposed Development Works, within such period as the Water Company may specify;
- (g) at least 7 Days before the Contractor proposes to commence construction of the Development Works, provide to the Water Company a Pre-Construction Verification Form (incorporating an audit schedule) in accordance with the Water Company's lodging requirements;
- (h) if the design of the Development Works changes, provide the Water Company with a complete set of the most recent version of the Design Documents for the Development Works;
- (i) when the Consultant is of the opinion that:
  - (i) the Development Works have been completed in compliance with the requirements set out in this document; and
  - (ii) all other services and roads to be constructed at the Development are complete,
 certify this by providing to the Water Company in accordance with the Water Company's lodging requirements, a Construction Verification Form.
- (j) on or before an Acceptance of Works Certificate is issued by the Water Company, provide to the Water Company in accordance with the Water Company's lodging requirements, a completed Construction Verification Form and As-Constructed Verification Form. Each of these forms must be accompanied by such other documents specified in the relevant form;
- (k) not earlier than the end of the Defects Liability Period and not later than 6 months after the end of Defects Liability Period, provide to the Water Company, in accordance with the Water Company's lodging requirements, an End of Defects Liability Verification Form if, in the opinion of the Consultant any Defect notified to the Consultant or the Contractor under clause 8(b) has been remedied;
- (l) ensure that any End of Defects Liability Verification Form submitted under clause 5.2(i) is accompanied by:
  - (i) evidence that an Acceptance of Works Certificate has been issued by the Water Company with respect to the Development Works;

- (ii) evidence that any Defect of which the Consultant or the Contractor has been notified under clause 8(b) has been remedied; and
- (iii) such other documents specified by the form;
- (m) at any time after the Water Company is provided with an End of Defects Liability Verification Form submitted by the Consultant under clause 5.2(i), the Consultant must comply with any request made by the Water Company that the Consultant provide the Water Company with such other information as the Water Company considers desirable to assist it in determining whether everything referred to in clause 5.2(i) has occurred;
- (n) indemnify the Water Company as provided under clause 10; and
- (o) effect and maintain the insurances required to be effected and maintained by the Consultant under clause 11.

## 6. THE CONTRACTOR

### 6.1 Contractor confirmations

The Contractor confirms to the Water Company, that:

- (a) the Contractor is an Accredited Contractor and is prepared, and appropriately qualified, to undertake each of the obligations of the Contractor set out in this document; and
- (b) any person nominated by the Contractor to perform any function (including signing any document) relating to things contemplated by the Development Deed, is duly authorised to perform that function.

### 6.2 Contractor's obligations

The Contractor agrees, for the benefit of the Water Company that the Contractor will:

- (a) properly supervise all construction activities for the Development Works;
- (b) ensure that the Development Works are undertaken in a safe manner and that the requirements of all Laws, including OH&S Laws, are met in undertaking the Development Works;
- (c) comply with the Land Development Manual as it affects the construction of the Development Works;
- (d) ensure that each element of the Development Works is constructed in accordance with:
  - (i) the Design Documents;
  - (ii) the Construction Requirements;
  - (iii) any other requirements stated in the Development Deed; and
  - (iv) any reasonable Directions from time to time given by the Water Company to the Contractor;
- (e) ensure that any person engaged by the Contractor (whether directly or indirectly) to perform any aspect of the Development Works is appropriately trained and qualified to perform those works;
- (f) without limiting the foregoing, ensure that any person engaged by the Contractor (whether directly or indirectly) to:

