



Consultant Accreditation Deed

Deed for accreditation to provide services

Barwon Region Water Corporation **ABN 86 348 316 514 (Barwon Water)** and

[insert name] ABN [insert ABN] (**Consultant**)

Rev	Date	Prepared	Approved	Comment
0	22.03.18	AH	AH	Initial Issue
1	04.02.19	AH	AH	Updated in response to requested minor amendments and clarifications from multiple parties.
2	20.02.19	AH	AH	Minor corrections in response to clarification request
3	06.03.19	DB	TJ	Formatting style updated to current BW standard.
4	06.05.21	CM	CM	Minor amendment to Clause 14 and Schedule 2 (Activity Method Statement) to provide clarity.
5	17.05.24	MB	CM	Amendment to Clause 15.4 to amend the management systems to include ISO45001 and CCF.

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Details

Date

Parties

Name	Barwon Region Water Corporation
ABN	86 348 316 514
Short form name	Barwon Water
Address	55-67 Ryrie Street Geelong VIC 3220

Name	[insert name]
ABN	[insert ABN]
ACN	[insert ACN]
Short form name	Consultant
Address	[insert]

Background

A Barwon Water is a body corporate established by section 85 of the *Water Act 1989 (Vic)* and is a water corporation under that Act.

B Barwon Water is responsible for the construction, operation and maintenance of Water Infrastructure.

C Barwon Water has an interest in ensuring, and a responsibility to ensure that Water Infrastructure constructed by the Developer or other third parties is designed and constructed in a suitable manner and to appropriate standards.

D In order to ensure that this Water Infrastructure is designed and constructed in a suitable manner and to appropriate standards only parties accredited by Barwon Water may design or construct this Water Infrastructure.

E The Consultant has applied for Accreditation. This Accreditation Deed sets out the terms and conditions of the Accreditation.

F This Accreditation Deed further determines the Consultant's obligations in the course of each particular Water Infrastructure, the Consultant works on.

Signing page

EXECUTED as an Accreditation Deed

Executed by Barwon Region Water Corporation by being signed, sealed and delivered by the person named below, an authorised delegate in the presence of:

←

←

Signature of Delegate

Signature of Witness

Name of Delegate (print)

Name of Witness (print)

Signed, Sealed and Delivered by [**Name of company**] in accordance with Section 127 of the *Corporations Act 2001*

←

←

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

OR (For a party executing under power of attorney for another)

Executed by [*Name of signatory*] by being signed, sealed and delivered by [*its, his or her*] attorney [*name of attorney*] under power of attorney dated [*date of power of attorney*] who declares that [*he or she*] has no notice of revocation of the power of attorney, in the presence of



Signature of Attorney



Signature of Witness

Name of Witness (print)

OR (For a partner to an unincorporated partnership)

Signed, sealed and delivered by [*executed by insert name*] (being a partner of that partnership under the authority of an authorising deed dated [*insert date of authorising deed*] on behalf of the partnership [*insert name of partnership*] in the presence of

Signature of Partner



Signature of Witness

[*executed by – insert name*]

Name of Witness (print)

OR (For a person executing as a sole trader)

Executed by [*executed by insert name*] by being signed, sealed and delivered by [*signed by – insert name*] in the presence of



Signature of Sole Trader



Signature of Witness

[*executed by – insert name*]

Name of Witness (print)

1 Interpretation

1.1 Defined terms

In this Accreditation Deed:

Absolute Discretion shall have the meaning as set out in subclause 32.6.

Accreditation means the accreditation provided for pursuant to this Accreditation Deed permitting a party to perform the Services on Water Infrastructure;

Accreditation Application Form means the application submitted by the Consultant in the form and as attached as Schedule 4;

Accreditation Conditions means any conditions the Consultant is required to fulfil under this Accreditation Deed in order to become Accredited by Barwon Water and any amendment to those conditions pursuant to subclause 7.3;

Accreditation Deed means this document and all Schedules to this document;

Accreditation Period means either the 24 months' period of Accreditation commencing on the Commencement Date or any 24 months period commencing with a Re-Accreditation;

Accredited means holding a current Accreditation under this Accreditation Deed;

Accredited Category means the category of Services in which the Consultant is Accredited and which is nominated at Item 3 of Schedule 1;

Accredited Consultant means a Consultant (being a person or company) who is Accredited by Barwon Water to provide Consultant Services;

Accredited Contractor means a contractor (being a person or company) who is Accredited by Barwon Water to carry out Works;

Application Process means the lodging of the Accreditation Application, all dealings between Barwon Water and the Consultant relevant to the lodging and consideration of the Accreditation Application, consideration of the Accreditation Application by Barwon Water and the decision by Barwon Water in relation to the Accreditation Application;

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

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

Audit/Auditing means a systematic and independent examination and surveying to determine whether quality activities and related results comply with planned arrangements (including compliance with relevant Legislative Requirements and contractual obligations) and whether these arrangements are implemented effectively and are suitable to achieve objectives.

Audit Schedule means a schedule compiled by the Consultant that details the frequency and items to be Audited by the Key Personnel undertaking construction auditing which is an appropriate risk based audit schedule designed to demonstrate confidence that the quality of the Works complies with the requirements of the Developer Deed and this Accreditation Deed.

Authorities means any person or body having jurisdiction over or in relation to the Works or Services or the activity of the Consultant in the execution of the Services or the performance of the obligations arising under this Accreditation Deed;

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 2 and as amended pursuant to subclause 13.2;

Barwon Water's 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/s means the person or persons representing Barwon Water as described in subclause 4.2(a)(i) and subclause 4.2(a)(ii) and are, as at the Commencement Date, the person or persons described as such at Item 9 of the Particulars or otherwise individually communicated to the Consultant in writing;

Barwon Water's Standards and Procedures means the standards, specifications, policies, procedures and matters listed in Schedule 6 and any updates or any other guidelines, rules or requirements notified to the Developer or the Accredited Consultant in writing from time to time.

Barwon Water Confidential Information means:

- (a) all Barwon Water Information and all information held by Barwon Water or the property of Barwon Water which is either (i), under general principles of law, confidential, or (ii) marked by Barwon Water as confidential, whether in documentary, visual, oral, machine-readable or other form;
- (b) but does not include information in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality);

Completion of Works Package has the meaning as set out in the Developer Deed.

Change Event means the occurrence of an Insolvency Event or a Change in Control or the likelihood (other than a negligible or fanciful likelihood) of these events occurring;

Change in Control means a change in the Control of the Consultant 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;

Consultant means the entity described as such in the Parties Section of this Accreditation Deed and in Item 6 of Schedule 1;

Consultant Confidential Information means:

- (a) all information held by the Consultant or the property of the Consultant which is, under general principles of law, confidential whether in documentary, visual, oral, machine-readable or other form;

- (b) but does not include information in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality);

Consultant's Personnel means the Consultant's officers, employees, agents, subcontractors, and the officers, employees and agents of subcontractors, and other persons engaged by the Consultant in connection with the undertaking of the Services (as is relevant to the Consultant) and includes Key Personnel;

Consultant's Representative/s means the person or persons representing the Consultant as described in subclause 4.1(a)(i) and subclause 4.1(a)(ii) and are, as at the Commencement Date, the person or persons described as such at Item 6 of the Particulars or otherwise individually communicated to Barwon Water in writing, or such other person as is nominated pursuant to subclause 4.1(b);

Continuing Provisions means the following provisions:

- (a) a provision of this Accreditation Deed which is described in the Accreditation Deed as continuing to be in effect following the termination or expiration of the Accreditation Deed;
- (b) any provisions relating to:
 - (i) the giving of a warranty by the Consultant;
 - (ii) the granting of an indemnity by the Consultant;
 - (iii) the granting of a release by the Consultant;
 - (iv) the use of Barwon Water Confidential Information or Consultant Confidential Information;
 - (v) Intellectual Property Rights;
 - (vi) any requirement for the Consultant to keep records; 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 Accreditation Deed;

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

Defect means any defect, deficiency or non-compliance in any Water Infrastructure undertaken or modified by or on behalf of the Developer in respect of which the Consultant is retained to provide services;

Design Package has the meaning as set out in the Developer Deed;

Developer means a person or organisation which enters into an agreement with Barwon Water in relation to the construction of Water Infrastructure;

Developer Deed means the deed between Barwon Water and a Developer in relation to the provision of the individual Water Infrastructure by the Developer;

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

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

Environmental Management System means a system which is capable of recording the impact of the performance of the Works or Services (as is relevant to the Consultant) on the environment, the compliance with the Environment Laws and which otherwise complies with the requirements of clause 15 of this Accreditation Deed;

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 risk (other than a negligible or fanciful risk) of damage to Assets, injury to persons, or the environment or a breach (other than a trivial breach) of this Accreditation Deed;
- (b) gives rise to risk (other than a negligible or fanciful risk) of the occurrence of a Notifiable Incident in respect of the Services or Consultant's Personnel;
- (c) a breach (other than a trivial breach or a Substantial Breach) of this Accreditation Deed; or
- (d) results in damage to an Asset where that damage is not immediately repaired or made good by the Consultant;

Insolvency Event means any of the following events:

- (a) for a corporation:
 - (i) an order is made by a court:
 - (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) (**Corporations Act**), 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*;
 - (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;

Key Personnel means the employees of the Consultant specified in the Particulars and which are the subject of clause 12;

Key Roles means the roles as described in Schedule 3 to be performed by the Key Personnel;

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;

Management Systems means an OHS Management System, an Environmental Management System and a Quality Management System required to be prepared by the Consultant pursuant to clause 15;

Non-Compliance means any failure by the Consultant to comply with a provision of this Accreditation Deed;

Notice of Dispute has the meaning as set out in subclause 29.3.

