

# Accreditation Deed - Accredited Entity

Unitywater Accreditation and  
Certification System



Unitywater

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# Accreditation Deed

Dated

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## Parties

**Unitywater** Northern Distribution Retail Authority established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Qld)*.

**Accredited Entity** Means the party named in the Particulars Schedule 1

## Background

- A Unitywater requires the Accredited Entity to provide the Functions, and will rely on the Accredited Entity's performance of the Functions in the discharge of Unitywater's own statutory functions under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Qld)* and to ensure compliance with Unitywater's own Policies and Plans is achieved.
- B The Accredited Entity has represented to Unitywater that it has the skills and expertise to provide the Functions, is a qualified professional in the provision of the type of services required and that it holds and will maintain all licences, accreditations, certificates or registrations the Accredited Entity or its Personnel are required to possess by any relevant Legislative Requirements in order to perform the Functions.
- C Unitywater has agreed to engage the Accredited Entity as an independent contractor to provide the Functions set out in this Accreditation Deed and the Accredited Entity agrees to accept such appointment on the following terms and conditions.

## Agreed terms

### 1 Definitions and Interpretation

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#### 1.1 Definitions

In this Accreditation Deed, terms defined in the Manual have the same meaning when used in this Accreditation Deed unless the context otherwise requires, and:

Term	Definition
<b>Accession</b>	has the meaning given to it in the PPSA.
<b>Accreditation Deed</b>	means this deed comprising of the documents referred to in clause 2.1.
<b>Accredited Entity's Representative</b>	means the person named in the Particulars or the person nominated in writing, in accordance with clause 12.2, by the Accredited Entity to Unitywater from time to time.

<b>Term</b>	<b>Definition</b>
<b>Approval, Approve or Approved</b>	means any approval, consent, agreement, accord or satisfaction, of Unitywater, whether given in accordance with a provision of this Accreditation Deed, as provided for in the Manual, or otherwise.
<b>Audit or Auditing</b>	means any process of auditing the Accredited Entity (including with respect to Registered Certifiers), including as set out in the Manual.
<b>Business Day</b>	means a day that is not: <ul style="list-style-type: none"> <li>(a) a public holiday in the place in which the Functions are being carried out; or</li> <li>(b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.</li> </ul>
<b>Certificate of Completion</b>	has the meaning given in the Manual.
<b>Claim</b>	means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Accreditation Deed, the Functions or either party's conduct under the Accreditation Deed, whether before, on or after it came into force, including for breach of contract (including under any indemnity), in tort (including negligence), in equity (including restitution), under statute, or otherwise.
<b>Commencement Date</b>	means the commencement date specified in the Particulars.
<b>Commingled</b>	has the meaning given to it in the PPSA.
<b>Completion Date</b>	means the date or dates specified in the Particulars for the expiration of the Term or the date of any earlier termination of this Accreditation Deed by Unitywater.
<b>Confidential Information</b>	means the following information of or relating to Unitywater in whatever form: <ul style="list-style-type: none"> <li>(a) information which Unitywater indicates or has indicated is confidential or which might reasonably be considered confidential by Unitywater;</li> <li>(b) information which by its very nature might reasonably be understood to be confidential or to have been disclosed to the Accredited Entity in confidence;</li> <li>(c) information which is commercially valuable or would be of commercial value to a competitor of Unitywater;</li> <li>(d) information which relates to Unitywater's financial affairs, including performance or profitability reports and margins and the price Unitywater charges for its products or services;</li> <li>(e) information which relates to or is contained in any of Unitywater's information technology systems;</li> <li>(f) information which relates to trade secrets, intellectual property or Intellectual Property Rights;</li> </ul>

<b>Term</b>	<b>Definition</b>
	(g) information which relates to the marketing techniques used by Unitywater;
	(h) information which is found in Unitywater's manuals or policies,
	(i) information which relates to products or services proposed, developed or being developed by Unitywater, or for which Unitywater is negotiating the provision of, including quotations, strategies, reports, concepts, plans, designs, drawings and programs;
	(j) this Accreditation Deed, and any information relating to the Functions;
	(k) all notes and other records prepared by Unitywater or anybody else, based on or incorporating information referred to in sub-clauses (a) to (i) above; and
	(l) all copies of the information, notes and other records referred to in sub-clauses (a) to (j) above;
	except for information that:
	(m) was rightfully in the possession of the Accredited Entity and not subject to an obligation of confidentiality on the Accredited Entity before the date of this Accreditation Deed; or
	(n) is or, after the date of this Accreditation Deed, becomes available in the public domain (other than as a result of a breach of this Accreditation Deed).
<b>Conflict of Interest</b>	means having an interest (whether personal, financial or otherwise) which conflicts, or may reasonably be perceived as conflicting, with the ability of the Accredited Entity to perform the Functions:
	(a) fairly and objectively;
	(b) without unreasonable influence, or interference, of any third party (including any Applicant, or person acting on behalf of, or for the benefit of an Applicant); and
	(c) strictly in accordance with the requirements of this Accreditation Deed, including clause 4.4.
<b>Connections Policy</b>	has the meaning given in the Manual.
<b>Consequential Loss</b>	means, to the extent that the loss is an indirect loss, loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production or loss of profit.
<b>Deliverable</b>	means any document required to provided to Unitywater by the Accredited Entity, as described under the Manual, reasonable requested by Unitywater, or otherwise required under this Accreditation Deed.
<b>Financing Statement</b>	has the meaning given to it in the PPSA.

<b>Term</b>	<b>Definition</b>
<b>Functions</b>	means the functions to be performed by the Accredited Entity (including the functions of Registered Certifiers nominated by the Accredited Entity) for Unitywater as set out in, or reasonably inferred from, the Manual and any other requirements of this Accreditation Deed, and includes the provision of the Deliverables to Unitywater.
<b>Government Agency</b>	means: <ul style="list-style-type: none"> <li>(a) a government or government department or other body;</li> <li>(b) a governmental, semi-governmental or judicial person; or</li> <li>(c) a person (whether autonomous or not) who is charged with the administration of a law.</li> </ul>
<b>GST Act</b>	means <i>A New Tax System (Goods and Functions Tax) Act 1999</i> (Cth).
<b>Industry Best Practice</b>	means the standards (including any relevant Australian Standard), practices, methods and procedures generally followed or approved by relevant industries and consultants in Australia with respect to the Functions and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced professional engaged in similar work or services.
<b>Insolvency Event</b>	means, for the Accredited Entity or Registered Certifier, any of the following events: <ul style="list-style-type: none"> <li>(a) the party informs Unitywater or any third party in writing or creditors generally that the party is insolvent or it is financially unable to proceed with, or comply with, the Accreditation Deed or the Registration Deed Poll;</li> <li>(b) execution is levied against the party by a creditor;</li> <li>(c) the party, being an individual person, or a partnership including an individual person, and that person: <ul style="list-style-type: none"> <li>(i) commits an act of bankruptcy;</li> <li>(ii) has a bankruptcy petition presented against it;</li> <li>(iii) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the official receiver; or</li> <li>(iv) is made bankrupt;</li> </ul> </li> <li>(d) under Part IX of <i>the Bankruptcy Act 1966</i> (Cth) makes a written proposal for a debt agreement, and the proposal becomes a debt agreement or makes a proposal for a deed of assignment, deed of arrangement or a composition;</li> <li>(e) under Part X of the <i>Bankruptcy Act 1966</i> (Cth) has a deed of assignment or deed of arrangement</li> </ul>

<b>Term</b>	<b>Definition</b>
	made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made;
	(f) the party is a corporation and: <ul style="list-style-type: none"> <li>(i) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;</li> <li>(ii) the party enters a deed of company arrangement with creditors;</li> <li>(iii) a controller or administrator is appointed; or</li> <li>(iv) a meeting of creditors is called with a view to, entering a scheme of arrangement or composition with creditors or appointing a controller or administrator to the party;</li> </ul>
	(g) a receiver of the property or part of the property of the party is appointed;
	(h) the party takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the party's business for the benefit of the creditors or any of them;
	(i) trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
	(j) a winding up order is made;
	(k) execution is levied by creditors, debenture holders or trustees or under a floating charge; or
	(l) any event analogous to any of the above events occurs.
<b>Intellectual Property Rights</b>	means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.
<b>Legislation or Legislative Requirements</b>	includes:



<b>Term</b>	<b>Definition</b>
	<ul style="list-style-type: none"> <li>(a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State applicable to the Functions;</li> <li>(b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Functions;</li> <li>(c) Australian Standards and any other relevant standards; and</li> <li>(d) fees and charges in connect with the foregoing (including any of the same charged by Unitywater).</li> </ul>
<b>List of Registered Certifiers</b>	means the list of Registered Certifiers, in Schedule 2, as updated from time to time in accordance with this Accreditation Deed.
<b>Manual</b>	means the Unitywater Accreditation and Certification Manual, as amended from time to time by Unitywater, by written notice to the Accredited Entity.
<b>Moral Rights</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the right of integrity of authorship;</li> <li>(b) the right of attribution of authorship; and</li> <li>(c) the right not to have authorship falsely attributed,</li> </ul> <p>including those rights as conferred by the <i>Copyright Act 1968</i> (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of this Accreditation Deed.</p>
<b>Particulars</b>	means Schedule 1.
<b>Personnel</b>	<p>means any officer, employee, consultant, agent, contractor or subcontractor of a party, but:</p> <ul style="list-style-type: none"> <li>(a) Unitywater's Personnel does not include the Accredited Entity or the Accredited Entity's Personnel; and</li> <li>(b) the Accredited Entity's Personnel includes its nominated Registered Certifiers, but does not include Unitywater or Unitywater's Personnel.</li> </ul>
<b>Personal Property</b>	has the meaning given to it in the PPSA.
<b>Policies and Plans</b>	means any policy or plan of Unitywater referred to in the Manual, including the Connections Policy.
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth).
<b>Quality Assurance System</b>	means the Accredited Entity's system which establishes the qualities and performance of the Functions including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Functions and audit and other critical issues relating to quality assurance,