- (i) undertake construction activities, has the qualifications specified in the Land Development Manual;
- (ii) undertake works in confined spaces, complies with the Water Company's "Confined Space Procedures", set out in the Land Development Manual; and
- (iii) undertake work on any Live Assets complies with:
  - (A) every relevant provision of the Land Development Manual concerning Live Assets; and
  - (B) any other written requirement of the Water Company, given to the Contractor;
- (g) ensure that at least 7 Days before the Contractor proposes to commence construction of the Development Works, the Contractor will provide to the Water Company evidence satisfactory to the Water Company that the insurances required to be effected by the Contractor under clause 11 have been effected and are being maintained;
- (h) at any time after the Water Company receives the Pre-Construction Verification Form, provide to the Water Company such other information as the Water Company reasonably requires to assist it in undertaking audits of the construction of the Development Works;
- (i) give the Water Company at least 2 Days written notice:
  - (i) if the Contractor does not propose to commence construction of the Development Works on the date set out either in the Pre-Construction Verification Form, or any previous notice given of the date it proposes to commence construction of the Development Works; and
  - (ii) of any later date upon which the Contractor proposes to commence construction of the Development Works;
- (j) ensure that all materials for the Development Works are either materials specified in the Approved Products List or if they are not so specified, have been approved by the Water Company;
- (k) gives 2 Day prior notice in accordance with the Water Company's lodging requirements to the Water Company of any occasion upon which the Contractor proposes to work on the Development Works:
  - (i) outside the hours of 7.30am to 4.00pm, Monday to Saturday; or
  - (ii) on a Sunday or public holiday;
- (l) promptly advise the Water Company if the Contractor vacates the site, and give the Water Company at least 2 Day notice in accordance with the Water Company's lodging requirements, of the day on which the Contractor will resume the Development Works; and
- (m) as far as practicable, ensure that any excavation made as part of the Development Works is wholly contained within an easement granted, or land transferred, or proposed to be granted or transferred, to the Water Company under clause 4.10 and that if any part of an excavation is not within an easement or transferred land referred to in clause 4.10, ensure that:
  - (i) the Contractor promptly backfills such part of the excavation as is not contained within that easement or transferred land; or

- (ii) the area of any easement or transferred land referred to in clause 4.10 is increased to include that part of the excavation;
- (n) ensure that there is in place, prior to the commencement of the Development Works and at all times during the completion of the Development Works a:
  - (i) Quality Plan;
  - (ii) Environmental Management Plan; and
  - (iii) OH&S Plan,
 which meet the minimum standards under the Water Company's Accredited Consultants and Contractors List Process;
- (o) comply with the plans prepared under clause 6.2(n), in carrying out construction of the Development works (but acknowledging that compliance by the Contractor with the plans submitted in accordance with clause 6.2(n) does not otherwise discharge any of the Contractor's obligations under the Development Deed);
- (p) indemnify the Water Company as provided under clause 10 and effect and maintain the insurances required to be effected and maintained by the Contractor under clause 11;
- (q) comply with any request made by the Water Company after receiving a completed Construction Verification Form and As-Constructed Verification Form, that the Contractor provide to the Water Company such other information as the Water Company reasonably requires, within such period as the Water Company may specify; and
- (r) maintain and retain its Accredited Status at all times during the term of this Deed, continuing to meet all requirements of the Water Company to achieve Accredited Status.

## **7. THE WATER COMPANY**

### **7.1 Audit**

- (a) Whenever an audit undertaken by or on behalf of the Water Company in connection with Development Deed identifies a matter to which a party is reasonably required to attend, that party must:
  - (i) attend to that matter in the manner, and within the time, reasonably required by the Water Company; and
  - (ii) on request from the Water Company, produce evidence satisfactory to the Water Company that the matter has been attended to.
- (b) If the Water Company, in its sole discretion, determines that an intensive audit is required of the survey, design or construction of the Development Works, the Developer must pay the relevant intensive audit fee calculated by the Water Company in accordance with the Price Determination, within 14 Days after receiving an invoice for that fee.

### **7.2 Acceptance of Works Certificate**

- (a) When:
  - (i) the Consultant has provided to the Water Company a Construction Verification Form and As Constructed Verification Form;
  - (ii) the Water Company is satisfied that the Development Works have been completed in accordance with the requirements of the Development Deed; and

- (iii) the Developer has lodged with the Water Company an appropriate Works Warranty Bond,

the Water Company must within three days issue to the Developer an Acceptance of Works Certificate.