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;

OHS Management System means a system which evidences how the Consultant will undertake the relevant activity in a manner which complies with this Accreditation Deed and which is capable of recording the compliance with OHS Law and which otherwise complies with the requirements subclause 15 of this Accreditation Deed;

Particulars means the information set out in Schedule 1.

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)*;

Probation means a period to be determined by Barwon Water during which the Consultant's Accreditation may be cancelled without notice by Barwon Water;

Quality Management System means a system which is capable of recording the quality of the Works or Services (as is relevant to the Consultant) and which otherwise complies with Barwon Water's Land Development and Administrative Process;

Re-Accreditation means the process of the Consultant's Accreditation automatically continuing through the process set out in subclause 7.5;

Re-Accredited means a Consultant continuing to be Accredited by reason of the process set out in subclause 7.5;

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 this Accreditation 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 has the meaning as described in subclauses 6.2(a) to 6.2(c) and subclause 24.1(a);

Specifications means:

- (a) all technical requirements, design requirements and other requirements, (except for the costing) set out for each individual Water Infrastructure in the respective Developer Deed;
- (b) any applicable Standard; and
- (c) any other requirement or detail as identified by Barwon Water and communicated by Barwon Water to the Consultant;

Standards means

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

Substantial Breach means a Non-Compliance in respect of a material term of this Accreditation Deed, repeated actions of the same character giving rise to a Non-Compliance or a Non-Compliance which gives rise to a risk (other than a negligible or fanciful risk) of Barwon Water suffering continuing or material prejudice (other than trivial or immaterial prejudice);

Third Party Assets means assets of a party other than Barwon Water;

Warranty Period is the period as set out in and determined for each individual project according to subclauses 11.3(a), and 11.3(b) of the respective Developer Deed.

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

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

WorkSafe means WorkCover;

WorkSafe Investigation means an investigation conducted by WorkSafe in relation to an Incident or a Serious Incident;

Works means any works or services in relation to or in connection with the construction of Water Infrastructure undertaken by or on behalf of the Developer or an Accredited Contractor;

Works Information means all information, plans, materials, documents and records in relation to Works or Services undertaken by or on behalf of the Developer or the Consultant and information, documents and records which are necessary to enable Barwon Water:

- (a) to understand the nature of the Works or Services which have been undertaken;
- (b) to understand the way in which those Works or Services may impact on Barwon Water's Assets; and
- (c) to conveniently, efficiently and cost effectively maintain the assets which result from the undertaking of the Works or Services;

1.2 Rules of Interpretation

In this Accreditation 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, this deed, and a reference to this 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 this 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 this deed or any part of it or benefits from the relevant provision;
- (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; and
- (o) where there is reference to an **experienced and competent consultant** this is a reference to a consultant who is qualified, skilled and experienced in services similar to the Services and who has brought that skill and experience to bear in relation to the carrying out of the Services or the performance of the relevant obligation;
- (p) Any request of Barwon Water towards the Consultant to rectify a Non-Compliance or any request of Barwon Water to an Accredited Contractor to remedy a Non-Compliance or Defect, may also be served by Barwon Water via Barwon Water's safety quality and environment management system to the Consultant and may be then called "Request for Corrective Action" or similar as notified to the Consultant.

1.3 No Claim

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

- (a) the Consultant must not bring any Claim against Barwon Water in relation to or in connection with the circumstances giving rise to the Claim;
- (b) the Consultant releases Barwon Water from any Claim which the Consultant 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 Consultant 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.

2 Relationship between the parties

- (a) The Consultant acknowledges that a Developer of an individual project for the construction of Water Infrastructure (where the Consultant is involved in that project) has appointed the Consultant as its agent in all dealings with Barwon Water in respect of the relevant project.
- (b) The Consultant is not, and must not purport to act as the agent of Barwon Water.
- (c) This Accreditation Deed, and the arrangements resulting from this Accreditation Deed, do not give rise to a partnership, employment, trust, agency or joint venture or any other relationship between the Consultant and Barwon Water other than the relationship established by this Accreditation Deed.

3 Principles

Barwon Water and the Consultant:

- (a) recognise that all parties (Barwon Water, the Developer, the Consultant and the Accredited Contractor) play a role in ensuring that the requirements set out in this Accreditation Deed are met;
- (b) acknowledge that any communication from Barwon Water to the Consultant is deemed to be communicated to the Developer and to the Accredited Contractors;
- (c) acknowledge that Barwon Water is entitled to assume that any communication from Barwon Water to the Developer, which is relevant to the Consultant will be passed to the Consultant by the Developer and is therefore deemed to be communicated to the Consultant;
- (d) acknowledge that the Consultant will ensure that appropriate people (including Key Personnel as applicable) remain involved with the Services;
- (e) acknowledge that the Consultant will act diligently in its duties, and will respond in a reasonable time to any request from Barwon Water or from the Developer or Accredited Contractor relating to the Services;
- (f) will work with integrity and mutual respect of both individuals and corporate objectives;
- (g) will place a high value on the relationship between Barwon Water and the Consultant; and
- (h) will endeavour to provide excellent service to Barwon Water's customers.

4 Representatives

4.1 Consultant's Representatives

- (a) The Consultant must nominate:
 - (i) one or more persons to represent the Consultant in its dealings with Barwon Water and to exercise some or all of the functions of the Consultant under the Accreditation Deed with regards to the Accreditation; and
 - (ii) one or more persons to represent the Consultant in its dealings with Barwon Water and to exercise some or all of the functions of the Consultant under the Accreditation Deed with regards to any individual project.
- (b) The Consultant may, subject to approval of the nominee by Barwon Water, by notice in writing to Barwon Water, nominate replacement Consultant's Representatives.
- (c) Barwon Water may not unreasonably withhold its approval of a replacement Consultant's Representative.
- (d) Matters within the knowledge of the Consultant's Representatives shall be deemed to be within the knowledge of the Consultant.
- (e) Any notice or other document given to or addressed to the Consultant's Representative shall be deemed to be given to the Consultant.

4.2 Barwon Water's Representatives

- (a) Barwon Water will nominate one or more persons in the Particulars or by notice to the Consultant:
 - (i) one or more persons to represent Barwon Water in its dealings with the Consultant and to exercise some or all of the functions of Barwon Water under the Accreditation Deed with regards to the Accreditation; and
 - (ii) one or more persons to represent Barwon Water in its dealings the Consultant and to exercise some or all of the functions of Barwon Water under the Accreditation Deed with regards to any individual project.
- (b) Barwon Water may nominate a natural person or a position in Barwon Water as Barwon Water's Representative.
- (c) Barwon Water will advise the Consultant in writing of the nomination of any Barwon Water Representative and of any functions the representative is entitled to exercise.
- (d) Barwon Water may, by notice in writing to the Consultant, nominate a replacement of any of Barwon Water's Representatives.
- (e) The appointment of any Barwon Water Representative shall not prevent Barwon Water from exercising any function.
- (f) Only those actions by Barwon Water's Representatives in relation to a function the Barwon Water's Representatives are entitled to exercise (as advised in accordance with subclause 4.2(c)) shall be taken to be an action of Barwon Water.

5 Consultant Obligations

5.1 General Obligations

The Consultant must, when engaged by the Developer, perform the Services:

- (a) take responsibility for and manage the risks of performing the Services;
- (b) develop clear open communication lines;
- (c) seek information about the individual Specification, the Warranty Period, the Barwon Water Representatives, and Barwon Water's Standards and Procedures, and any other information which is relevant for the construction of the individual Water Infrastructure, from the relevant Developer, and provide such information to the Accredited Contractors;
- (d) provide a healthy and safe working environment;
- (e) undertake a continuous improvement process for the delivery of the Services in accordance with the Quality Management System; and
- (f) administer this Accreditation Deed;
- (g) oversee and administer the undertaking of the Works or Services;
- (h) comply with the Accreditation Conditions;
- (i) only undertake Services in the Accredited Category;

- (j) carry out or arrange for the carrying out of Audits of those Works or Services so that the Consultant can be satisfied that the Works or Services are in accordance with their Audit Schedules and the requirements of this Accreditation Deed;
- (k) keep records of any Audits required to be carried out pursuant to subclause 5.1(j) for a period of 7 years;
- (l) facilitate any quality Audits executed by Barwon Water; and
- (m) notify Barwon Water as soon as the Consultant becomes aware of a Change Event; and

5.2 Consultant's Resources

The Consultant must:

- (a) maintain the resources, or have available the resources necessary to comply with its obligations under this Accreditation Deed;
- (b) maintain the management resources necessary to properly manage and oversee the discharge of its obligations under this Accreditation Deed; and
- (c) develop and maintain the systems necessary to comply with its obligations under this Accreditation Deed.