<b>Term</b>	<b>Definition</b>
	and which must comply with and be third party accredited quality assurance systems, which unless otherwise agreed by Unitywater should be compliant with AS/NZS ISO 9001 – 2000 (project management works) and AS4801 (safety) that can be utilised by Registered Certifiers.
<b>Registered Certifier</b>	has the meaning given in the Manual.
<b>Registration Deed Poll</b>	has the meaning given in the Manual, the template form of which is attached in Schedule 4.
<b>Related Entity</b>	has the meaning given in the <i>Corporations Act 2001</i> (Cth).
<b>RTI Act</b>	means the <i>Right to Information Act 2009</i> (Qld).
<b>Security Interest</b>	has the meaning given to it in the PPSA.
<b>Term</b>	means the period from the Commencement Date to the Completion Date.
<b>Unitywater’s Representative</b>	means the person named in the Particulars or the person or persons nominated by Unitywater in writing to the Accredited Entity from time to time under clause 12.1.
<b>Unitywater Supplied Information</b>	means any information supplied or made available to the Accredited Entity by or on behalf of Unitywater, whether before, on, or after the Commencement Date, but excludes: <ul style="list-style-type: none"> <li>(a) documents forming part of this Accreditation Deed; and</li> <li>(b) subject to clause 31, the Manual.</li> </ul>
<b>Verification Statement</b>	has the meaning given to it in the PPSA.
<b>Wilful Misconduct</b>	means: <ul style="list-style-type: none"> <li>(a) any deliberate or intentional breach of the Accreditation Deed, or</li> <li>(b) any other act or omission of any person done or omitted to be done after having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from the act or omission, excluding acts or omissions done by the Accredited Entity in good faith.</li> </ul>

## **1.2 Interpretation**

In the Accreditation Deed, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) headings are, in the interpretation of this Accreditation Deed, to be disregarded;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Accreditation Deed and references to this Accreditation Deed include any schedules or annexures;

- (e) a reference to a party to this Accreditation Deed or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or agreement (including a reference to this Accreditation Deed) is to that document or agreement as amended, supplemented, varied or replaced;
- (h) a reference to this Accreditation Deed includes the agreement recorded by this Accreditation Deed;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) if any day on or by which a person must do something under this Accreditation Deed is not a Business Day, then the person must do it on or by the next Business Day;
- (k) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (l) a reference to 'month' means calendar month;
- (m) wherever the words 'include', 'included' or 'including' are used in this Accreditation Deed, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative;
- (n) no provision of this Accreditation Deed is to be construed against the interests of Unitywater because Unitywater prepared or relies on this Accreditation Deed; and
- (o) with respect to indemnities:
  - (i) each indemnity in the Accreditation Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Accreditation Deed;
  - (ii) it is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity under the Accreditation Deed; and
  - (iii) a party must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in this Accreditation Deed.

## **2 Accreditation Deed**

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### **2.1 Documents comprising this Accreditation Deed**

This Accreditation Deed comprises of the following documents:

- (a) Schedule 1 - Particulars;
- (b) these terms and conditions;
- (c) Schedule 2 – List of Registered Certifiers (as updated from time to time in accordance with this Accreditation Deed); and

- (d) any other Schedules of this Accreditation Deed.

## **2.2 Resolving ambiguities**

- (a) Any discrepancy, inconsistency or ambiguity between the documents comprising this Accreditation Deed, will be resolved according to the descending order of precedence set out in clause 2.1, with the first listed document having the highest precedence.
- (b) To the extent the order of precedence in clause 2.1 cannot resolve the discrepancy, inconsistency or ambiguity, then the Accredited Entity must comply with highest quality or standard or perform the more onerous obligation under the Accreditation Deed.
- (c) If clause 2.2(a) or clause 2.2(b) cannot resolve the discrepancy, inconsistency or ambiguity, and a party has notified the other of a discrepancy, inconsistency or ambiguity, then:
  - (i) Unitywater will direct the interpretation to be followed;
  - (ii) the Accredited Entity will comply with any such direction; and
  - (iii) the Accredited Entity will have no entitlement to make any Claim against Unitywater arising from or in connection with the direction or resolution of the discrepancy, inconsistency or ambiguity provided for in that direction.

## **3 Term**

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### **3.1 The Term**

- (a) The Accredited Entity is only permitted to undertake the Functions during the Term, and subject to it not being suspended under clause 19 of this Accreditation Deed.
- (b) The Accredited Entity must not perform the Functions, or hold itself out as being able to perform the Functions, during any period of suspension under clause 19 of this Accreditation Deed or, subject to any new accreditation deed executed under clause 3.2, at any time after the expiration of the Term.

### **3.2 Extension of Term**

- (a) Prior to expiration of the Term, Unitywater may review the performance of the Accredited Entity (including any of its Registered Certifiers) in order to decide whether or not to take action under clause 3.2(c).
- (b) The Accredited Entity (including any of its Registered Certifiers) must provide Unitywater with any assistance required for the review contemplated under clause 3.2(a), including any information requested in connection with financial capacity, insurances and resources. Without limitation, Unitywater may also take into account results of Auditing in its review under clause 3.2(a).
- (c) Unitywater may, in its sole and unfettered discretion, offer a new accreditation deed to the Accredited Entity prior to, or after, the expiry of the Term of this Accreditation Deed.

## **4 Manual & Process**

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### **4.1 Accredited Entity to undertake Functions**

Subject to the Accredited Entity not being suspended under clause 19 of this Accreditation Deed, during the Term:

- (a) Unitywater will allow and permit the Accredited Entity to perform the Functions; and
- (b) the Accredited Entity must perform all Functions in accordance with this Accreditation Deed and the Manual.

### **4.2 The Manual**

Without limiting any other provisions of this Accreditation Deed, the Accredited Entity must:

- (a) comply with all requirements in the Manual applicable to an Accredited Entity (as such Manual is current at the time of performance of the Functions, including the time of submitting any Deliverables); and
- (b) must ensure any of its nominated Registered Certifiers comply with all requirements in the Manual which are applicable to a Registered Certifier (as such Manual is current at the time of performance of the Functions, including the time of submitting any Deliverables).

### **4.3 The Process**

- (a) An Applicant may prepare connection applications and other applications, or have such applications developed on its behalf by another person, in order to progress a development (**Application**).
- (b) Subject to clause 37:
  - (i) an Applicant may submit an Application to the Accredited Entity for assessment;
  - (ii) the Accredited Entity may accept the Application and, if accepted the Accredited Entity, will then assess the Application; and
  - (iii) in accepting the Application, the parties acknowledge that the Accredited Entity may only be entitled to remuneration from the Applicant.
- (c) If the Applicant submits an Application to the Accredited Entity that would, if accepted by the Accredited Entity, cause or may cause a Conflict of Interest, the Accredited Entity must:
  - (i) give notice to Unitywater, including details of the risk of a Conflict of Interest; and
  - (ii) refuse to assess the Application.

This provision does not restrict or limit any right of the Accredited Entity to otherwise refuse an Application.
- (d) In accepting an Application, and assessing that Application:
  - (i) the Accredited Entity is responsible for the Functions (including the Deliverables) to Unitywater; and

- (ii) subject to, and in accordance with, clause 5 the Accredited Entity must nominate any Registered Certifiers required to assess the Application, and ensure only the nominated Registered Certifiers undertake the assessment work in respect of that Application.
- (e) The Accredited Entity acknowledges and agrees that:
- (i) Unitywater is relying on the Accredited Entity's performance of the Functions (including the Deliverables) in the discharge of Unitywater's own statutory functions under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld) and to ensure compliance with Unitywater's own Policies and Plans is achieved, including to:
    - (A) ensure Application and developments achieve least lifecycle cost outcomes which are compliant with all Legislative Requirements, the SEQ Code and Unitywater's Network Master Plan; and
    - (B) satisfy the Prudency Efficiency Test;
  - (ii) without limiting the preceding paragraph, Unitywater:
    - (A) will prepare, sign and issue decision notices, infrastructure charge notices, provisional Certificates of Completion or Certificates of Completion (**Unitywater Certifications**) having regard to, and in reliance upon, the Functions (including the Deliverables); and
    - (B) will be relying on the Functions and Deliverables, and the Accredited Entity will remain liable to Unitywater for at least seven years following a Unitywater Certification which incorporates, or was prepared signed or issued having regard to the Functions and Deliverables provided, despite Unitywater despite Unitywater having prepared, signed or issued the Unitywater Certification.

#### **4.4 Duty to Unitywater**

- (a) Accredited Entities must (and must ensure their Registered Certifiers), in addition to any obligations under this Accreditation Deed:
  - (i) always act first and foremost, and with utmost good faith, in the interests of Unitywater in performing the Functions;
  - (ii) regularly monitor the Applicant's compliance with the applicable Legislative Requirements, Policies and Plans, Unitywater Certifications or other standards, connection approvals or any other agreements to which the Applicant and Unitywater may be a party (including water infrastructure agreements) and promptly notify Unitywater of any issue with performance, including any failure to perform, of the Applicant; and
  - (iii) do not take direction on its Functions (including the Deliverables), and any related decisions, from any Applicant or allow themselves to be placed in a position where they have or may have a Conflict of Interest between their obligations to Unitywater and their obligations to any other person.