- (b) The Acceptance Works Certificate is prima facie evidence that the Development Works have been completed in accordance with the requirements of this Development Deed.
- (c) The Defects Liability Period commences on the date upon which the Water Company issues an Acceptance of Works Certificate.
- (d) The parties acknowledge and agree that, in the period between the date of issuing of an Acceptance of Works Certificate and the date of issuing of a Certificate of Completion:
  - (i) all right, title and interest in the Development Works remains with the Developer; and
  - (ii) customer connections authorised in writing by the Water Company may be made to water, recycled water and sewer assets comprising part of the Development Works.

### 7.3 Consent to Statement of Compliance

- (a) The Water Company will issue a Consent to Statement of Compliance when it is satisfied that such of the following requirements as are relevant to the Development Works have been met:
  - (i) the Consultant has provided to the Water Company a Construction Verification Form;
  - (ii) an Acceptance of Works Certificate has been issued by the Water Company with respect to the Development Works;
  - (iii) all water mains, recycled water mains and sewers outside the boundaries of the Development upon which the Development depends, have been constructed and completed;
  - (iv) if the assets referred to in clause 7.3(a)(iii) have not been constructed and completed, the Developer has made appropriate alternative temporary arrangements, approved by the Water Company;
  - (v) a copy of the relevant certified Plan of Subdivision, showing all easements referred to in clause 4.10, has been given to the Water Company;
  - (vi) every instrument necessary to create an easement referred to in clause 4.10 in favour of the Water Company has been lodged at the Registrar of Titles;
  - (vii) every transfer necessary to transfer land referred to in clause 4.10 has been lodged at the Registrar of Titles;
  - (viii) all fees, charges, contributions and other moneys payable by the Developer to the Water Company under this document have been paid; and
  - (ix) any other document or information required to be given to the Water Company under this document has been so given.

#### 7.4 Certificate of Completion

The Water Company will issue a Certificate of Completion when it is satisfied in its discretion that:

- (a) the Development Works; and
- (b) all other services and roads to be constructed at the site of the Development,

are complete, and:

- (c) any Defect notified to a party under clause 8(b) has been remedied.

#### 7.5 Effect of Certificate of Completion

- (a) On and from the date upon which the Water Company issues a Certificate of Completion:
  - (i) all right, title and interest in the Development Works vests in the Water Company, by virtue of this clause, without any further instrument of transfer or assignment;
  - (ii) the Water Company must operate, maintain, repair and replace the Development Works at its cost; and
  - (iii) subject to clauses 8, 9 and 10, the Developer, Consultant and Contractor are discharged from their respective obligations under this document.
- (b) After the expiration of the Defects Liability Period and Warranty Period, respectively the Water Company must maintain, repair and replace the Development Works at its cost.

#### 8. DEFECTS LIABILITY PERIOD

- (a) The Defects Liability Period commences on the date upon which the Water Company issues an Acceptance of Works Certificate and continues for the period specified in Schedule 4 "Construction Requirements" (or where no period is specified, 3 months).
- (b) At any time during the Defects Liability Period, the Water Company may:
  - (i) notify the Contractor and Consultant in writing of any Defect that the Water Company reasonably considers to be related to the construction of the Development Works, and require the Contractor, at the Contractor's cost, to remedy the Defect within the period as is set out in the notice;
  - (ii) notify the Consultant in writing of any Defect that the Water Company reasonably considers to be related to the design of the Development Works, and require the Consultant, at the Consultant's cost, to remedy the Defect within the period as is set out in the notice; or
  - (iii) at its discretion, undertake emergency works in respect of any Defect that the Water Company reasonably considers to be related to the construction of the Development Works and recover the reasonable costs incurred in remedying the Defect from one or more of the Works Warranty Bond, the Contractor (if the Defect relates to construction of the Development Works) or Consultant (if the Defect relates to design of the Development Works) and the Developer.
- (c) The Contractor or Consultant (as the case may be) must comply with any notice given under clause 8(b)(i) or (ii).
- (d) If the Contractor or Consultant does not comply with a requirement within the period set out in a notice given under clause 8(b)(i) or (ii), the Water Company may remedy the Defect and recover the reasonable costs incurred in remedying the Defect from one or

more of the Works Warranty Bond, the Contractor (if the Defect relates to construction of the Development Works) or Consultant (if the Defect relates to design of the Development Works) and the Developer.