5.3 Regulatory and Prudential Compliance

The Consultant must maintain all registrations, accreditations and approvals necessary for it to be entitled to undertake the relevant Services.

6 Consultant Obligations regarding the Developer Deed and the undertaking of the Services

6.1 Developer Deed -

- (a) The Consultant must
 - (i) after having been engaged by a Developer, and before the commencement of any Services, procure to receive and read a copy of the relevant Developer Deed; and
 - (ii) not cause the Developer to breach the obligations of the Developer under the Developer Deed related to the Works or Services.

6.2 Undertaking the Services

- (a) The Consultant must, when engaged by a Developer for the provision of design services:
 - (i) execute the detailed engineering design of the Works which must be in accordance with the Specifications and which must depict Works which, if constructed in accordance with the design, will be fit for their purpose;

- (ii) prepare all of the documents required to be included in the Design Package (except for those documents to be prepared by others);
 - (iii) submit the Design Package to Barwon Water on behalf of the Developer;
 - (iv) either carry out the design of any Works on its own, or if the Consultant has not carried out the design, verify and unequivocally adopt and endorse the design of any Works of a prior Consultant who was Accredited for the purpose of each individual Developer Deed, and submit the design; and
 - (v) undertake any other activity as requested by the Developer in accordance with the Developer Deed or as reasonably requested by Barwon Water.
- (b) The Consultant must, when engaged by a Developer for the provision of construction auditing services:
- (i) Audit the construction of the Works, provide all relevant information and rectification requests from Barwon Water to the Accredited Contractors, and ensure and witness that the construction of the Works at all times complies with the Specifications and all other requirements contemplated by each individual Developer Deed and any reasonable request of Barwon Water;
 - (ii) prepare and lodge the Completion of Works Package and any other various forms, approvals, confirmations, and other documents as required in each individual Developer Deed (including the Land Development and Administrative Process), in this Accreditation Deed or as otherwise reasonably required by Barwon Water, which certify and confirm that the design and the Works or Services will be or have been carried out and completed in a proper and professional manner, and in accordance with the Specifications and all other requirements contemplated by each individual Developer Deed or in this Accreditation Deed, or as reasonably requested by Barwon Water;
 - (iii) undertake any other activity as requested by the Developer in accordance with the Developer Deed or as reasonably requested by Barwon Water;
 - (iv) certify that the as-constructed drawing and documentation satisfy the requirements under the Developer Deed and this Accreditation Deed; and
 - (v) certify that any statement in these documents are accurate and true.
- (c) When engaged by the Developer, the Consultant must further
- (i) prepare and lodge any form, document, and notification as required in the Land Development and Administrative Process or as reasonably requested by Barwon Water from time to time; and
 - (ii) engage with the stakeholder as required.
- (d) Where the Consultant provides Services under this Accreditation Deed, the Services must be provided:
- (i) with the due skill, diligence, prudence, planning and care that would reasonably be expected from an experienced and competent consultant; and
 - (ii) in compliance with:
 - (A) the Specifications for the individual Water Infrastructure;

- (B) Barwon Water's Land Development Administrative Process;
 - (C) all Legislative Requirements;
 - (D) any reasonable written direction given by Barwon Water or Barwon Water's Representative regarding the compliance with the Specifications; and
 - (E) the requirements of Authorities;
- (e) Any statement in any documents prepared and lodged by the Consultant must be accurate and true.
 - (f) The Consultant acknowledges that Barwon Water relies on the experience and professional skills of the Consultant.
 - (g) The Consultant acknowledges that the submission to, receipt and consideration of, or approval or verification of an 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.

7 Accreditation

7.1 Process and conditions for Accreditation

Barwon Water may grant Accreditation to a Consultant provided:

- (a) the Consultant meets all requirements as prompted in the Accreditation Application Form;
- (b) the Consultant has submitted a complete Accreditation Application Form including all documentation as required in the Accreditation Application Form to Barwon Water;
- (c) the Consultant has provided Barwon Water with any certificates and information as prompted in the Accreditation Application Form and with any additional information as reasonably required by Barwon Water;
- (d) Barwon Water is sufficiently satisfied that the Consultant has and will maintain the ability to comply with the obligations under this Accreditation Deed; and
- (e) the Consultant has executed this Accreditation Deed.

7.2 Duration of Accreditation

The Consultant's Accreditation starts at the Commencement Date and expires either:

- (a) 24 months after the Commencement Date; or
- (b) provided the Consultant has been Re-Accredited, 24 months after the date of the respective Re-Accreditation; or
- (c) at such earlier date which may result from the operation of this Accreditation Deed.

7.3 Accreditation Conditions

- (a) The Consultant must ensure that it continuously complies with the Accreditation Conditions for the entire time of the Accreditation Period.

- (b) Barwon Water may amend any of the Accreditation Conditions from time to time provided that such amendment will not impose any additional liability or constraint on the Consultant or be unreasonably burdensome on the Consultant.
- (c) Barwon Water will provide the Consultant with a written notice of any amendment and a reasonable period for meeting any amended Accreditation Conditions.
- (d) Any amended Accreditation Condition:
 - (i) will take effect upon the date of notification to the Consultant or upon any other date as stipulated by Barwon Water in the notification, and
 - (ii) will thereafter be regarded as an Accreditation Condition under this Accreditation Deed and shall apply as if it had been set out as an Accreditation Condition when this Accreditation Deed was first entered into.
- (e) The limiting proviso in subclause 7.3(b) does not apply in respect of any amendment which is made:
 - (i) with a view to ensuring that the Services are undertaken in compliance with the requirements of this Accreditation Deed;
 - (ii) in order to comply with, or better ensure compliance with standards, regulations, legislation, government policy, government direction, government strategy, good governance or protection of assets;
 - (iii) in response to any breach of this Accreditation Deed by the Consultant; or
 - (iv) with a view to ensuring that Barwon Water is in a position to conveniently, effectively, consistently and reliably be satisfied that a Consultant is complying with the requirements of this Accreditation Deed.

7.4 Accreditation Application

- (a) The Consultant warrants that the Accreditation Application and all information provided by the Consultant during the Application Process is accurate, complete, true and correct and is not misleading.
- (b) When granting an Accreditation, Barwon Water is relying upon the information provided by the Consultant.
- (c) The Consultant has no claim against Barwon Water in relation to or in connection with the Application Process.
- (d) If Barwon Water becomes aware that there has been a breach of the warranty provided for in subclause 7.4(a) then Barwon Water may, in its absolute discretion, immediately terminate the Consultant's Accreditation.
- (e) Following the termination of the Consultant's Accreditation pursuant to subclause 7.4(d), subclause 26.3 shall apply.

7.5 Re-Accreditation

- (a) A Consultant will be assessed and Barwon Water may grant a Re-Accreditation for another 24 months only if, as at 30 days prior to the expiration of the current Accreditation Period:
 - (i) the Consultant at that time still satisfies the relevant Accreditation Conditions and will satisfy them for the next 24 months or other period as determined by

Barwon Water (however, the Consultant is not obliged to provide Barwon Water with a new Accreditation Application Form);

- (ii) the Consultant is not in breach of this Accreditation Deed; and
 - (iii) the Consultant has submitted a statutory declaration stating its compliance with the above requirements.
- (b) If the Consultant is Re-Accredited pursuant to this subclause 7.5 then the Accreditation Period is extended by 24 months or a period determined by Barwon Water.

7.6 Change in Circumstances

- (a) If the Consultant becomes aware of or expects the occurrence of any:
- (i) circumstance or change in circumstance which adversely impacts on, or may adversely impact on the ability of the Consultant to:
 - (A) undertake or undertake in time all or part of any Services in compliance with this Accreditation Deed; or
 - (B) comply with other obligations under this Accreditation Deed; or
 - (ii) circumstance or change in circumstance which impacts a characteristic of the Consultant which was relied upon by Barwon Water in providing the Consultant's Accreditation,

then the Consultant must notify Barwon Water in writing immediately after the Consultant or the Consultant's Representatives gaining knowledge of this circumstance or change in circumstance stating the reasons and its potential effect on the fulfilment of the obligations compliance under this Accreditation Deed. This notification does not release the Consultant from its obligations under this Accreditation Deed.

- (b) If Barwon Water becomes aware of the occurrence of any:
- (i) circumstance or change in circumstance which impacts on, or may adversely impact on the ability of the Consultant to:
 - (A) undertake or undertake in time all or part of any Services in compliance with this Accreditation Deed; or
 - (B) otherwise comply with this Accreditation Deed; or
 - (ii) circumstance or change in circumstance which impacts a characteristic of the Consultant which was relied upon by Barwon Water in providing the Consultant's Accreditation,

then Barwon Water may issue a Show Cause Notice under clause 22.