## 5 Registered Certifiers

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### 5.1 Role of the Registered Certifiers

The Accredited Entity must:

- (a) subject to clauses 5.2 or 5.3, only nominate Registered Certifiers on the List of Registered Certifiers (including any updated list Approved under this clause 5.1) who:
  - (i) have executed the Deed Poll and provided this to Unitywater; and
  - (ii) are qualified for the role required, including ensuring persons so nominated are appropriate, having regard to the different roles of Registered Certifiers, under the Manual, being:
    - (A) Minor Connections Certifiers;
    - (B) Major Connections Certifiers; and
    - (C) Construction Certifiers;
- (b) ensure that only a qualified and nominated Registered Certifier:
  - (i) on the List of Registered Certifiers Approved by Unitywater; and
  - (ii) who has not been suspended or terminated (whether under this Accreditation Deed or otherwise),  
  
actually performs the assessments or any other similar Functions on behalf of the Accredited Entity;
- (c) promptly give notice to Unitywater, and provide an updated List of Registered Certifiers for Approval by Unitywater, should:
  - (i) any Registered Certifiers leave the Accredited Entity's employment, become subject to an Insolvency Event or otherwise cease to be a Registered Certifier for the Accredited Entity; or
  - (ii) a Registered Certifier be suspended or terminated by Unitywater;
- (d) should it wish to add a Registered Certifier to the List of Registered Certifiers, obtain Unitywater's prior written Approval to such additional Registered Certifier;
- (e) ensure that each of the nominated Registered Certifiers is available at the times set out in this Accreditation Deed or the Manual, or as otherwise required by Unitywater with respect to their relevant nominations; and
- (f) ensure that the Registered Certifiers properly perform their roles and responsibilities in accordance with this Accreditation Deed and the Manual.

If Unitywater Approves a change to the List of Registered Certifiers under this clause, the changed list as Approved, replaces the old list for the purposes of this Accreditation Deed (including any future nominations of Registered Certifiers).

## **5.2 No Conflict of Interest in nomination or engagement of a Registered Certifier**

Without limiting clause 37, the Accredited Entity must:

- (a) immediately disclose to Unitywater if it becomes aware, or suspects the nomination, or continued engagement, of any Registered Certifier may create a Conflict of Interest; and
- (b) after disclosure in accordance with the previous paragraph:
  - (i) provide any additional information reasonably required by Unitywater; and
  - (ii) ensure the Registered Certifier is not further nominated, or engaged in undertaking the Functions, until such time as Unitywater has reviewed the disclosure, and in its sole and unfettered discretion, Approved the Registered Certifier to be so nominated or so engaged.

In granting any Approval under clause 5.2(b)(ii), Unitywater may impose any conditions it believes are appropriate, and the Accredited Entity must ensure any such conditions are complied with, including by the Registered Certifier.

## **5.3 Suspension or termination of a Registered Certifier**

- (a) If any Registered Certifier is suspended or terminated by Unitywater, the Accredited Entity must not nominate them for any further Functions, and if they are presently nominated, the Accredited Entity must cease their engagement, and promptly find a replacement for the Registered Certifier, such replacement also being required to be nominated in accordance with this Accreditation Deed, including clause 5.1.
- (b) The Accredited Entity must ensure that the Registered Certifier has no involvement with any of the Functions for any period that the Registered Certifier is suspended or at all if the Registered Certifier is terminated.
- (c) In the event of a replacement being required under clause 5.3(a), the Accredited Entity must notify Unitywater of the replacement Registered Certifier, as soon as practicable, for Approval by Unitywater.

## **5.4 Change of nominated Registered Certifier**

- (a) If the Accredited Entity wishes to change a nominated Registered Certifier, it must provide Unitywater with:
  - (i) the reasons the Registered Certifier is to be replaced; and
  - (ii) the details of the proposed replacement for the Registered Certifier, such replacement also being required to be nominated in accordance with this Accreditation Deed, including clause 5.1.
- (b) The Accredited Entity must not change the nominated Registered Certifier without Unitywater's prior written Approval (such Approval will not be unreasonably withheld).
- (c) If Unitywater gives its Approval under clause 5.4(b), the Accredited Entity is permitted to nominate the replacement Registered Certifier it has proposed, and must update the List of Registered Certifiers as soon as practicable.



## **6 Acknowledgments of Accredited Entity**

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The Accredited Entity represents, acknowledges and agrees, for the benefit of Unitywater, that:

- (a) prior to entering into this Accreditation Deed, it has carefully reviewed and understands the requirements of this Accreditation Deed and the Manual, including all of the Functions;
- (b) it has made its own investigation and assessment of the Functions, and risks involved in providing the Functions, and it has reviewed and satisfied itself about the information that Unitywater has made available to it about the Functions and this Accreditation Deed and has not relied upon any Unitywater Supplied Information in entering into this Accreditation Deed;
- (c) it holds and will maintain all licences, accreditations, certificates or registrations the Accredited Entity or its Personnel are required to possess by any relevant Legislative Requirements in order to perform the Functions, including as set out in the Manual;
- (d) it understands the scope of the Functions includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by the description of the Functions;
- (e) it will not be entitled to any remuneration or other Claim against Unitywater for performance of the Functions; and
- (f) it understands Unitywater has established similar arrangements to this Accreditation Deed with other parties and that:
  - (i) the Accredited Entity or any of the Registered Certifiers are not granted any exclusivity to perform any of the Functions; and
  - (ii) Unitywater may require other Personnel to perform one or more Functions for any Application.

## **7 Role of the Accredited Entity**

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### **7.1 Obligations of the Accredited Entity**

The Accredited Entity must (and must ensure its Personnel):

- (a) ensure all Functions (including the Deliverables) are undertaken:
  - (i) with due care and skill and to the best of its knowledge and expertise;
  - (ii) in a thorough and professional manner in accordance with Industry Best Practice;
  - (iii) in accordance with:
    - (A) all Legislative Requirements including all applicable safety, health and environmental laws and regulations;
    - (B) the Manual, including all Policies and Plans;
- (b) comply with all lawful directions and orders given by Unitywater; and

- (c) ensure all Deliverables are provided promptly when required by the Accreditation Deed, the Manual or otherwise by Unitywater.

## **7.2 Accredited Entity warranty**

The Accredited Entity warrants and undertakes that:

- (a) the Functions (including the Deliverables) will:
  - (i) match the description of the Functions (including the Deliverables) as set out in this Manual; and
  - (ii) be fit for the purpose or purposes:
    - (A) described in this Accreditation Deed or the Manual;
    - (B) informed to the Accredited Entity by Unitywater; and
    - (C) for which these types of Functions (including the Deliverables) are commonly provided;
- (b) the Functions (including the Deliverables) will be provided by appropriately qualified and trained Personnel; and
- (c) in performing the Functions, it will:
  - (i) avoid unnecessary interference with property or persons;
  - (ii) prevent nuisance and unreasonable noise and disturbance; and
  - (iii) not cause any loss, damage or destruction to any property (including Unitywater's property) or injury, death or harm to any person (including Unitywater's Personnel).

## **7.3 Fees**

- (a) Accredited Entities may set or negotiate their own fees for the services provided to Applicants in connection with the Functions. Fees charged by Accredited Entities to Applicants for services must be in accordance with any applicable Legislative Requirements and otherwise will not be set or Approved by Unitywater under this Accreditation Deed.
- (b) Without limitation to any right under Legislation, this Accreditation Deed or otherwise, the Accredited Entity acknowledges and agrees:
  - (i) Unitywater may charge Accredited Entities a fee for the submission of particular Deliverables (including certification packages) and to issue provisional Certificates of Completion and Certificates of Completion;
  - (ii) the value of the fees is set by Unitywater, in its sole and unfettered discretion, and will be published by Unitywater; and
  - (iii) the Accredited Entity will have no Claim in connection with any adjustment to the fees.
- (c) For clarity, nothing in this Accreditation Deed affects the rights and obligations of the Accredited Entity under any agreement with the Applicant.

#### **7.4 Supply of items**

Any items (including software or electronic storage devices) which the Accredited Entity uses or supplies to Unitywater in connection with the Functions must:

- (a) be of merchantable quality and fit for purpose; and
- (b) comply with any applicable standards specified in the Manual.

#### **7.5 Modern Slavery**

In performing its obligations under this Accreditation Deed, the Accredited Entity is to take reasonable steps to ensure that there is no modern slavery or human trafficking in the Accredited Entity's supply chains or in any part of its business. The Accredited Entity shall notify Unitywater as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Accreditation Deed. The Accredited Entity represents, warrants and undertakes that it conducts its business in a manner that is consistent with the principles of the *Modern Slavery Act 2018 (Cth)*. Unitywater may terminate this Accreditation Deed with immediate effect by giving written notice to the Accredited Entity if the Accredited Entity commits a breach of this clause.

### **8 Inspection and information**

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#### **8.1 Unitywater to be kept fully informed**

The Accredited Entity must keep Unitywater fully informed of all aspects of the performance of the Functions.

#### **8.2 Provision of information**

Without limiting the scope of clause 8.1, the Accredited Entity must provide to Unitywater, as requested from time to time by Unitywater, copies of all plans, designs, drawings, specifications, reports, data and other information relating to the Functions to a standard which at all times meets the reasonable satisfaction of Unitywater and accords with Industry Best Practice.