- (e) If, at the end of 6 months (or any greater period prescribed by the Water Company) after the end of the Defects Liability Period:
- (i) the Consultant has not given the Water Company an End of Defects Liability Verification Form;
  - (ii) the Water Company has not issued a Certificate of Completion; or
  - (iii) in the Water Company's reasonable opinion, any Defect notified under clause 8(b) has not been remedied,

the Water Company may, in its sole discretion and without giving further notice to another party:

- (iv) remedy any outstanding Defect referred to in clause 8(e)(iii); and
  - (v) recover the reasonable costs incurred by the Water Company in remedying any such Defect, from one or more of the Works Warranty Bond, the Contractor (if the Defect relates to construction of the Development Works) or the Consultant (if the Defect relates to design of the Development Works) and the Developer.
- (f) The Consultant, the Developer or the Contractor (as applicable) must pay the amount of any costs referred to in this clause 8 within 14 Days after receiving an invoice for those costs.

## 9. WARRANTY PERIOD

### 9.1 Subsequent faults - design

If at any time within 2 years after issuing a Certificate of Completion, the Water Company discovers any fault in the Development Works which the Water Company reasonably considers is attributable to a deficiency in the design of the Development Works, the Water Company may:

- (a) notify the Consultant in writing of the fault; and
- (b) require the Consultant to remedy the fault within 14 Days after the date of the notice or any greater period specified in the notice.

### 9.2 Subsequent faults – construction

If at any time within 2 years after issuing a Certificate of Completion, the Water Company discovers any fault in the Development Works which the Water Company reasonably considers is attributable to a deficiency in the construction of the Development Works, the Water Company may:

- (a) notify the Consultant and Contractor in writing of the fault; and
- (b) require the Contractor to remedy the fault within 14 Days after the date of the notice or any greater period specified in the notice.

### 9.3 Water Company may remedy

- (a) Subject to clause 9.3(b), if the Consultant or Contractor fails, at the relevant party's cost, to remedy any fault within the period referred to in clause 9.1 or 9.2, the Water Company may:

- (i) remedy the fault; and
  - (ii) recover the reasonable costs incurred by the Water Company in remedying the fault from one or more of the Works Warranty Bond, the Consultant or Contractor (as the case may be), or the Developer.
- (b) The Water Company may, at its discretion, undertake emergency works to remedy of any fault that the Water Company reasonably considers to be attributable to a deficiency design or construction of the Development Works and recover the reasonable costs incurred by the Water Company in remedying the fault from one or more of the Works Warranty Bond, the Consultant (if the fault relates to the design of the Development Works) or the Contractor (if the fault relates to the construction of the Development Works) or the Developer.

#### 9.4 **Costs**

The relevant party must pay the amount of any costs referred to in this clause 9, within 14 Days after receiving an invoice for those costs.

### 10. **INDEMNITY**

#### 10.1 **Developer's indemnity**

The Developer indemnifies the Water Company and must keep the Water Company indemnified against any Liability or Claim in respect of:

- (a) any loss, destruction or damage to any real or personal property; and
- (b) any personal injury to, or the death of any person,

arising, whether directly or indirectly, from, or in the course of, or caused by, the design and construction of the Development Works or any breach by the Developer of its obligations under the Development Deed, except to the extent that any such loss, destruction, damage, personal injury or death has been caused by the negligence of the Water Company, its employees, agents or contractors.