7.7 Previous Accreditation Regime

- (a) Barwon Water's previous accreditation regime is replaced in its entirety by this Accreditation Deed;
- (b) The Consultant releases Barwon Water from any claim which the Consultant has, or but for this Accreditation Deed, may have had against Barwon Water in relation to the previous accreditation regime or the process leading to the Consultant's Accreditation under this Accreditation Deed.

7.8 Services without Accreditation

In any case where the Consultant has undertaken any Services:

- (a) before the commencement of the Accreditation Period and at that time not being accredited under the previous accreditation regime;
- (b) after 31 May 2018 and before the commencement of the Accreditation Period, and at that time being accredited under the previous accreditation regime except for the case that the Works or Services were undertaken within the scope of a project in process of the Developer under a former 'letter of offer';
- (c) unless otherwise agreed, after lapsing of the Accreditation Period; or
- (d) during any suspension or after termination of the Accreditation,

then:

- (e) all terms and conditions of this Accreditation Deed which relate to the Services apply to these particular Services which have been undertaken by the Consultant; and
- (f) Barwon Water is entitled to direct the Consultant to ensure reinstatement of the land or any other property impacted by the Services.

8 Consequence of Accreditation

8.1 No assurance of work

- (a) Barwon Water makes no representation to the Consultant that the Consultant will be offered the opportunity to undertake any Services by reason of it being Accredited.
- (b) The Consultant has no claim against Barwon Water by reason of the Consultant not having the opportunity to undertake any Services.

8.2 Others may be accredited

- (a) Barwon Water may accredit other consultants and may accredit as many consultants as it chooses.
- (b) The Consultant has no claim against Barwon Water by reason of Barwon Water accrediting other consultants.

9 Loss and Damage

The Consultant must ensure that Assets will not be damaged. If loss or damage occurs to Assets, by reason of the performance of the relevant Services, a breach of this Accreditation Deed or any other action of the Consultant or the Consultant's Personnel, the Consultant must to the extent that such loss or damage is not caused by any 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 Consultant in a written notice, whereby subclauses 24.2 and 24.3 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.

10 Consultant's Warranties

10.1 The warranties

The Consultant warrants, represents and agrees that:

- (a) it has the legal right and power to enter into this Accreditation Deed;
- (b) all of its internal requirements necessary to enter into Accreditation Deed and to perform its obligations under this Accreditation Deed have been satisfied;
- (c) it has disclosed whether any other Australian water authorities have raised any performance issues in relation to its conduct;
- (d) it has disclosed whether it has been denied the opportunity to undertake work for any other Australian water authority for any reason;
- (e) it has disclosed any situation whether it has had its entitlement to undertake work revoked, cancelled or suspended by any other Australian water authority;
- (f) it has entered into this Accreditation Deed in its own right and not as agent for any other entity;
- (g) it has, and will maintain, the capacity to comply with its obligations under this Accreditation Deed; and
- (h) it will comply with the provisions of this Accreditation Deed.

10.2 Continuing and repeated warranties

The warranties and representations set out in subclause 10.1 of this Accreditation Deed are repeated on each day from the Commencement Date until the termination or expiration of this Accreditation Deed.

11 Indemnity

11.1 Provision of Indemnity

The Consultant indemnifies and must keep indemnified Barwon Water against any loss, damage, cost, expense or liability suffered or incurred in relation to any breach of this Accreditation Deed or any warranty provided for in this Accreditation Deed.

11.2 Indemnities

Where any indemnity is given under this Accreditation 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;
- (b) the indemnity is given in respect of any such loss damage or expense arising from or 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 Consultant; and
- (d) the indemnity survives the termination of this Accreditation Deed.

11.3 Payment

- (a) Barwon Water may, in good faith, estimate the liability of the Consultant pursuant to subclause 11.1 and, upon that estimate being provided to the Consultant, it shall be a debt due and payable by the Consultant to Barwon Water.
- (b) The debt arising pursuant to subclause 11.3(a):
 - (i) is payable upon the estimate being provided to the Consultant;
 - (ii) is provisional only; and
 - (iii) may be adjusted as a result of the Consultant taking proceedings to establish the final quantum of the liability.
- (c) If the Consultant disagrees with Barwon Water's estimate it may dispute the assessment by following the dispute resolution process contained in clause 29.

11.4 Proportional Reduction

The Consultant's liability to indemnify Barwon Water pursuant to subclause 11.1 shall be reduced proportionally to the extent that any relevant loss, damage, cost, expense or liability was caused by or contributed to by an act or omission of Barwon Water or of any of its employees, officers or agents or directly engaged contractors (For the avoidance of doubt, 'contractors' shall not include any contractor or consultant engaged by a developer).

12 Personnel

12.1 Key Personnel

The Consultant must ensure that the Key Roles are only performed by the Key Personnel or by any replacement of such Key Personnel which is authorised under subclause 12.2.

12.2 Replacement of Key Personnel

- (a) The Consultant may, subject to Barwon Water's rights under subclause 12.2(d), propose a replacement of the persons of the Key Personnel.

- (b) The proposed replacing person must have all skills, qualifications, competence, and experience as required in the Accreditation Conditions for the category of Services undertaken by the corresponding person which shall be replaced.
- (c) The Consultant must notify Barwon Water, in writing, of the name of the envisaged replacement person and of the details of its skills, qualifications, competence, expertise and experience, and must do so within 5 Business Days before the replacement; and Barwon Water may accept or refuse to approve the Personnel who have or are being proposed.
- (d) If Barwon Water notifies the Consultant that it refuses to approve the Key Personnel as provided for in the foregoing subclause then the Consultant must propose an alternative person.

12.3 Qualification of Consultant's Personnel

- (a) The Consultant's Personnel must:
 - (i) have the skills, qualifications, competence, and experience required by this Accreditation Deed and appropriate to the undertaking of the Services; and
 - (ii) hold all necessary registrations, authorisations, certificates, permits or consents required by this Accreditation Deed and necessary and appropriate to the undertaking of the relevant Services.
- (b) The Consultant must:
 - (i) only deploy or permit the deployment of Consultant's Personnel who satisfy the requirements of subclause 12.3(a) in undertaking the relevant Services; and
 - (ii) ensure that any of the Consultant's Personnel who undertake the relevant Services satisfy the requirements of subclause 12.3(a).

12.4 Responsibility for Contractor's Personnel

- (a) When deploying Consultant's Personnel, the Consultant continues to be liable
 - (i) for its obligations under this Accreditation Deed and at law; and
 - (ii) for the acts and omissions of any Consultant's Personnel as if they were the Consultant's acts or omissions.
- (b) The Consultant must ensure that all the Consultant's Personnel are aware of, and comply with, the relevant obligations arising under this Accreditation Deed, the relevant requirements of this Accreditation Deed and Barwon Water's Land Development Administrative Process, as if it were the Consultant.

12.5 Removal of Consultant's Personnel

The Consultant must, upon the written request of Barwon Water, promptly replace, or procure the replacement of, any of the Consultant's Personnel engaged in connection with the relevant Services if Barwon Water, in its reasonable opinion, considers that:

- (a) the person does no longer have the capability, or is no longer satisfactorily capable, of deploying the relevant skills, competence, expertise and experience; or
- (b) the person's performance or conduct is, or has been, unsatisfactory in the context of the requirements relevant to Accreditation; or
- (c) the person is not complying, or will not comply with the obligations under this Accreditation Deed.

13 Barwon Water's Land Development Administrative Process

13.1 Compliance with Barwon Water's Land Development Administrative Process

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

13.2 Amendment of Barwon Water's Land Development Administrative Process

Barwon Water may amend any of Barwon Water's Land Development and Administrative Process from time to time as is necessary to comply with standards, regulations, legislation, and Barwon Water business requirements including good governance and protection of assets. The Consultant will be given written notice of the amendment and a reasonable period to meet these conditions.

14 OHS and Environment

14.1 OHS Obligations / Environment

- (a) The Consultant must, in undertaking the Services comply and ensure compliance by Auditing with
 - (i) the applicable OHS Law and the Environment Laws;
 - (ii) all Barwon Water 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 Consultant must ensure and warrants that the Consultant's Personnel:
 - (i) have completed and maintain appropriate training and competency assessments in order to safely execute the 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.

14.2 Control of work site

The Consultant acknowledges and agrees:

- (a) that all of the Consultant's Personnel are the employees of and under the control and direction of the Consultant or subcontractors to the Consultant; and
- (b) Barwon Water is not exercising management and control over the area in which the Works or Services are being undertaken.; and

- (c) The Consultant must not cause, permit or tolerate unacceptable actual or potential hazards or incidents relating to safety, health or the environment over which the Consultant has control.

14.3 Access to work site

Barwon Water and any person authorised by Barwon Water or by law shall be entitled to access the area in which the Works or Services are being undertaken. Where the Consultant has control over this area, it must ensure by Auditing that this access is safe during the performance of the Works or Services, and that Barwon Water and any person authorised by Barwon Water will be inducted by the relevant owner of the area.