#### **8.3 Inspection and review**

At all reasonable times, Unitywater and its nominee will have the right to access, inspect and review performance of the Functions at any site or premises at which the Functions are being performed or will be performed (including the Accredited Entity's premises and at the premises of any of the Accredited Entity's Personnel).

### **9 Deliverables**

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#### **9.1 Development and submission of Deliverables**

The Accredited Entity must ensure all Deliverables (including as prepared by a Registered Certifier) are produced, updated and delivered to Unitywater in accordance with this Accreditation Deed and the Manual.

#### **9.2 Review, Approval or non-approval of Deliverables**

Unitywater may:

- (a) review; and
- (b) Approve or reject;

each Deliverable in accordance with this clause 9.

### **9.3 Deliverable Review**

- (a) Without obligation to do so, Unitywater may provide the Accredited Entity (including the Registered Certifier) with such comment, information or advice as it determines should be provided.
- (b) Any comment, information or advice provided:
  - (i) while intended to be of assistance to the Accredited Entity (including the Registered Certifier) is not to be relied upon by the Accredited Entity;
  - (ii) must not be taken as Approval that the Functions (including the Deliverables) are in accordance with this Accreditation Deed; and
  - (iii) will not waive any provisions of, or release the Accredited Entity from, any provisions of this Accreditation Deed.

### **9.4 Deliverable Approval**

- (a) Unitywater must use reasonable endeavours to, within the time stated in the Manual (or if there is no time stated, within the Manual, a reasonable time) of its receipt of a Deliverable which requires its Approval for use, notify the Accredited Entity in writing whether the Deliverable is either Approved or rejected.
- (b) If Unitywater provides the Accredited Entity with notice of rejection of any Deliverable, then Unitywater may inform the Accredited Entity of the reasons for rejection and may provide details of any corrective action to be taken by the Accredited Entity before the Deliverable will be reconsidered for Approval or rejection. The Accredited Entity must, within 5 Business Days (or such duration as required by Unitywater), deliver the rectified Deliverable for Approval or rejection.
- (c) If the Accredited Entity submits the rectified Deliverable as conforming to the requirements of the Accreditation Deed and Manual, Unitywater will be entitled to exercise the rights provided by this clause 9.4 as if the Deliverable had been submitted by the Accredited Entity for the first time.
- (d) Without limiting any other provision of this Accreditation Deed, if Unitywater provides the Accredited Entity with notice of Approval, then the Deliverable will have effect in accordance with that Approval as set out in clause 10.

### **9.5 Deliverable updates**

- (a) The Accredited Entity must maintain with accuracy, completeness and currency all Deliverables provided under the Accreditation Deed, in accordance with the requirements of the Manual.
- (b) If, under clause 9.5(a), changes to any Deliverable become necessary, the Accredited Entity must within 5 Business Days (or such duration as required by Unitywater), submit a proposed amendment to the Deliverable to Unitywater.

- (c) A proposed amendment to any Deliverable will be subject to the same review and Approval process as described in this clause 9 to the extent of the effect of the proposed amendment.
- (d) Until a proposed amendment to an Approved Deliverable is subsequently Approved under clause 9, the original Approved Deliverable will remain in effect.

## **9.6 Security of Critical Infrastructure**

If as part of providing the Deliverables under this Accreditation Deed, the Accredited Entity requires or is given access to the premises and/or property of Unitywater, and such premises or property is considered by Unitywater to be 'critical infrastructure asset' (as that term is defined in the Security of *Critical Infrastructure Act 2018 (Cth)*), then Unitywater may in its sole and absolute discretion, require the Accredited Entity to:

- (a) Notify Unitywater in writing of any ownership interest (direct or indirect) in the Accredited Entity held by any person or entity residing outside of Australia ('Foreign Ownership Interest');
- (b) Notify Unitywater in writing of any change in any Foreign Ownership Interest;
- (c) Notify Unitywater in writing of any change in the executive management, ownership (direct or indirect) or control of the Accredited Entity;
- (d) Undertake such background security checks (as are reasonably required by Unitywater) on the Accredited Entity's Personnel who have access to Unitywater's critical infrastructure assets.

# **10 Approvals**

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## **10.1 General**

Any Approval of Unitywater (whether in respect of a Deliverable or otherwise):

- (a) must be construed as no more than an indication from Unitywater that the Accredited Entity may continue to perform the Functions at that time (including with respect to the use of any Deliverables), and not a confirmation that the Functions (including the Deliverables) comply with the requirements of this Accreditation Deed or are suitable for use;
- (b) must not be construed as limiting the Accredited Entity's responsibility to provide the Functions (including the Deliverables) in accordance with the requirements of the Accreditation Deed;
- (c) must not be construed as a waiver of any right under the Accreditation Deed or any Claim arising out of any act or omission of the Accredited Entity or the Accredited Entity's Personnel, including for non-compliance of that Deliverable with the Accreditation Deed; and
- (d) does not limit or affect any representation, warranty, undertaking, liability, obligation or other promise of the Accredited Entity under this Accreditation Deed or otherwise at law.

## **10.2 Discretions**

Except to the extent expressly provided by this Accreditation Deed, the Accredited Entity acknowledges and agrees that:

- (a) Unitywater or Unitywater Representative may exercise its discretions and rights under this Accreditation Deed in whatever way Unitywater or Unitywater Representative decides in their sole and unfettered discretion, in Unitywater's interests only and without being under any obligation to do so; and
- (b) Unitywater or Unitywater Representative may grant, refuse or grant subject to conditions any Approval required from Unitywater or Unitywater Representative in their sole and unfettered discretion.

## **11 Unitywater Supplied Information**

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The Accredited Entity agrees that:

- (a) unless Unitywater expressly directs the Accredited Entity otherwise in writing, any Unitywater Supplied Information:
  - (i) has been or will be provided only for the Accredited Entity's convenience; and
  - (ii) has not been and will not be relied upon by the Accredited Entity for any purpose (including entering into this Accreditation Deed or performing its obligations under this Accreditation Deed, including those provided for in the Manual);
- (b) Unitywater does not:
  - (i) assume any responsibility or duty of care in respect of; or
  - (ii) warrant, guarantee or make any representation as to,  
  
the Unitywater Supplied Information (including its accuracy, completeness or adequacy for any purpose); and
- (c) Unitywater will not be liable to the Accredited Entity for any Claim arising from or in connection with the Unitywater Supplied Information (including any inaccuracy, incompleteness or inadequacy for any purpose), the provision of the Unitywater Supplied Information or the non-provision of any other information by Unitywater.

## **12 Representatives**

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### **12.1 Appointment of Representative**

- (a) Unitywater will appoint the Unitywater Representative.
- (b) The Unitywater Representative has authority to exercise Unitywater's powers, discretions and authorities under this Accreditation Deed.
- (c) Unitywater may appoint more than one person to exercise a particular power, discretion or authority.
- (d) The Accredited Entity must comply with any directions of the Unitywater Representative.

### **12.2 Accredited Entity's Representative**

The Accredited Entity must at all times ensure there is an Accredited Entity's Representative who must:

- (a) have the power to:
  - (i) receive directions from Unitywater in respect of this Accreditation Deed and the Functions on behalf of the Accredited Entity; and
  - (ii) bind the Accredited Entity in respect of all matters which arise or may arise in relation to this Accreditation Deed and the performance of the Functions;
- (b) be suitably qualified and experienced; and
- (c) be in a position to promptly attend meetings upon any reasonable request by Unitywater.

A matter within the knowledge of the Accredited Entity's Representative is deemed to be a matter within the knowledge of the Accredited Entity.

### **12.3 Notifications of changes**

- (a) Each party must advise the other in writing of any change in the identity of the person appointed to represent them under this clause.
- (b) If Unitywater Representative makes a reasonable objection to the appointment of the Accredited Entity's Representative, the Accredited Entity must terminate the appointment and appoint another representative.

## **13 Relationship**

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### **13.1 Principal and independent contractor**

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership or joint venture.

### **13.2 No contractual relationship**

No contractual relations will arise between any of the Accredited Entity's Personnel and Unitywater as a result of the Accredited Entity's and Unitywater's relationship.

### **13.3 No right or authority**

The Accredited Entity does not have the right or authority to act on behalf of or bind Unitywater except the authority to:

- (a) receive the Applications from an Applicant; and
- (b) process the Applications in accordance with the Manual (subject to Unitywater's Approval),

in accordance with, and subject to, this Accreditation Deed.

### **13.4 No entitlements**

- (a) Neither the Accredited Entity nor its Personnel are entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from Unitywater.
- (b) The Accredited Entity acknowledges and agrees that:

- (i) the Accredited Entity is solely responsible for providing its Personnel with these entitlements;
- (ii) neither the Accredited Entity nor its Personnel are employees of Unitywater; and
- (iii) the Accredited Entity must indemnify Unitywater for any Claims for such entitlements from the Accredited Entity or any of its Personnel.

### **13.5 No responsibility**

The Accredited Entity is responsible for making appropriate tax deductions and payments and superannuation contributions in respect of any payments or benefits provided to any of its Personnel.

## **14 Meetings and reporting**

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### **14.1 Application Meetings**

Unitywater and the Accredited Entity, including the nominated Registered Certifiers, must meet as required by Unitywater to discuss:

- (a) the timing, quality, performance and progress of the Functions in relation to an Application; and
- (b) any other matters which Unitywater may wish to raise at a meeting concerning the Functions, this Accreditation Deed or the Manual.