#### 10.2 **Consultant's indemnity**

The Consultant indemnifies the Water Company and must keep the Water Company indemnified against any Liability or Claim arising, whether directly or indirectly, from, or in the course of, or caused or contributed to by, the design of the Development Works or any breach by the Consultant of its obligations under the Development Deed, except to the extent that any such Liability or Claim has been caused by the negligence of the Water Company, its employees, agents or contractors.

#### 10.3 **Contractor's indemnity**

The Contractor indemnifies the Water Company and must keep the Water Company indemnified against any Liability or Claim in respect of:

- (a) any loss, destruction or damage to any real or personal property; and
- (b) any personal injury to, or the death of any person,

arising, whether directly or indirectly, from, or in the course of, or caused by, the construction of the Development Works or any breach by the Contractor of its obligations under the Development Deed, except to the extent that any such loss, destruction, damage, personal injury or death has been caused by the negligence of the Water Company, its employees, agents or contractors.

## 11. **INSURANCE**

### 11.1 **Public liability insurance**

- (a) Before the Contractor commences any of the Development Works, the Contractor must, arrange a public liability policy of insurance which must be in joint names of the Water Company, the Developer, the Consultant and the Contractor which covers the Water Company the Consultant and the Contractor and all subcontractors employed from time to time by any of those parties in relation to Development Works for their respective rights and interests and covers their liabilities to third parties, including the Contractor's liability to the Water Company or any third party for 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) and is for an amount in respect of any one occurrence not less than \$20 million.
- (b) The Policy of insurance referred to in paragraph (a) must be maintained until the expiration of 2 years after the Certificate of Completion is issued.
- (c) The Contractor must not do any act or permit or suffer any circumstances by which the policy of insurance taken out under this clause 11.1 may at any time become void or voidable and the Contractor must at all times at its own expense comply with the conditions of such policy so as to prevent its invalidation. The Contractor hereby indemnifies the Water Company against any losses, damages, costs or expenses arising out of their respective default under this paragraph.

### 11.2 **Professional indemnity insurance**

- (a) Before the Consultant commences any work in connection with the design of the Development Works, the Consultant must arrange professional indemnity insurance with a limit of indemnity not less than \$5 million which covers liability arising from a breach of professional duty, whether owed in contract or otherwise caused by any negligent act or omission of the Consultant, its employees, subcontractors, contractors or agents.
- (b) The Policy of insurance referred to in paragraph (a) must be maintained until the expiration of 7 years after the Certificate of Completion is issued.
- (c) The Consultant must not do any act or permit or suffer any circumstances by which the policy of insurance taken out under this clause 11.2 may at any time become void or voidable and the Consultant must at all times at its own expense comply with the conditions of such policy so as to prevent its invalidation or prejudice rights of the insured under such policy. The Consultant hereby indemnifies the Water Company against any losses, damages, costs or expenses directly attributable to the Consultant's default under this paragraph.

### 11.3 **Evidence of insurance**

Before commencing the Development Works, and thereafter whenever reasonably required by the Water Company, the Consultant and the Contractor, must give to the Water Company evidence, satisfactory to the Water Company, that the insurances required to be effected respectively by the Consultant and the Contractor have been effected and are being maintained.

### 11.4 **Terms of insurance**

- (a) The Consultant and the Contractor must ensure that the policies of insurance which are required under this clause 11 provide that failure by the Consultant or the Contractor, as the case may be, to observe and fulfil the terms of the policy will not prejudice the insurance with regard to the Water Company.

- (b) The Contractor must ensure that the policies of insurance required under this clause 11.1 provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against the Water Company.
- (c) The Consultant and the Contractor must not do or allow anything to be done which reduces the insurances or makes them void or voidable.
- (d) The effecting and keeping in force of any insurance will not in any way limit the obligations or responsibilities of the Contractor or the Consultant under this document or at Law.