14.4 Examination of area / Works on Barwon Water Assets

The Consultant must procure that the Consultant's Personnel:

- (a) has received and read the Barwon Water 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 Consultant's obligations under this Accreditation Deed.

14.5 Environment

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

15 Management Systems

15.1 Quality Management System, OHS Management System, and Environmental Management Systems

The Consultant must at all times have a Quality Management System, an OHS Management System and an Environmental Management System.

15.2 Preparation of Management Systems

- (a) The Consultant must prepare all Management Systems in a way that they support the performance of the Consultant's obligations under this Accreditation Deed.
- (b) The Consultant must retain a copy of any such Management System and have it available for inspection by Barwon Water upon request.

15.3 Compliance with Management Systems

The Consultant must maintain and consistently implement the Management Systems.

15.4 Requirements for Management Systems

The Management Systems must at all times:

- (a) comply with any relevant Legislative Requirements;
- (b) comply with the OHS Law;
- (c) be certified and regularly audited by an appropriately qualified external auditing / compliance organisation as being compliant with the following (as amended or superseded from time to time):
 - (i) in relation to safety management systems, AS/NZS 4801:2001, ISO45001 or CCF JAS-ANZ requirements;
 - (ii) in relation to quality management systems, ISO 9001 or CCF JAS-ANZ requirements; and
 - (iii) in relation to environmental management systems, AS/NZS ISO 14001:2004 or CCF JAS-ANZ requirements.
- (d) not prescribe a lesser standard or requirement than the corresponding standard or requirement in any of the relevant requirements of the Accreditation Deed;
- (e) support compliance with and the implementation of the relevant requirement of the Accreditation Deed;
- (f) to the extent relevant in relation to a particular project, describe how the Consultant will manage the undertaking of the Consultant's obligations under this Accreditation Deed in accordance with this Accreditation Deed;
- (g) describe how the Consultant will satisfy all relevant Legislative Requirements;
- (h) describe how the Consultant will provide evidence that it has complied with its obligations under this Accreditation Deed;
- (i) contain a mechanism which will result in management of the Consultant being informed, in a timely manner, of any non-conformances with a requirement of this Accreditation Deed;
- (j) contain a mechanism which will result in the recording of any non-conformance with a requirement of this Accreditation Deed and any request for a corrective action issued by Barwon Water to the Consultant under Barwon Water's SQE Management System, the circumstances giving rise to that non-conformance, the steps taken to address that non-conformance and the steps taken to prevent the non-conformance recurring in the future; and
- (k) be capable of being Audited to demonstrate the compliance of:
 - (i) the Management Systems with the requirements of this Accreditation Deed; and
 - (ii) the performance of the Works or Services (as far as relevant to the Consultant) with this Accreditation Deed.

15.5 Documents

- (a) The Consultant must retain all data, document and records relevant to the Management Systems for a period of 7 years after the completion of the relevant Work or Services (as is relevant to the Consultant).
- (b) The Consultant must provide Barwon Water with copies of any data, documents and records relevant to the Management Systems if requested to do so by Barwon Water.

15.6 Audit of Management Systems

The Consultant must allow Barwon Water, or a nominee of Barwon Water, to conduct an Audit of any of the Management Systems if requested to do so by Barwon Water.

15.7 Additional requirements for the Quality Management System

The Quality Management System must, in addition to complying with the requirements for Management Systems as set out above be capable of recording the quality of the performance of the Services (as is relevant to the Consultant)

16 Incidents

16.1 Keeping of Records

- (a) The Consultant 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 Consultant must allow Barwon Water, or a nominee of Barwon Water, to conduct an Audit of any of the documents and records to which subclause 16.1(a) applies if requested to do so by Barwon Water.

16.2 Reporting of Serious Incidents

The Consultant 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.

16.3 Investigation of Serious Incidents

- (a) The Consultant must:
 - (i) as soon as practicable after a Serious Incident, investigate the Serious Incident with a view to:
 - (A) fully understanding the cause of the Serious Incident; and
 - (B) taking steps to prevent the circumstances which gave rise to the Serious Incident from occurring in the future;
 - (ii) complete the investigation in accordance with this subclause 16.3 within 5 Business Days of the Serious Incident, unless the Serious Incident is the subject of a WorkSafe Investigation, in which case the investigation by the Consultant must be completed as soon as possible and no later than 3 Business Days after the WorkSafe Investigation has concluded.
- (b) The Consultant must:
 - (i) advise Barwon Water of the arrangements for and the timing of the investigation;
 - (ii) allow Barwon Water, if it desires to do so, to contribute to or participate in the investigation;
 - (iii) record the investigation in writing in a manner which results in an Auditable record of the investigation and the matters referred to in subclause 16.3(a)(i);

- (iv) provide Barwon Water with a copy of the written record referred to in subclause 16.3(b)(iii) within 5 Business Days of the investigation being concluded.

16.4 Response to Serious Incidents

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

17 Insurances

17.1 Obligation to insure

The Consultant must maintain:

- (a) the insurances specified in Schedule 5;
- (b) all insurances required by a Legislative Requirement; and
- (c) all other insurances which a reasonable prudent consultant in the position of the Consultant would maintain.

17.2 Subcontractors

The Consultant must procure that its subcontractors maintain all insurances

- (a) as set out in Schedule 5; and
- (b) as required by a Legislative Requirement.

17.3 Status of insurer

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

17.4 Evidence of insurance

The Consultant 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 of compliance with this clause 17 in the form of a certificate of currency for the respective insurance policy.

17.5 No undermining

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

17.6 Cancellation

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

17.7 Indemnity

The Consultant 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 Consultant to comply with the obligations under this clause 17.

17.8 Claims

The Consultant must:

- (a) notify Barwon Water in writing of any claims against the insurances effected by the Consultant relating to the Services without undue delay 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 require.

18 Works Information

18.1 Provision of the Works Information

As soon as practicable but not later than 10 days after the completion of the Works or Services and at any other time upon reasonable request of Barwon Water, the Consultant must provide the Works Information to Barwon Water.

18.2 Form of the Works Information

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

18.3 Accuracy of the Works Information

The Consultant warrants that the Works Information will be accurate and complete and will not be misleading. Barwon Water is relying upon the Works Information.

19 Barwon Water Information

19.1 Relevance of Barwon Water Information

The Consultant:

- (a) acknowledges that it may come into possession of Barwon Water Information; and
- (b) must, to the extent practicable, independently verify any Barwon Water Information; and
- (c) warrants that it will not rely upon any Barwon Water Information where it is practicable to independently verify the Barwon Water Information.

19.2 No warranty

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

19.3 No Claim

- (a) The Consultant has no claim against Barwon Water in relation to or in connection with any Barwon Water Information.

19.4 Use of Barwon Water Information

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

20 Intellectual Property

20.1 Consultant's obligations

The Consultant:

- (a) warrants that the Services 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 Services (as is relevant to the Consultant) and the Works Information in whatever reasonable 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 20.1(b).

20.2 Barwon Water's intellectual property

- (a) The Consultant acknowledges that the provision to it of any of Barwon Water's Information does not give to the Consultant any Intellectual Property Rights in that information (other than in respect of the licence granted in subclause 20.2(b)).
- (b) Barwon Water grants to the Consultant a royalty free licence to use Barwon Water's Information for the purpose of undertaking the Services.

20.3 The Consultant's Intellectual Property

Barwon Water acknowledges that the provision to it of any of the

- (a) Consultant's Intellectual Property which existed prior to entering into this Accreditation Deed or which was created independently from the Services or from services of the Consultant provided under Barwon Water's previous accreditation Scheme; or
- (b) Consultant's information

does not give Barwon Water any Intellectual Property Rights (other than in respect of the license granted in subclause 20.1(b)).

21 Confidentiality

21.1 Use of Barwon Water Confidential Information

The Consultant:

- (a) must only use Barwon Water Confidential Information solely for the purpose of undertaking of the Services;
- (b) must not disclose Barwon Water Confidential Information other than as permitted in this Accreditation Deed;
- (c) must only disclose Barwon Water Confidential Information to persons who:
 - (i) are aware and agree that the Barwon Water Confidential Information must be kept confidential; or
 - (ii) have signed any confidentiality deed required by Barwon Water from time to time,and either:
 - (iii) has a need to know (and only to the extent that each has a need to know); or
 - (iv) has been approved by Barwon Water from time to time;
- (d) must ensure that the Consultant's Personnel keep confidential all Barwon Water Confidential Information, other than in circumstances where disclosure is permitted by this Accreditation Deed; and
- (e) must ensure that the Consultant's Personnel only use Barwon Water Confidential Information solely for the purpose of undertaking of the Services.

21.2 Use of Consultant Confidential Information

- (a) Barwon Water:
 - (i) must not disclose Consultant Confidential Information other than as permitted in this Accreditation Deed; and
 - (ii) must ensure that the Barwon Water's Representative keeps confidential all Consultant Confidential Information, other than in circumstances where disclosure is permitted by this Accreditation Deed.
- (b) Barwon Water is permitted to share Consultant Confidential Information with other water corporations and other public bodies.