### **14.2 Progress reports**

- (a) The Accredited Entity must, if requested by Unitywater, promptly provide Unitywater with progress reports as to the provision of the Functions (including Deliverables) in such detail as allows Unitywater to ascertain and make its own plans in respect of the Functions.
- (b) A progress report may be requested to be provided, prior to any meeting requested under clause 14.1, or otherwise at other intervals reasonably requested by Unitywater.

### **14.3 Conferences, trainings or other meetings**

The Accredited Entity must attend any conferences, trainings or other meetings which are contemplated by the Manual or which Unitywater otherwise requires the Accredited Entity to attend, in connection with the Functions, which may include conferences, trainings or other meetings:

- (a) with such other accredited entities and registered certifiers;
- (b) with any Government Agency;
- (c) to deal with reviews, quality systems, audits and any other specific matters; and/or
- (d) any combination of the things listed above.

If required by Unitywater, the Accredited Entity must ensure that all Registered Certifiers on the List of Registered Certifiers attend the conferences, trainings or other meetings under this clause.



#### **14.4 Approval for attendance with other Government Agency**

- (a) Unless otherwise agreed in writing by Unitywater, the Accredited Entity must not attend meetings with any other Government Agency, or seek any direction, comment, approval or other indications from any Government Agency with respect to the Functions (including the Deliverables).
- (b) If agreement is given by Unitywater for the Accredited Entity to meet with another Government Agency with respect to the Functions:
  - (i) Unitywater may have a representative present at the meeting; and
  - (ii) whether or not Unitywater's representative elects to attend the meeting, the Accredited Entity must, if requested by Unitywater, promptly provide Unitywater with reports of such meetings and copies of any relevant correspondence and minutes of the meeting.

### **15 Records**

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#### **15.1 Accredited Entity to keep records**

The Accredited Entity must make and keep accurate records of the Functions (including all Deliverables), including all documents, calculations, workings, records as to progress of the Functions, diary records of tasks, results of the examination and testing of any Functions or materials, quality assurance records and reports, time records, any consultant's other reports and opinions provided to Unitywater or referred to by the Accredited Entity and all necessary supporting records whether in writing or stored on any other medium.

#### **15.2 Inspection**

- (a) Unitywater and its nominee may have access to, inspect and copy at any time any information referred to under clause 15.1.
- (b) In the case of any record stored on a medium other than in writing, the Accredited Entity must promptly make available upon request such facilities as may be necessary to enable a legible reproduction to be provided to Unitywater or its nominee.
- (c) The Accredited Entity is not entitled to refuse access to, inspection of or copying of any record on any basis whatsoever other than legal professional privilege.
- (d) Information referred to under clause 15.1 must not be destroyed:
  - (i) without the prior written Approval of Unitywater; or
  - (ii) the expiration of 7 years from the Completion Date.

### **16 Resources, tools and equipment**

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The Accredited Entity must have, and ensure it provides to its Personnel, all tools, equipment, plant and resources (including access to legal advice), at its own cost and expense, including as such resources are reasonably required by Unitywater, in order to ensure Unitywater is satisfied the Accredited Entity and its Personnel are able to properly and diligently performance their Functions in accordance with this Accreditation Deed and the Manual.

## **17 Quality Assurance**

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### **17.1 Development of system**

The Accredited Entity must develop, and implement, the Quality Assurance System for the Functions and submit a detailed report to Unitywater at any time required by Unitywater (including any time required by the Manual) in relation to the Quality Assurance System.

### **17.2 Quality Assurance System**

The Accredited Entity must:

- (a) implement and carry out the Functions in accordance with the Quality Assurance System, including ensuring its Personnel comply with the Quality Assurance System; and
- (b) allow Unitywater or its nominee access to the Accredited Entity's Quality Assurance System at all reasonable times for the purposes of quality monitoring, Auditing and review.

### **17.3 Purpose of Quality Assurance**

The Accredited Entity's implementation of, or compliance with, the Quality Assurance System does not relieve the Accredited Entity of its representations, warranties, undertakings, obligations or other promises under this Accreditation Deed.

## **18 Non-compliant Functions**

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### **18.1 Rectification of non-compliant Functions**

If Unitywater is not satisfied that the Functions (including Deliverables) comply in all respects with the requirements of this Accreditation Deed, Unitywater may, at its option:

- (a) require the Accredited Entity to, within a reasonable time, take such steps as are necessary to ensure that the Functions (including the Deliverables) comply with this Accreditation Deed and the Accredited Entity agrees that it will have no Claim against Unitywater for any work done to rectify the non-compliance; or
- (b) either itself or by others, rectify the Functions (including Deliverables) which do not comply with this Accreditation Deed and the Accredited Entity agrees to reimburse Unitywater, as a debt due and payable, for any costs, losses, expenses or damages Unitywater incurs in rectifying any Functions which do not comply with this Accreditation Deed.

### **18.2 Accredited Entity's obligations not effected**

Unitywater's rights under clause 18 do not in any way change or affect the Accredited Entity's representations, warranties, undertakings, obligations or other promises under this Accreditation Deed or affect Unitywater's rights to:

- (a) Claim against the Accredited Entity; or
- (b) exercise any other rights under this Accreditation Deed, including under clauses 19 or 28.

## **19 Suspension**

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### **19.1 Unitywater's right to suspend the Functions**

Unitywater may, in its sole and unfettered discretion, by notice in writing at any time to the Accredited Entity:

- (a) suspend the ability of the Accredited Entity or any Registered Certifier to continue to perform all, or any part of, the Functions:
  - (i) for its convenience and without any reason;
  - (ii) because of any act or omission of Unitywater or its Personnel;
  - (iii) because of any act or omission of the Accredited Entity or its Personnel, including breach of this Accreditation Deed or any negligent or unlawful acts or omissions;
  - (iv) for the protection or safety of any person, property or the environment; or
  - (v) to comply with an order of a court or other Government Agency; and
- (b) as soon as Unitywater becomes aware that the reason for any suspension no longer exists, give a direction lifting the suspension, or part of the suspension, and permit the Accredited Entity or Registered Certifier to recommence providing the Functions, to the extent so notified.

### **19.2 Partial suspension**

If the suspension related to only part of the Functions, the Accredited Entity or Registered Certifier may continue to perform Functions which are not suspended.

### **19.3 Obligations during suspension**

During a period of suspension, Unitywater may issue one or more notices under clause 28.5.

### **19.4 No Claim**

The Accredited Entity will have no Claim of any kind against Unitywater arising out of the exercise by Unitywater of its rights under this clause 19.

## **20 Subcontracting, Assignment & Novation**

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### **20.1 No subcontracting or dealing allowed without approval**

Subject to nominations of Registered Certifiers under clause 5, the Accredited Entity must not subcontract, assign or novate any other right, interest, benefit or obligation under this Accreditation Deed without Unitywater's prior written Approval.

### **20.2 Liability of Accredited Entity for Subcontracted Functions**

- (a) If the Accredited Entity subcontracts any of the Functions to any Personnel or otherwise obtains any Approval to engage or use any Personnel, including to any Registered Certifier under clause 5, the Accredited Entity remains fully responsible for the Functions and Deliverables and its liabilities and obligations under this Accreditation Deed.

- (b) The Accredited Entity is vicariously liable to Unitywater for acts or omissions of its Personnel as if they were acts or omissions of the Accredited Entity.
- (c) The Accredited Entity must include terms necessary to give effect to this Accreditation Deed in any subcontract (including as necessary to give effect to clause 28.5).

### **20.3 Removal of Personnel**

- (a) The Unitywater Representative may direct the Accredited Entity to suspend or terminate from the performance of any Functions, within such time as the Unitywater Representative directs, any Personnel who, in the reasonable opinion of the Unitywater Representative:
  - (i) has breached this Accreditation Deed, the Manual or the relevant Deed Poll;
  - (ii) has caused the Accredited Entity to breach this Accreditation Deed;
  - (iii) has caused Unitywater to breach any Legislative Requirements;
  - (iv) is otherwise guilty of misconduct or is incompetent or has been, or continues to be, negligent; or
  - (v) has suffered an Insolvency Event,or as otherwise provided for in the Manual.
- (b) The relevant Personnel must not thereafter be employed in connection with the Functions without the prior written Approval of the Unitywater Representative.

## **21 Directions and variations**

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### **21.1 Unitywater directions and variations**

- (a) Unitywater may issue directions and orders in relation to the Functions (including the deliverables) and the Accredited Entity must comply with such directions and orders.
- (b) Unitywater may vary the Functions, including to:
  - (i) increase, decrease or omit any requirements associated with the performance of the Functions; or
  - (ii) where the Functions include the provision of Deliverables in a certain manner, change the manner the Deliverables are to be provided.
- (c) Without limitation, this clause 21.1 applies with respect to directions, orders or variations issued with respect to the Manual.
- (d) If any variation decreases or omits any part of any Functions, Unitywater may perform or have others perform any part of such Functions.

### **21.2 No invalidation**

No direction or variation under clause 21.1 will:

- (a) invalidate this Accreditation Deed; or

- (b) entitle the Accredited Entity to any Claim.

### **21.3 Legislative and Policy Compliance**

- (a) Without limiting any other obligation of the Accredited Entity, the Accredited Entity must immediately (and in any event within 5 Business Days of receipt of a direction, order or variation and before it is complied with) advise Unitywater if it believes:

- (i) a direction or order of Unitywater under this Accreditation Deed; or
- (ii) a variation by Unitywater under this Accreditation Deed,

will result in any of the Functions (including any Deliverables) failing to comply with, or the Accredited Entity being in breach of, any Legislative Requirement or any Policies and Plans.