#### 11.5 Notices from insurer of Claims

- (a) The Consultant and the Contractor must notify the Water Company in writing whenever the insurer gives the Consultant or the Contractor, as the case may be, a notice of cancellation or any other notice in respect of a policy.
- (b) The Consultant and the Contractor must notify the Water Company in writing of any Claims against the insurances effected by the Consultant or the Contractor within 5 Days after one of them becomes aware of the Claims and will provide such further information to the Water Company in relation to the Claim as the Water Company may reasonably require.

#### 11.6 Insurance of employees

- (a) The Consultant must ensure that the Consultant and Contractor each hold workers' compensation insurance as required by law in respect of its employees until the expiration of 2 years after the date of the Certificate of Completion.
- (b) The Consultant must ensure that the Contractor any subcontractor hold workers' compensation insurance, as required by law, until the expiration of 2 years after the date of the Certificate of Completion.
- (c) The Developer indemnifies the Water Company against any loss it may suffer as a consequence of any failure of the Contractor or any subcontractor to obtain workers' compensation insurance in accordance with this clause 11.6.

### 12. CONFIDENTIALITY

#### 12.1 Confidentiality obligation

Each party must keep confidential and must not allow, make or cause any public announcement or other disclosure of or in relation to any information relating to the conduct and assessment of, and decision making in relation to, any tender conducted by the Developer, Consultant and/or Contractor for works relating to the Development Works that are required to be undertaken by the Water Company and that the Developer has agreed to undertake on behalf of the Water Company.

#### 12.2 Exceptions

A party's obligation under clause 12.1 not to make any disclosure does not apply to disclosures to the extent they are:

- (a) required by law;
- (b) required by the listing rules of Australian Stock Exchange Limited;
- (c) required to enable the party to perform its obligations or making or defending any claim under this document; or

(d) required to be disclosed under this document,

provided that before any such disclosure, the disclosing party notifies the other party in writing of the information it proposes to disclose and gives details of the reasons for such disclosure.

### 13. **INTELLECTUAL PROPERTY**

#### 13.1 **Intellectual Property in Deliverables**

- (a) All Intellectual Property in the Deliverables will be owned absolutely by the party creating the Deliverable and vest in that party immediately on creation by that party.
- (b) To the extent that the Water Company may at any time acquire any right, title or interest in any Intellectual Property in the Deliverables, the Water Company, by this document, assigns to the relevant party all such right, title and interest.

#### 13.2 **Licence**

Each of the Developer, Consultant and Contractor grants the Water Company a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence under the Intellectual Property in the Deliverables for whatever purpose required by the Water Company.

#### 13.3 **No infringement**

Each of the Developer, Consultant and Contractor warrants to the best of its knowledge and belief after making all reasonable enquiries that the Water Company's use of the Deliverables will not infringe any Intellectual Property rights of any person nor give rise to any liability to make royalty or other payments to any person.

### 14. **PRE-ACCREDITATION OF CONSULTANT AND CONTRACTOR**

By signing this Deed, the Consultant and Contractor each confirms its status as a currently Accredited Consultant and Accredited Contractor which have met all pre-qualification requirements to undertake the Development Works in accordance with the Water Company's Accredited Consultants and Contractors List Process.

The Consultant and Contractor must each maintain their Accredited Status during the term of this Deed and must continue to meet all requirements of the Water Company to achieve Accredited Status.

### 15. **GOODS AND SERVICES TAX**

#### 15.1 **Definitions and interpretation**

In the Development Deed, all definitions and interpretations will have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods & Services Tax) Act 1999 (ANTS (GST) Act 1999)*.

#### 15.2 **GST pass on**

- (a) Unless otherwise stated, the amounts shown in this document are exclusive of GST.
- (b) If GST is payable on any supply made under or in connection with the Development Deed:
  - (i) to the extent, if any, the consideration otherwise provided for that supply is expressed as an amount of money, the consideration is increased by the amount of the GST relating to the amount of money otherwise payable; and

- (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or in the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.

### 15.3 Tax invoices / Adjustment notes

The right of the supplier to recover any amount in respect of GST under the Development Deed on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient, except where the recipient is required to issue the Tax Invoice or Adjustment Note.