21.3 Breach of Confidence

- (a) The Consultant must immediately notify Barwon Water of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- (b) The Consultant must provide assistance reasonably requested by Barwon Water in relation to any proceedings Barwon Water may take against any person for unauthorised use, copying or disclosure of Confidential Information.
- (c) The Consultant acknowledges that damages will not be an adequate remedy in relation to any breach of this clause 21 and that Barwon Water will be entitled to take injunctive proceedings in relation to, or to prevent any such breach.

21.4 Limit of obligations

The obligations in this clause 21 do not apply to:

- (a) information already in the public domain (other than as a result of a breach of this clause 21);
- (b) any disclosure required by the listing rules of the Australian Stock Exchange; or
- (c) any disclosure required by law or any governmental authority.

21.5 Survival

The obligations in this clause 21 survive the termination or expiration of this Accreditation Deed.

22 Show Cause Notice

22.1 Service of notice

- (a) Barwon Water may issue a notice to show cause (**Show Cause Notice**) to the Consultant if:
 - (i) the Consultant is in breach of this Accreditation Deed; or
 - (ii) any warranty given by the Consultant under this Accreditation Deed is breached; or
 - (iii) the issue of such a notice is provided for elsewhere in this Accreditation Deed.
- (b) The Show Cause Notice must:
 - (i) state that it is a notice under this subclause 22.1;
 - (ii) set out the circumstances relied upon in relation to the notice; and
 - (iii) set out the time within which the Consultant must provide a response in the form as set out under subclause 22.2 (which time must not be less than 5 Business Days from the date of the Show Cause Notice).
- (c) In the Show Cause Notice, Barwon Water may set out a time within which the Consultant must rectify and resolve the effects of the breach and/or circumstances arising from the breach.

22.2 Response to notice

- (a) Upon receipt of a Show Cause Notice, the Consultant must provide a response to the notice within the time required under subclause 22.1(b)(iii).
- (b) The Consultant's response must:
 - (i) set out the reasons for the breach occurring, circumstance arising, and effect creating;
 - (ii) identify what steps the Consultant will take in order to ensure that the breach, circumstance and effect ceases;
 - (iii) identify what steps the Consultant will take in order to prevent the breach or circumstance occurring again in the future;

- (iv) describe the steps the Consultant proposes to take in order to rectify and resolve the effects of the breach 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 this Accreditation Deed in relation to the breach or circumstance.

22.3 Consideration of notice

Upon receipt of a response from the Consultant as contemplated by subclause 22.2 Barwon Water may, in its Absolute Discretion, advise the Consultant as to whether Barwon Water:

- (a) it will terminate the Consultant's Accreditation according to clause 26;
- (b) considers that the response does not adequately address the matters required to be addressed under subclause 22.2;
- (c) intends to permit the Consultant's Accreditation to remain;
- (d) intends to permit the Consultant's Accreditation to remain subject to certain conditions; or
- (e) intends to permit the Consultant's Accreditation to remain subject to the Consultant being placed on Probation.

22.4 Inadequate Response

- (a) If Barwon Water advises the Consultant that it considers that the response does not adequately address the matters required to be addressed under subclause 22.2 then Barwon Water may, in its absolute discretion:
 - (i) call for the Consultant to again respond as required subclause 22.2; or
 - (ii) elect to follow one of the other options set out in subclause 22.3.
- (b) If Barwon Water calls for the Consultant to again respond as required subclause 22.2 the Consultant must do so within the time directed by Barwon Water.
- (c) Subclause 22.3 and subclause 22.4 shall continue to apply until Barwon Water considers that the response does adequately address the matters required to be addressed under subclause 22.2 or until Barwon Water has elected to follow one of the other options set out in subclause 22.3.

22.5 Compliance with Response and time set by Barwon Water

- (a) If Barwon Water advises the Consultant that it permits the Consultant's Accreditation to remain (with or without conditions) as contemplated by subclauses 22.3(c), (d), or (e) then:
 - (i) the Consultant must, thereafter, take the steps, and continue to take the steps, set out in the response from the Consultant (being the steps described in subclauses 22.2(b)(ii), 22.2(b)(iii) and 22.2(b)(iv) and if so specified, within the time determined by Barwon Water under subclause 22.1(c)); and
 - (ii) the steps referred shall, thereafter, be regarded as obligations under this Accreditation Deed and be subject to the provisions of this Accreditation Deed as if they had been set out as obligations when this Accreditation Deed was first entered into.

- (b) If Barwon Water advises the Consultant that it will terminate the Consultant's Accreditation under this Accreditation Deed, Barwon Water is notwithstanding entitled to request the Consultant to take the steps, and continue to take the steps, set out in the response from the Consultant (being the steps described in subclauses 24.2(b)(ii) and 24.2(b)(iv)) and if so specified, within the time determined by Barwon Water under subclause 22.1(c); and the Consultant must comply with that request.

22.6 Conditions

If Barwon Water advises the Consultant that it intends to permit the Consultant's Accreditation to remain with conditions, as contemplated by subclause 22.3(d) then:

- (a) the Consultant must, thereafter, comply with those conditions; and
- (b) the conditions shall, thereafter, be regarded as Accreditation Conditions and be subject to the provisions of this Accreditation Deed as if they had been set out as Accreditation Conditions when this Accreditation Deed was first entered into.

22.7 Validity of notice

A Show Cause Notice shall not be regarded as ineffective or invalid by reason of any deficiency in the information required to be given under subclause 22.1 and substantial compliance with subclause 22.1 shall be sufficient.

23 Performance Discussion

23.1 Deferral of Show Cause Notice

If Barwon Water is entitled to issue a Show Cause Notice then Barwon Water may, in its absolute discretion, defer the issuing of the Show Cause Notice and invite the Consultant:

- (a) to participate in a discussion with Barwon Water in relation to the Consultant's performance under this Accreditation Deed;
- (b) to provide an undertaking as to the future performance of the Consultant; or
- (c) to do a combination of the above.

23.2 Undertakings and conditions

- (a) Barwon Water may, in its absolute discretion, accept an undertaking as to the future performance from the Consultant.
- (b) The undertaking may set out conditions which the Consultant agrees to abide by in the future.
- (c) If any undertaking sets out conditions as provided for in subclause 23.2(b) then:
 - (i) the Consultant must, thereafter, comply with those conditions; and
 - (ii) the conditions shall, thereafter, be regarded as Accreditation Conditions and be subject to the provisions of this Accreditation Deed as if they had been set out as Accreditation Conditions when this Accreditation Deed was first entered into.
- (d) Any undertaking given by the Consultant as provided for in subclause 23.2(b):

- (i) must be adhered to by the Consultant; and
- (ii) shall, thereafter, be regarded as obligations under this Accreditation Deed and be subject to the provisions of this Accreditation Deed as if they had been set out as obligations when this Accreditation Deed was first entered into.

23.3 Duration of deferral

- (a) Barwon Water may defer the issuing of the Show Cause Notice for the period of time it, in its absolute discretion, considers appropriate.
- (b) If Barwon Water has not accepted an undertaking prior to the expiration of the period of time referred to in subclause 23.3(a) then Barwon Water will be free to issue the Show Cause Notice.

24 Defects / Non-Compliance

24.1 Rights and obligations regarding Defects

- (a) The Consultant must:
 - (i) conduct reasonable inspections of the Works with a view to identifying any Defects;
 - (ii) promptly advise Barwon Water of any Defects of which it becomes aware; and
 - (iii) ensure the rectification of any Defects.
- (b) At any time after the commencement of the Services and during the Warranty Period, Barwon Water may:
 - (i) notify the Consultant by notice in writing of any Non-Compliance or any Defect that Barwon Water reasonably considers to exist;
 - (ii) require the Consultant, at the Consultant's cost, to ensure the rectification of the Non-Compliance or the Defect (or, at the option of Barwon Water, the taking of steps to ameliorate the consequences of the Non-Compliance) within the period set out in the notice which shall be determined by Barwon Water having regard to the nature of the Non-Compliance or the Defect;
 - (iii) at its discretion, undertake, or procure the undertaking of emergency works in respect of any such Non-Compliance or Defect; and
 - (iv) require the Consultant to provide to Barwon Water a response letter, within the period set out in the notice, which must:
 - (A) set out the reasons for the Non-Compliance or Defect occurring or circumstance arising;
 - (B) identify what steps the Consultant will take in order to ensure that the Non-Compliance or Defect, circumstance and effect ceases;
 - (C) identify what steps the Consultant will take in order to prevent the Non-Compliance or Defect or circumstance occurring again in the future;

- (D) describe the steps the Consultant proposes to take in order to rectify and resolve the effects of the Non-Compliance or Defect and/or the circumstances within the timeframe determined by Barwon Water under subclause 24.1(b)(ii); and
- (E) set out the reasons why Barwon Water should not take further action under this Accreditation Deed in relation to the Non-Compliance or Defect or circumstance.