- (b) The Accredited Entity must also advise Unitywater of the reasons it believes there will be a non-compliance and any steps that can be taken to deal with or overcome the non-compliance.

- (c) If Unitywater agrees with the Accredited Entity (acting reasonably) that there is a non-compliance issue with the Legislative Requirement or any Policies and Plans, then Unitywater must give notice to the Accredited Entity and (in its sole and unfettered discretion) either:

- (i) withdraw the direction, order or variation; or
- (ii) issue a further direction, order or variation,

so as to deal with or overcome any non-compliance with the Legislative Requirement or any Policies and Plans (as applicable).

## **22 Insurance**

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### **22.1 Requirement**

On and from the Commencement Date, the Accredited Entity must take out, effect and maintain the policies of insurance set out in the Particulars and having at least the minimum limits of cover specified.

### **22.2 Insurances**

Except to the extent this Accreditation Deed expressly requires a longer period of insurance, all insurances required under clause 22 must continue for the duration Term.

### **22.3 Additional insurances**

The Accredited Entity may at its own cost take out and maintain any additional insurance it may desire including policies in respect of any exclusions, conditions or deductibles contained in any other policy of insurance required by this Accreditation Deed and for which the Accredited Entity may become liable.

#### **22.4 Terms and insurer acceptable to Unitywater**

- (a) The insurances required under clauses 22 must be taken out, effected and maintained on reasonably commercially available terms (including as to exclusions, deductibles and excesses), and with a reputable insurer, that is reasonably acceptable to Unitywater.
- (b) Without limiting paragraph (a), the Accredited Entity's public liability insurance policy must:
  - (i) including both the Accredited Entity and Unitywater as a separate insured and which covers Unitywater, Unitywater's Representative, the Accredited Entity and its Personnel used from time to time in relation to the performance of the Functions for their respective rights and interests and covers their liabilities to third parties;
  - (ii) must cover the Accredited Entity's liability to Unitywater and Unitywater's liability to the Accredited Entity for loss or destruction of or damage to property and the death of or harm or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance); and
  - (iii) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

#### **22.5 Copies**

With the exclusion of the policy of insurance required under clause 22.9, the Accredited Entity must provide to Unitywater copies of the policies, endorsements and certificates/schedules of insurance for all insurances it is required to take out, effect and maintain under this Accreditation at the following times:

- (a) before commencing the Functions;
- (b) upon renewal of each of those insurances; and
- (c) upon request by Unitywater.

#### **22.6 Parties to be informed**

- (a) The Accredited Entity must inform Unitywater in writing (including a completed Unitywater incident report or equivalent) of any occurrence that may give rise to a claim under an insurance policy required by clause 22 and will keep Unitywater informed of subsequent developments concerning the claim. The Accredited Entity must ensure that Personnel similarly comply with this obligation.
- (b) The Accredited Entity must immediately advise Unitywater of any cancellation or amendment of the terms of any policy required by clause 22.

#### **22.7 Liabilities and obligations**

The liabilities and obligations of the Accredited Entity under this Accreditation Deed are not limited or otherwise affected by reason of it taking out, effecting or maintaining any of the insurances referred to in this clause 22.

## **22.8 Subcontractors**

- (a) The Accredited Entity must ensure that each of its subcontractors, including any Registered Certifiers, before commencing work under any subcontract or any other agreement in connection with the Functions, is covered by, or takes out, effects and maintains policies of insurance of the types required by this Accreditation Deed, in the terms required by this Accreditation Deed and for at least the minimum limits of cover set out in the Particulars.
- (b) The Accredited Entity is required to provide evidence of such insurances held by subcontractors under this clause 22.8, if requested by Unitywater (and the Accredited Entity must satisfy Unitywater in accordance with clause 22.5 or clause 22.9(b), as applicable to the policy of insurance required).

## **22.9 Professional indemnity insurance and liability**

- (a) The Accredited Entity must take out, effect and maintain from the Commencement Date, until the expiration of the period stated in the Particulars, professional indemnity insurance:
  - (i) sufficient to cover any liabilities of the Accredited Entity which may arise out of the Functions provided pursuant to this Accreditation Deed (including all Registered Certifiers); and
  - (ii) in any event, to at least the minimum limits of cover set out in the Particulars.
- (b) As and when reasonably required by Unitywater to do so from time to time, the Accredited Entity must produce for inspection such evidence as Unitywater may reasonably require (including certificates/schedules of insurance) to satisfy itself that this clause 22.9 has been complied with by the Accredited Entity.
- (c) The Accredited Entity must immediately notify Unitywater if it ceases to maintain professional indemnity insurance in accordance with clause 22.9(a).
- (d) The Accredited Entity must not without the prior written Approval of Unitywater settle, waive, or compromise any actual or anticipated claim it may have from time to time against the insurers or underwriters of its professional indemnity insurance where such claim arises out of or is concerned with any breach or alleged breach of this Accreditation Deed by the Accredited Entity and where such settlement, waiver or compromise would prejudice the interests of Unitywater.

## **22.10 Failure to provide evidence**

If the Accredited Entity fails to produce evidence of compliance with its insurance obligations under this Accreditation Deed to the reasonable satisfaction of Unitywater (including under clause 22.8), Unitywater may, without any obligation to do so, take out, effect and maintain the insurance and pay the premiums. The amount paid will be a debt due from the Accredited Entity to Unitywater.

# **23 Indemnity**

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## **23.1 Accredited Entity to Indemnify Unitywater**

The Accredited Entity must indemnify Unitywater against any Claim suffered or incurred by Unitywater in respect of any:

- (a) loss, destruction or damage to property;
- (b) personal injury, harm or death;

- (c) infringement or alleged infringement of any Intellectual Property Right; or
- (d) breach of any Legislative Requirement,

to the extent caused or contributed to by any acts or omissions of the Accredited Entity or its Personnel, but the Accredited Entity's liability to indemnify Unitywater will be reduced proportionally to the extent that the breach of this Accreditation Deed by Unitywater or the negligent act or omission of Unitywater or its Personnel contributed to the relevant breach, loss, destruction, damage, death, harm or injury or infringement.

### **23.2 Indemnity for breach**

The Accredited Entity must indemnify Unitywater for any breach of any representation, warranty, undertaking, obligation or other promise in this Accreditation Deed but the Accredited Entity's liability to indemnify Unitywater will be reduced proportionally to the extent that the breach of this Accreditation Deed by Unitywater or the negligent act or omission of Unitywater or its Personnel contributed to the relevant breach.

### **23.3 Exclusion of liability**

- (a) Despite any other provision of this Accreditation Deed, the Parties will not be liable to the other Party, or any other person beneficially entitled under this Accreditation Deed, for any Consequential Loss (whether arising in contract, including under any indemnity, in tort, under statute, in equity or otherwise from any cause whatsoever).
- (b) As far as the law permits and unless otherwise specified in this document, Unitywater excludes all liability to the Accredited Entity (whether arising in contract, including under any indemnity, in tort, under statute, in equity or otherwise from any cause whatsoever) for any injury, loss damage, cost or expense relating to or arising from this Accreditation Deed, except to the extent that:

- (i) loss, destruction or damage to property; or
- (ii) personal injury, harm or death;

arises directly from the negligent act or omission of Unitywater or its Personnel.

## **24 Liability Cap**

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### **24.1 Accredited Entity's Liability Cap**

The Accredited Entity's liability is limited to \$5,000,000.00.

This Clause 24 does not limit or exclude the Accredited Entity's liability:

- (a) In respect of liability which:
  - (i) cannot be limited at law;



- (ii) is due to the Accredited Entity's *Wilful Misconduct*; fraud or criminal conduct;
  - (iii) arises in connection with the Accredited Entity's breach of *Legislative Requirements*; or
  - (iv) arises in connection with the Accredited Entity's abandonment of its obligations under the *Accreditation Deed*;
- (b) for loss of or damage to third party property and claims by any third party against Unitywater in respect of personal injury or death or loss of, or damage to, any other property arising out of or as a consequence of the carrying out of this *Accreditation Deed*;
  - (c) to the extent the Accredited Entity's is paid or indemnified, or is entitled to be paid or indemnified, for the liability by an insurer under an insurance policy required by this *Accreditation Deed*;
  - (d) to the extent the Accredited Entity's would have been entitled to be indemnified for that liability by an insurer under an insurance policy required by this *Accreditation Deed*, but for a failure by the Accredited Entity to effect and maintain the insurance policy as required by this *Accreditation Deed*; and
  - (e) to the extent that, the Accredited Entity is entitled to recover that liability from any other third party, or would have been entitled to recover that liability but for any act or omission of the Accredited Entity.

## **25 Confidentiality**

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### **25.1 Information to be kept confidential**

The Accredited Entity must keep confidential and will not use for its own purposes and will not without the prior written Approval of Unitywater disclose to any third party, any Confidential Information which may become known to the Accredited Entity in connection with it undertaking the Functions.

### **25.2 Permissible disclosure**

The Accredited Entity must not at any time, before, during or after completion of the Functions, use or disclose any Confidential Information for any purpose other than:

- (a) to the Accredited Entity's Personnel who:
  - (i) have a need to know, and only to the extent that each needs to know, in order for the Accredited Entity to complete the Functions; and
  - (ii) have agreed in writing to maintain the confidentiality of such Confidential Information prior to any disclosure to them of that Confidential Information taking place;
- (b) as strictly necessary to complete the Functions; or
- (c) disclosure required by Legislative Requirements, provided that the Accredited Entity first notifies Unitywater of any pending disclosure and limits the extent of the disclosure to the maximum extent lawfully possible and as otherwise reasonably directed by Unitywater,

except in accordance with Unitywater's prior written Approval.