### 15.4 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under the Development Deed must exclude any amount in respect of GST included in a cost to the extent to which an entitlement arises or would arise to claim an input tax credit and any amount in respect of GST included in the revenue lost.

### 15.5 Recipient created tax invoices

- (a) The final reimbursement amount will be determined by the Water Company at the project completion stage.
- (b) If GST is payable on a supply to the Water Company, for which a reimbursement amount is consideration, Water Company, in accordance with section 29-70(3) of the ANTS (GST) Act 1999 and GSTR 2000/10, will issue a Recipient Created Tax Invoice (**RCTI**) in respect of this supply.
- (c) The Water Company will issue the original or a copy of the RCTI to the Developer within 28 Days of the determination of the value of the reimbursement and will retain the original or a copy of the RCTI.
- (d) The Developer must provide its Australian Business Number to the Water Company and this will be disclosed on the RCTI.
- (e) The Water Company will issue the original or a copy of a recipient created adjustment note to the Developer within 28 Days of the adjustment that occurs in respect of the reimbursement for which a RCTI was issued and will retain the original or a copy of the recipient created adjustment note.
- (f) The Water Company will reasonably comply with its obligations under Australian Taxation laws.
- (g) The Developer shall not issue Tax Invoices in respect of the reimbursements for which a RCTI was, or will be, issued.
- (h) The Developer acknowledges that it is registered for GST in accordance with ANTS (GST) Act 1999 and that it shall notify the Water Company if it ceases to be registered.
- (i) The Water Company acknowledges that it is registered for GST in accordance with ANTS (GST) Act and that it shall notify the developer if it ceases to be registered or if it ceases to satisfy any of the requirements of GSTR 2000/10.

## 16. NOTICES

Any notice to be given by any party under the Development Deed may be given by delivering it, posting it by prepaid post, by facsimile transmission or by any other means agreed between the

Parties from time to time, to the facsimile number or address, as the case may be, set out for that party in Schedule 2, as subsequently updated by written notice for that party to all other parties.

## 17. VARIATIONS

### 17.1 Directing variations

- (a) The Developer, Consultant or Contractor must not vary the Development Works except as directed in writing by the Water Company.
- (b) The Water Company may, acting reasonably, give the Developer written notice of a proposed Variation to the Development Works and the Developer must comply with any such Direction.
- (c) The Developer will be entitled to:
  - (i) any reasonable cost, loss, expense or damage; and/or
  - (ii) a reasonable extension of the Initial Period,by reason of the Variation as agreed by the Water Company acting reasonably.

### 17.2 Variations for convenience of Developer

- (a) If the Developer wishes to request the Water Company to direct a Variation, it must lodge a request in writing with the Water Company.
- (b) If the Developer requests the Water Company to direct a Variation for the convenience of the Developer, the Water Company may do so in its discretion. Any Direction must be written and may be conditional.
- (c) Unless a Direction provides otherwise, the Developer will not be entitled to:
  - (i) any cost, loss, expense or damage; or
  - (ii) extension of the Initial Period,by reason of the Variation.
- (d) The Water Company may determine to direct or refuse to direct a Variation requested by the Developer in the Water Company's absolute discretion.

## 18. DISPUTES

### 18.1 Senior executives

If a dispute arises between the Water Company, Developer, Consultant or Contractor concerning any matter arising out of or in connection with this document (other than a payment under section 27, 28 or 29 of the Water Industry Act 1994), a party may give written notice of that dispute to the other relevant parties (**parties**) and senior executives of those parties must meet and endeavour to resolve the dispute. A dispute relating to a payment under section 27, 28 or 29 of the Water Industry Act will be dealt with in accordance with the process set out in section 30 of the Act.