24.2 Compliance with notice

- (a) The Consultant must comply with any notice given under subclauses 24.1(b)(i) and must do so within the time as determined in that notice according to subclause 24.1(b)(ii).
- (b) If the Consultant does not comply with subclause 24.2(a) Barwon Water may remedy the Non-Compliance, ameliorate the consequences of the Non-compliance and rectify the Defect with own staff or by engaging a contractor.

24.3 Costs incurred by Barwon Water

Any costs reasonably incurred by Barwon Water in:

- (a) undertaking or procuring the undertaking of emergency works as contemplated by subclause 24.1(b)(iii); or
- (b) remedying the Non-Compliance, ameliorating the consequences of the Non-Compliance and rectifying the Defect as contemplated by subclause 24.2(b),

shall be a debt due and payable to Barwon Water by the Consultant.

25 Audits

25.1 General right to Audit

- (a) Barwon Water's agents or officers may at any time during the term of this Accreditation Deed Audit the compliance with the requirements under this Accreditation Deed by the Consultant.
- (b) The Consultant must:
 - (i) cooperate fully with the auditor;
 - (ii) allow the auditor access to all relevant records and premises; and
 - (iii) not obstruct the auditor in the performance of its role.

25.2 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 Services, Barwon Water may at any time, during the performance of the Services, Audit the Services. If in the course of Auditing, Barwon Water is not satisfied that the Services (as relevant to the Consultant) are or will not have a Non-Compliance or Defect
 - (i) the Consultant must pay the costs of the Audit, and
 - (ii) Section 24 (Defects/ Non-Compliance) applies.

- (b) If tests are specified for the Works or Services, the Consultant shall ensure that Barwon Water is informed 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 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 one of the Developer, the Accredited Consultant or the Contractor having regard to the agreements between them.
- (c) In the course of any kind of Auditing, Barwon Water is entitled to take photographs.
- (d) Any inspection, testing or Auditing by Barwon Water shall not relieve the Consultant of any obligations contained in the Accreditation Deed.

25.3 OHS Audits for work on Barwon Water Assets

At any time, during the performance of the Works or Services, Barwon Water may Audit the compliance of the Consultant 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 (as relevant to the Consultant) undertaken at a Barwon Water Asset are or will comply with OHS Law:

- (a) the Consultant must pay the costs of the Audit; and
- (b) the Consultant must comply with any instruction given by Barwon Water under subclause 14.1(a) (iii).

26 Termination of Accreditation

26.1 Termination of Accreditation

Barwon Water may at any time by giving notice to the Consultant terminate the Consultant's Accreditation if:

- (a) a Show Cause Notice has been served to the Consultant and the Consultant has not responded as required by subclause 22.2; or
- (b) a Show Cause Notice has been served on the Consultant and Barwon Water has advised that it will terminate the Accreditation Deed as contemplated by subclause 22.3(a); or
- (c) the Consultant fails to take a step or continue to take a step under subclause 22.5; or
- (d) the Consultant fails to comply with a condition under subclause 22.6; or
- (e) the Consultant engages in fraudulent conduct (e.g. falsifying documents);
- (f) the Consultant is the subject of an Insolvency Event;
- (g) the Consultant fails to comply with, or procure compliance with Barwon Water's live sewer entry requirements;

- (h) the Consultant is subject to a WorkSafe Investigation and Barwon Water is reasonably of the view that the reason for the WorkSafe Investigation is likely to impact the Contractors ability to comply with the requirements under the Accreditation Deed; or
- (i) the Consultant commits a Substantial Breach of this Accreditation Deed

26.2 Timing of termination

- (a) If Barwon Water is to terminate the Consultant's Accreditation under subclause 26.1 it may, in the notice to the Consultant, nominate a future date upon which the termination is to take effect. The Accreditation will be terminated upon that date.
- (b) If no such date is nominated then the Accreditation is terminated from the date of receipt, or deemed receipt, of the notice.

26.3 Consequences of termination

If the Consultant's Accreditation is terminated under this Accreditation Deed, then the Consultant:

- (a) must, upon Barwon Water's request, complete any of the Services which are not completed yet (unless Barwon Water directs the Consultant to immediately cease undertaking all Services);
- (b) must, if so directed by Barwon Water, immediately cease undertaking all Services (except to the extent necessary to make safe any circumstance which would otherwise be unsafe);
- (c) must not commence the undertaking of any further Services; and
- (d) is not entitled to apply for Accreditation until a 12 month period has elapsed since the cancellation the Consultant's Accreditation, unless otherwise agreed by Barwon Water.

26.4 Re-application (after termination)

In order to re-apply and be considered by Barwon Water for Accreditation after the Accreditation has been terminated according to clause 26.1, a Consultant must demonstrate that:

- (a) any non-conformances have been rectified; and
- (b) a preventative action plan is in place; and
- (c) at least 2 months, or such other period as nominated by Barwon Water has passed since the time of termination; and
- (d) the requirements set out under subclause 7.1 are fulfilled.

26.5 Termination of Accreditation Categories

In addition to Barwon Water's right to terminate the Accreditation in its entirety, Barwon Water may terminate only one or more Accreditation Categories applicable to the Contractor, and subclauses 26.1 until 26.4 apply accordingly.

27 Suspension of Accreditation

27.1 Entitlement to suspend

If Barwon Water is entitled to terminate the Consultant's Accreditation then Barwon Water may, in its absolute discretion, suspend the Consultant's Accreditation as an alternative to termination of the Consultant's Accreditation.

27.2 Immediate suspension

- (a) If Barwon Water forms the view that it is prudent, in order to prevent:
 - (i) any loss or damage or injury described under clause 11; or
 - (ii) a material or repeated breach of this Accreditation Deed, to immediately suspend the Consultant's Accreditation then Barwon Water may issue a notice to the Consultant suspending the Consultant's Accreditation from a time and date nominated in the notice.
- (b) The Consultant's Accreditation is suspended from the time and date nominated in the notice delivered pursuant to subclause 27.2(a).
- (c) As soon as practicable following the delivery of a notice pursuant to subclause 27.2(a), Barwon Water shall deliver a Show Cause Notice or take any other steps it is entitled to take in circumstances where it is entitled to deliver a Show Cause Notice.
- (d) If Barwon Water does not deliver a Show Cause Notice or take any other steps it is entitled to take in circumstances where it is entitled to deliver a Show Cause Notice within 5 Business Days of the delivery of a notice pursuant to subclause 27.2(a) then the suspension ceases.

27.3 Duration of suspension

If Barwon Water suspends the Consultant's Accreditation, then Barwon Water may:

- (a) suspend the Accreditation for a defined period of time;
- (b) suspend the Accreditation until certain specified conditions are satisfied; and
- (c) nominate a maximum permitted duration for the suspension.

27.4 Consequences of suspension

If the Consultant's Accreditation is suspended in accordance with clause 27, then, for the duration of the suspension, subclause 26.4 shall apply as if the Accreditation had been terminated.

27.5 Conditions

If Barwon Water suspends the Accreditation until certain specified conditions are satisfied and those conditions are satisfied then:

- (a) upon satisfaction of the conditions Barwon Water will give notice to the Consultant that the suspension has ceased and the suspension shall cease from the date of the notice;
- (b) the Consultant must, after the satisfaction of the conditions, continue to comply with those conditions; and

- (c) the conditions shall, thereafter, be regarded as Accreditation Conditions and be subject to the provisions of this Accreditation Deed as if they had been set out as Accreditation Conditions when this Accreditation Deed was first entered into.

27.6 Maximum duration

If a maximum permitted duration is specified for a suspension as contemplated by subclause 27.3(c) then if the suspension has not ceased by the expiration of the duration then Consultant's Accreditation is automatically terminated.

27.7 Suspension of Accreditation Categories

In addition to Barwon Water's right to suspend the Accreditation in its entirety, Barwon Water may suspend only one or more Accreditation Categories, and subclauses 27.1 to 27.6 apply accordingly.

28 Change in Control

28.1 Consent required

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

28.2 Actions required

If there is to be a Change in Control the Consultant must demonstrate that the Change in Control will not adversely impact the Consultant's ability to perform the Services.

28.3 Consent not to be unreasonably withheld

Provided that the Consultant has complied with subclauses 28.1 and 28.2 then Barwon Water may not unreasonably withhold its consent.

28.4 Absence of consent

- (a) If there is a Change in Control without consent of Barwon Water then:
 - (i) the Consultant's Accreditation is immediately suspended; and
 - (ii) Barwon Water is entitled to issue a Show Cause Notice.
- (b) A failure to terminate this Accreditation Deed immediately following a Change in Control without the consent of Barwon Water shall not prevent Barwon Water from later terminating the Consultant's Accreditation in its Absolute Discretion.

28.5 Duration of suspension

- (a) If the Consultant's Accreditation is suspended by reason of subclause 28.4 the suspension remains in effect until the earlier of:
 - (b) the cessation of the Change in Control;
 - (c) the expiration of the Consultant's Accreditation by reason of subclause 7.2; and
 - (d) the cancellation of the Consultant's Accreditation in accordance with this Accreditation Deed.