### **25.3 Accredited Entity to keep information confidential**

If Confidential Information is disclosed in accordance with clause 25.2, the Accredited Entity must ensure that the person to whom the information is disclosed is made aware of its confidential nature and the obligations restricting its use and disclosure.

### **25.4 Consequence of wrongful disclosure**

The Accredited Entity accepts responsibility for any use or disclosure of Confidential Information contrary to this clause and will be liable for any damage, loss or expense suffered by Unitywater in connection with any such use or disclosure.

### **25.5 Survival**

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

## **26 Intellectual Property**

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### **26.1 Assignment of Intellectual Property**

- (a) The Accredited Entity vests and assigns to Unitywater all Intellectual Property Rights which may arise in respect of, or as a result of, the performance of the Functions on the date those Intellectual Property Rights arise.
- (b) The Accredited Entity must ensure that all of the Accredited Entity's Personnel assign to Unitywater all Intellectual Property Rights which may arise in respect of, or as a result of, the performance of the Functions on the date those Intellectual Property Rights arise.
- (c) Unitywater grants a revocable licence to the Accredited Entity to use the Intellectual Property Rights which are the subject of the assignment under clauses 26.1(a) and 26.1(b) solely for the performance of the Functions.

### **26.2 Disclosure of Intellectual Property Rights**

The Accredited Entity must disclose to Unitywater any Intellectual Property Right promptly after it is brought into existence.

### **26.3 Execution of documents**

The Accredited Entity must execute all documents and do all other things reasonably necessary to:

- (a) enable Unitywater or its nominee to obtain letters patent, design registration or other official protection for Unitywater's interest in each of its Intellectual Property Rights; and
- (b) vest, assign and transfer to Unitywater or its nominee the full ownership of each of its Intellectual Property Rights.

### **26.4 Survival of obligations**

The obligations of the Accredited Entity under this clause 26, continue after termination or expiration of this Accreditation Deed.

## 26.5 Moral Rights

The Accredited Entity warrants that each author of any document or material of any kind in any medium that forms part of the Functions (**Author Material**) genuinely and irrevocably consents to:

- (a) any acts or omissions of any person, including Unitywater, in connection with any Author Material, whether occurring before, on or after the Commencement Date, which might otherwise infringe the Moral Rights of the author; and
- (b) use of any Author Material without identification of the author as the author or creator of the Author Material.

## 27 PPSA

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- (a) The parties acknowledge that this Accreditation Deed may constitute a Security Interest in favour of Unitywater.
- (b) If Unitywater determines that this Accreditation Deed (or a transaction in connection with it) is or contains a Security Interest, the Accredited Entity agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Unitywater asks and considers necessary for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
  - (ii) enabling Unitywater to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
  - (iii) enabling Unitywater to exercise rights in connection with the Security Interest.
- (c) Unitywater is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- (d) The Accredited Entity must notify Unitywater as soon as the Accredited Entity becomes aware of any of the following:
  - (i) if any Personal Property which does not form part of Unitywater's Personal Property becomes an Accession to Unitywater's Personal Property and is subject to a Security Interest in favour of a third party;
  - (ii) if any of Unitywater's Personal Property is located or situated outside Australia or, upon request by Unitywater, of the present location or situation of any of Unitywater's Personal Property; or
  - (iii) if the Accredited Entity parts with possession of Unitywater's Personal Property.
- (e) The Accredited Entity must not:
  - (i) create any Security Interest or lien over any Personal Property that Unitywater has an interest in (other than Security Interests granted in favour of Unitywater);
  - (ii) sell, lease or dispose of its interest in Personal Property that Unitywater has an interest in;

- (iii) give possession of the Accredited Entity's Personal Property that Unitywater has an interest or Unitywater's Personal Property to another person except where Unitywater expressly authorises it to do so;
  - (iv) permit any of Unitywater's Personal Property to become an Accession to or Commingled with any asset that is not part of Unitywater's other Personal Property or real property; or
  - (v) change its name without first giving Unitywater 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Accredited Entity is required to do under this clause 27 is at the Accredited Entity's expense.
- (g) Neither Unitywater nor the Accredited Entity will disclose information of the kind mentioned in section 275(1) of the PPSA and the Accredited Entity will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 27 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

## **28 Termination**

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### **28.1 Termination by notice**

Unitywater may terminate this Accreditation Deed by notice in writing to the Accredited Entity:

- (a) immediately, if:
  - (i) the Accredited Entity does not carry out its obligations under this Accreditation Deed and fails to rectify the breach within 5 Business Days after being requested in writing to do so by Unitywater;
  - (ii) the Accredited Entity, or any of its Personnel:
    - (A) breach clause 5.2 or clause 37; or
    - (B) are subject to a Conflict of Interest that is material;
  - (iii) a right to terminate arises under clause 37;
  - (iv) the Manual provides for the event or circumstance of termination, and in Unitywater's reasonable opinion that event or circumstance has occurred;
  - (v) in Unitywater's reasonable opinion, the Accredited Entity has been negligent in the performance of any material obligation or Function or the non-performance of any material obligation or Function; or
  - (vi) the Accredited Entity suffers an Insolvency Event, subject to any stay against enforcement of such rights, as specified in the Corporations Act or any relevant court order;
  - (vii) the Accredited Entity is in breach of clause 22 or clause 30; or
- (b) at any time, in Unitywater's sole and unfettered discretion, without a requirement to provide reasons, upon giving 20 Business Day's prior notice.

## **28.2 Unitywater's rights not affected by termination**

Any expiration or termination of this Accreditation Deed does not affect:

- (a) any of Unitywater's rights which may have accrued before the date of expiration or termination; and
- (b) the rights and obligations of the parties under this Accreditation Deed which survive termination.

## **28.3 Unitywater's rights after termination**

Without limiting Unitywater's rights and entitlements in connection with the termination of this Accreditation Deed, if Unitywater terminates this Accreditation Deed, Unitywater:

- (a) has no liability to the Accredited Entity in connection with the supply of the Functions for any Claim; and
- (b) may engage others to supply the Functions.

## **28.4 Obligations on termination or expiration**

Promptly upon the termination or expiration of this Accreditation Deed, or upon request at any time by Unitywater, the Accredited Entity must provide Unitywater with:

- (a) the return of the Confidential Information (including all copies, except for one copy which may be required by the Accredited Entity for proper record keeping purposes);
- (b) any item in respect of which Intellectual Property Rights are held by Unitywater;
- (c) any property, including records or information belonging to Unitywater or relating to the Functions;
- (d) all Deliverables which the Accredited Entity has prepared relevant to the Functions,

which are in the Accredited Entity's possession, power or control. Provision of information (including Deliverables) under this clause must be in the form reasonably requested by Unitywater and otherwise to the reasonable satisfaction of Unitywater.

## **28.5 Transitioning**

During any period of suspension, or on expiry or termination of this Accreditation Deed, Unitywater may by notice to the Accredited Entity, require the Accredited Entity to do one or more of the following:

- (a) provide a list of all Applicants in connection with the Functions, and give a status update on the stage of the Applications;
- (b) comply with any reasonable directions of Unitywater including if directed to assist with, or to complete, any or all Deliverables or other Functions for an existing Application (in which case this Accreditation Deed shall continue to apply to that Application);
- (c) assign or novate (as directed) to Unitywater or a third party nominated by Unitywater all rights and benefits under contracts with third parties (including subcontractors, including any Registered Certifiers) in connection with the Functions;

- (d) do all things in co-operation with Unitywater and its subcontractors, including any Registered Certifiers, concerned to arrange (as reasonably directed by Unitywater) that subcontractors contracts in connection with the Functions be novated to Unitywater or a third party nominated by Unitywater; and
- (e) provide Unitywater with any information reasonably requested by Unitywater in respect of the Functions.

The Accredited Entity must comply with any and all notices issued under this clause 28.5.

### **28.6 Survival of obligations**

The obligations of the Accredited Entity under clauses 28.4 and 28.5, continue after termination or expiration of this Accreditation Deed.

## **29 Dispute resolution**

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### **29.1 Dispute resolution process**

Any dispute between the Accredited Entity and Unitywater must be:

- (a) dealt with initially:
  - (i) if the Manual provides for a mechanism of resolving or elevating that dispute, in accordance with the Manual; or
  - (ii) if the Manual does not provide for a resolving the dispute, in accordance with this clause 29,
- (b) if any process in clause 29.1(a)(i) does not resolve the dispute or clause 29.1(a)(ii) applies, then either party may give notice to the other specifying the nature of the dispute (**Notice of Dispute**).
- (c) After a Notice of Dispute, Unitywater's Representative and the Accredited Entity's Representative, must meet at least once, and must use their reasonable endeavours to resolve the dispute within 15 Business Days of the Notice of Dispute.

### **29.2 Termination of the dispute resolution process**

If the dispute is not resolved by the parties in accordance with clause 29.129.1(c), then either party may by notice in writing commence litigation.

### **29.3 Continued performance required**

Despite the existence of a dispute, the Accredited Entity must continue to perform the Functions required by this Accreditation Deed.

### **29.4 Urgent interlocutory relief**

A party may commence court proceedings relating to any dispute arising under this Accreditation Deed at any time where that party seeks urgent interlocutory relief.

### **29.5 Survival**

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

## 30 Guarantee and Indemnity

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- (a) If the Accredited Entity is a subsidiary of a corporation or has a Related Body Corporate, the Accredited Entity must, if requested by Unitywater in writing at any time, provide Unitywater within 10 Business Days of that request having been made, a guarantee and indemnity in the form attached at Schedule 3 executed by the entity nominated by Unitywater.
- (b) For the purpose of this clause 30, the term 'Related Body Corporate' has the meaning given in the *Corporations Act 2001* (Cth).