### 18.2 Mediation

If the senior executives of the relevant parties fail to settle the dispute within 42 Days of the notice referred to in clause 18.1 (or such additional period as the parties agree in writing) then the parties must within 14 Days refer the dispute to mediation by such expert as is agreed between the parties or if the parties cannot agree they must make application to the President of the Law Institute of

Victoria to appoint a mediator who is deemed to be acting as a mediator and not an arbitrator. All costs of the mediation will be shared equally by the parties to the dispute.

### **18.3 Litigation**

If the dispute has not been resolved pursuant to clause 18.2 within 42 Days of referring the dispute to the relevant expert for mediation (or such additional period the parties agree in writing), one of the parties to the dispute may take any action necessary to have the dispute determined by litigation.

### **18.4 Dispute will not affect performance**

The existence of a dispute will not relieve any party from its obligation to perform the Development Works in accordance with this document.

### **18.5 Injunction**

Nothing in this document prevents a party seeking an injunction or other interlocutory relief at any time.

## **19. FORCE MAJEURE**

### **19.1 Notice and suspension of obligations**

If a party is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other parties prompt notice of that fact including:
  - (i) full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration;
  - (iii) the obligations affected by it and the extent of its effect on those obligations; and
  - (iv) the steps taken and proposed to be taken to rectify it; and
- (b) the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

### **19.2 Effort to overcome**

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

### **19.3 Alternative supply**

During any period in which a party (other than the Water Company) is not performing obligations because of a claimed Force Majeure Event, the Water Company may (but need not) obtain all its requirements from any other source or make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

## **20. TERMINATION**

### **20.1 Termination by the Water Company for cause**

The Water Company may terminate a party's rights under this document, with immediate effect by written notice to that party, if:

- (a) in the case of the Developer, the Developer:
  - (i) commits a material breach of any condition in this document;
  - (ii) acts in a fraudulent manner;
  - (iii) permits a Change of Control of the Developer to occur without the prior consent of the Water Company;
  - (iv) permits the Consultant or Contractor to cease to maintain Pre-Approval Status;
  - (v) ceases to carry on business or is the subject of an Insolvency Event; or
  - (vi) subject to clause 2.2(a)(iii), fails to complete the Development Works within the Initial Period.
- (b) in the case of the Consultant, the Consultant:
  - (i) commits a material breach of any condition in this document;
  - (ii) acts in a fraudulent manner;
  - (iii) permits a Change of Control of the Consultant to occur without the prior consent of the Water Company;
  - (iv) ceases to maintain Pre-Approval Status; or
  - (v) ceases to carry on business or is the subject of an Insolvency Event;
- (c) in the case of the Contractor, the Contractor:
  - (i) commits a material breach of any condition in this document;
  - (ii) acts in a fraudulent manner;
  - (iii) permits a Change of Control of the Contractor to occur without the prior consent of the Water Company;
  - (iv) ceases to maintain Pre-Approval Status; or
  - (v) ceases to carry on business or is the subject of an Insolvency Event;
- (d) a Force Majeure Event affecting the Development Works continues for more than 42 Days.

## 20.2 Effect of termination

If a party's rights are terminated under clause 20.1:

- (a) that party must not carry out any further Development Works under this document;
- (b) termination, however caused, is without prejudice to any rights or liabilities of the parties accruing to the date of termination;
- (c) the party terminated is not entitled in contract, tort or otherwise to any payment or compensation for losses incurred as a result of that party's termination; and

- (d) the costs incurred by the Water Company in completing the Development Works under clause 2.2(a)(ii), will be a debt due and payable by the Developer to the Water Company.

## 21. GENERAL

### 21.1 No partnership

This document does not create a partnership between the parties.

### 21.2 Governing Law

- (a) This document is governed by the Law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

### 21.3 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

### 21.4 Giving effect to this document

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

### 21.5 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and

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

### 21.6 Operation of indemnities

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

### 21.7 Consents

Where this document contemplates that the Water Company may agree to or consent to something (however it is described), the Water Company may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

**21.8 Non-merger**

The rights of the parties do not merge at the date of termination or completion of the Development Works.

**21.9 Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

**21.10 Inconsistency with other documents**

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