28.6 Consequences of suspension

If the Consultant's Accreditation is suspended in accordance with this clause 28, then, for the duration of the suspension, subclause 26.4 shall apply as if the Accreditation had been cancelled.

29 Dispute Resolution

29.1 Dispute process

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

29.2 Prevention by collaboration

- (a) The parties will seek to prevent any Dispute from arising by constant collaboration.

29.3 Notice of Dispute

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

29.4 Meetings

If a party issues a notice of Dispute under subclause 29.3, the following process applies:

- (a) within 10 Business Days of the giving of a Notice of Dispute, the Consultant's Representative and/ or other person duly authorised by the Consultant and Barwon Water's Representative and/ or other person duly authorised by Barwon Water 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 Consultant, represented by a senior person having authority to agree a resolution of the Dispute (not being the Consultant's Representative and being senior to the Consultant's Representative) and Barwon Water represented by a senior person having authority to agree a resolution of the Dispute, (not being Barwon Water's Representative and being senior to Barwon Water's Representative) must confer in a good faith attempt to resolve the Dispute and must do so within 20 Business Days of the giving of a Notice of Dispute.

29.5 Mediation

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

29.6 Litigation

If:

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

29.7 Performance during dispute resolution

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

29.8 Interlocutory relief

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

29.9 Parties Obligations

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

29.10 Survival

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

30 Audit of Records

30.1 Retention of documents and records

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

30.2 Entitlement to undertake Audit

Upon reasonable notice from Barwon Water, the Consultant must allow Barwon Water, or a nominee of Barwon Water, to inspect the documents and records to which subclause 30.1 applies and to conduct an Audit of those documents and records.

31 Notices

31.1 Application of clause

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

31.2 Requirements for Notices

Any notice given under or in relation to this Accreditation Deed must:

- (a) be in writing;
- (b) be signed by or on behalf of the party giving the notice;
- (c) be delivered to each of Barwon Water's Representative and the Consultant's Representative;

- (d) comply with the requirements of this Accreditation Deed;
- (e) be delivered as provided for in this Accreditation Deed; and
- (f) state on the face of the notice:
 - (i) that it is a notice pursuant to this Accreditation Deed;
 - (ii) which clause or clauses of this Accreditation Deed the notice relates to; and
 - (iii) what issue or issues the notice relates to.

31.3 Non-compliance with requirements

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

31.4 Mode of Service

A notice may be served by:

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

31.5 Address for Service

- (a) The addresses for service (including the facsimile number) are set out in Item 7 and Item 8 of the Particulars.
- (b) The address for service (including the facsimile number or e-mail) may be varied by a party upon the giving of notice in writing of that variation.
- (c) A notice must be given to the address for service (including the facsimile number) or by hand.

31.6 Time of Service

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

- (a) where the notice is permitted to be delivered by hand and is delivered by hand, when it has been delivered to the address of the addressee provided for in this Accreditation 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 this Accreditation 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 this Accreditation Deed in which case if, at the conclusion of the transmission, the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages in the notice have been successfully transmitted it shall be deemed to have been given:
 - (i) if transmission was successfully completed before 4.00 pm on a Business Day, on the day it was sent; and

- (ii) otherwise on the next Business Day.
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Accreditation Deed and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when the sender receives confirmation on its server that the message has been transmitted.

31.7 Validity of Notice

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

32 Miscellaneous

32.1 Governing Law

This Accreditation Deed is governed by the laws of Victoria.

32.2 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.

32.3 Entire Deed

This Accreditation 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.

32.4 Alteration

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

32.5 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 this Accreditation Deed Barwon Water may:
 - (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 (the **Approval**) fails to comply with or fulfil the conditions or is otherwise in breach of the conditions, the Approval will be void from the beginning and matters as between Barwon Water and the Consultant will be as if the Approval had not been given (save that Barwon Water will continue to enjoy the benefit of any compliance with the conditions).

32.6 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 Consultant;
- (b) Barwon Water may impose any conditions it considers appropriate in relation to the exercise of the discretion (and subclause 36.5 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 this Accreditation Deed giving rise to the discretion); and
- (g) the Consultant shall have no claim against Barwon Water in relation to the exercise of the discretion or the timing of the exercise of the discretion.

32.7 Consultant's breach

- (a) Any breach of this Accreditation Deed by the Consultant shall be taken to be committed afresh each day until the breach ceases.
- (b) Barwon Water's rights in relation to any breach of this Accreditation Deed by the Consultant 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 or be taken to be an election by Barwon Water.

32.8 Cumulative rights

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

32.9 No liability reduction

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

32.10 Cessation of work for a certain Development

- (a) The obligations and the liability of the Consultant under this Accreditation Deed or at law are not limited by the fact that the Consultant ceases to provide Services for the construction of a particular Water Infrastructure.
- (b) If the Consultant ceases to provide Services for the construction of a particular Water Infrastructure, it must immediately notify Barwon Water.

- (c) If the Consultant's Accreditation is suspended or terminated or if the Consultant ceases to provide Services for the construction of a particular Water Infrastructure for any other reason, it must immediately notify the Developer and the Accredited Contractors who are involved in the construction of the particular Water Infrastructure.

32.11 No Reliance

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

32.12 Survival

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

32.13 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.

32.14 Severance

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

32.15 Counterparts

This Accreditation Deed may be executed in counterparts. All executed counterparts constitute one document.

32.16 Costs

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

32.17 Inconsistency with other documents

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

32.18 Amendment

This Accreditation Deed can only be amended or replaced by another document signed by the Consultant and Barwon Water.

32.19 Assignment

The Consultant must notify Barwon Water if it assigns its rights under this Accreditation Deed.

32.20 Privacy

The Accreditation Status of consultants and contractors will be publicly available on the Barwon Water website. Barwon Water reserves the right to share Audit information with other water corporations and other public bodies. Consultants will not have access to the detailed Audit information of parties other than themselves.

Schedule 1 - Particulars

#	Clause	Item	Information	
1.	7.4	Accreditation Application	Date	
2.	7.2	Accreditation Period	Accreditation Period commences	
			Accreditation Period lapses	
3.		Accredited Category		
4.		Commencement Date	Date	
5.		Consultant	Title	
			ABN/ACN	
			Trading as	
6.	4.1	Consultant's Representative	Name	
7.	31.5	Consultant's Address	Address	
			Telephone	
			Facsimile	
			Email	
8.	31.5	Barwon Water's Address	Address	
			Telephone	
			Facsimile	
			Email	
9.	4.2	Barwon Water's Representative	Name	
10.	12	Key Personnel	Name: Role:	

Schedule 2 - Barwon Water's Land

Development and Administrative Process

(for Consultant Accreditation and 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 Consultant Accreditation and Developer Works" sets out more details regarding the accreditation and the respective Developer Works (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 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 and the Contractor Accreditation Deed 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 Accreditation 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

- (a) 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 in electronic form:
 - (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. 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 Accredited Consultant for the fourth design Audit.

11. Activity Method Statement

- (a) Barwon Water may, at its discretion, review an activity method statement, or may simply retain the statement as a record. The Accredited Consultant 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 Accredited Consultant 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

Five (5) Business Days before the commencement of the Works or Services, the Accredited Consultant on behalf of the Developer must:

- (a) satisfy all requirements, follow all instructions and attach all additional documentation as prompted in the online form 'Notification of Works'; and
- (b) 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 Accredited Consultant must ensure that the Works are tested by an Accredited Contractor who did not undertake the relevant Works, 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 testing any aspect of the Works 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 Accredited Consultant must submit the test results to Barwon Water within the timeframes as set out in Schedule 6 of the Developer Deed.

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 Schedule 6 of the Developer Deed are complete and that the testing process and the test results do comply with the requirements as set out in Schedule 6 of the Developer Deed.

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 and subclause 6.2(b)(ii) of the Consultant Accreditation 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 Schedule 6 of the Developer Deed.

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 to 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 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 Accredited Contractor / Accredited 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 Schedule 6 of the Developer Deed.

Schedule 3 - Key Roles

1. Key Roles

The Key Roles are:

- (a) design personnel who must provide the services set out under subsection 6.2(a) of the Accreditation Deed; and
- (b) construction personnel who must provide the services set out under subsection 6.2(d) of the Accreditation Deed.

Schedule 4 - Accreditation Application Form

The Accreditation Application Form as showed at the Barwon Water website applies as amended from time to time.

Schedule 5 - Required Insurances

The Consultant is required to have the following insurances:

- (a) Professional indemnity insurance to the amount of \$10 million per claim and not less than \$10 million in the annual aggregate, which must be maintained for a period of 7 years after Asset Transfer;
- (b) Public liability insurance to the amount of \$20 million per claim and not less than \$20 million in the annual aggregate which is in the name of the Consultant and notes Barwon Water's interest; and
- (c) any other insurances required by law.

Schedule 6 - Barwon Water's Standards and Procedures

Barwon Water's Standards and Procedures are:

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