## 31 Responsibilities

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- (a) As between the parties, except as provided for in this clause 31, the Accredited Entity acknowledges and agrees it must do all things necessary to perform all of the Functions (including to produce the Deliverables), at its own cost and expense and without any assistance of any kind from Unitywater.
- (b) Where the Manual expressly provides, and only to the extent it expressly provides, that Unitywater:
  - (i) is responsible for performing a particular role, managing a particular aspect, providing a particular service, rendering assistance (including particular training, performance management or Audits), making an assessment, providing feedback, coaching, counselling, or undertaking a review;
  - (ii) will issue a response, direction, order, comment or Approval, make an appointment, establish or maintain a register or other document; or
  - (iii) issue a direction notice, provisional Certificate of Completion or Certificate of Completion,

(each a **Unitywater Responsibility**), the parties agree the Accredited Entity will not be required as part of the Functions to undertake for Unitywater that Unitywater Responsibility.

- (c) The Accredited Entity acknowledges and agrees that to the extent the Manual may be construed to, or does, contain any representation or promise, including an act that Unitywater is, or will undertake, or will refrain from undertaking (including with respect to the time frame in which Unitywater will do any thing, including perform any Unitywater Responsibility) (each a **Unitywater Representation**) than the part of the Manual containing the Unitywater Representation is to be treated as 'Unitywater Supplied Information' and clause 11 will apply to the Unitywater Representation.
- (d) In the event that the Accredited Entity becomes aware of a failure on the part of Unitywater to undertake any Unitywater Responsibility in accordance with the Manual that will:
  - (i) materially impact on the ability of the Accredited Entity to properly perform the Functions;
  - (ii) cause the Accredited Entity or Unitywater to breach the Accreditation Deed, including with respect to the Accredited Entity, its requirements in the Manual; or
  - (iii) cause a breach of any Legislation or Policies and Plans,

then the Accredited Entity must promptly, and in any event within 5 Business Days of becoming aware of the issues or issues under this under this clause 31(d), give Unitywater

notice, including full details of the relevant issue or issues under this clause 31(d) (**Warning Notice**).

- (e) Without limitation to any other rights under this Accreditation Deed (including under clause 21) or otherwise, Unitywater may take any action it considers reasonable in response to a Warning Notice.
- (f) If the Accredited Entity fails to issue a Warning Notice in accordance with this clause, then without limiting any other provision of this Accreditation Deed, Unitywater will have no liability for any Claim in connection with the matters described in clause 31(d).

## **32 No fetter**

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- (a) Unless otherwise expressly provided in the Accreditation Deed, nothing in the Accreditation Deed gives rise to any duty on the part of Unitywater to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the Accreditation Deed.
- (b) Notwithstanding anything expressly provided or implied in the Accreditation Deed to the contrary, the parties agree that:
  - (i) Unitywater is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Agency in the proper exercise and performance of any of its executive or statutory rights or duties; and
  - (ii) nothing has the effect of constraining Unitywater or placing any fetter on Unitywater's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) The Accredited Entity is not entitled to make any Claim against Unitywater relating to any exercise or not to exercise any of its executive or statutory rights or duties.
- (d) Any statement or requirement in the Accreditation Deed providing that Unitywater will act in 'good faith' or use or exercise 'reasonable endeavours' or 'act reasonably' (or not act 'unreasonably'), or similar terms, in relation to any matter or outcome, means that Unitywater:
  - (i) will take steps to deal with the relevant matter, or bring about the relevant outcome, so far as it is reasonable able to do so having regard to its resources and other responsibilities;
  - (ii) does not guarantee the relevant matter or outcome will be brought about; and
  - (iii) is under no obligation to:
    - (A) exercise a right of any Government Agency, or to influence, over-ride, interfere with or direct any other Government Agency in the proper exercise and performance of its legal, statutory or executive duties and functions;
    - (B) exercise a power or discretion in a manner that Unitywater regard as not in the public interest;
    - (C) develop or implement new policy or a change in Policies and Plans;



- (D) procure any new legislation or a change in legislation (including by-laws);  
or
- (E) otherwise act in any way that Unitywater regards as not in the public interest.

## **33 Privacy**

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### **33.1 Information Privacy Act**

- (a) The Accredited Entity is to comply with the *Information Privacy Act 2009* (Qld).
- (b) If the Accredited Entity collects or has access to Personal Information as a result of the Functions, the Accredited Entity must:
  - (i) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - (ii) not use Personal Information other than for the purposes of undertaking the Functions, unless required or authorised by law;
  - (iii) not disclose Personal Information without the Consent of Unitywater, unless required or authorised by law;
  - (iv) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform the Functions in accordance with the Accreditation Deed;
  - (v) ensure that its officers and employees do not access, use or disclose Personal Information other than to perform the Functions in accordance with the Accreditation Deed;
  - (vi) ensure that its Personnel who have access to Personal Information comply with obligations as imposed on the Accredited Entity under this clause;
  - (vii) fully cooperate with Unitywater to enable Unitywater to respond to applications for access to or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
  - (viii) comply with such other privacy and security measures as Unitywater reasonably advises the Accredited Entity in writing from time to time.
- (c) By submitting any Deliverable, the Accredited Entity warrants that it has obtained the consent of each individual whose Personal Information is included in any Deliverable for the:
  - (i) inclusion of their Personal Information in that Deliverable;
  - (ii) use of the Personal Information by Unitywater for the purposes reasonably contemplated by this Accreditation Deed; and
  - (iii) disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting Unitywater with the performance of its own functions in connection with the Accreditation Deed.

- (d) The Accredited Entity must immediately notify Unitywater on becoming aware of any breach of this clause.
- (e) This clause 33 survives the expiry or termination of the Accreditation Deed.

### **33.2 Privacy Act**

- (a) For the purposes of this clause 33:
  - (i) **'personal information'** has the meaning given to that term in the Privacy Act;
  - (ii) **'Privacy Act'** means the *Privacy Act 1988* (Cth); and
  - (iii) **'sensitive information'** has the meaning given to that term in the Privacy Act.
- (b) In relation to any personal information provided or to be provided by the Accredited Entity in connection with the Functions (whether as prior to entry into this Accreditation Deed or otherwise), the Accredited Entity warrants to Unitywater:
  - (i) the Accredited Entity has obtained and will obtain the consent of each individual about whom any sensitive information is provided; and
  - (ii) the Accredited Entity has or will within the time required by the Privacy Act ensure that each individual about whom any personal information is provided has received or will receive a written statement setting out all of the matters required by the Privacy Act, including:
    - (A) in relation to disclosure of the personal information to Unitywater, any of Unitywater's Personnel and any other Government Agency requiring the information for the purposes set out in paragraph (B) below; and
    - (B) disclosing that the entities referred to in paragraph (A) above, shall use the personal information for the purposes of reviewing and assessing matters relevant to the Functions from time to time.
- (c) The Accredited Entity will comply (and ensure that its Personnel comply) with the provisions of the Privacy Act in relation to any personal information provided to the Accredited Entity by Unitywater, any of Unitywater's Personnel or any other Government Agency.

## **34 Rights to Publish**

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The Accredited Entity acknowledges and agrees that Unitywater may publish the Accredited Entity's or Registered Certifier's details on the 'Accreditation Register' on Unitywater's internet site, and otherwise as reasonably contemplated by the Manual.

## **35 Right to information**

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- (a) The RTI Act provides members of the public with a legally enforceable right to access documents held by Unitywater.
- (b) The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- (c) The information required to be provided to Unitywater in accordance with this Accreditation Deed, including the Deliverables, is potentially subject to disclosure to third parties.

- (d) If disclosure under the RTI Act, and/or general disclosure of any information, in whole or in part, would be of concern to the Accredited Entity, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated clearly by the Accredited Entity when providing the information. Unitywater cannot guarantee that any information provided by the Accredited Entity, including information that is identified by the Accredited Entity in accordance with this clause will be protected from disclosure under the RTI Act.

## **36 Audits**

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### **36.1 Auditing**

- (a) Unitywater may itself, or through its Personnel, at any time, undertake an Audit of the Accredited Entity, including for purposes contemplated in the Manual, or as otherwise determined by Unitywater as reasonably required to assess the performance of the Functions.
- (b) The Accredited Entity must promptly comply with all reasonable requests of Unitywater in connection with an Audit, and ensure that all information provided by the Accredited Entity as part of an Audit is complete and accurate.
- (c) Unitywater or its Personnel may take copies of all records when carrying out the Audit.

### **36.2 Scoring and results**

Any scoring or results of an assessment by Unitywater (including on 'pass' or 'fail' or other basis) whether in connection with an Audit, or otherwise as contemplated under the Manual, is undertaken by Unitywater in its sole and unfettered discretion and the Accredited Entity will have no Claim in connection with that scoring or those results.

## **37 Conflicts of interest**

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### **37.1 Dealing with Applicants**

- (a) Without limitation, a Conflict of Interest is deemed to occur if:
  - (i) an Accredited Entity or any of its Personnel, allows, or permits, an Applicant to have any role, influence over, or inference with, the Functions;
  - (ii) the Accredited Entity, or any of its Personnel, acts in respect of any Application in which it has any financial interest, other than remuneration for the services as reasonably contemplated by clause 7.3; or
  - (iii) the Accredited Entity, or any of its Personnel, provides services to the Applicant, or has other contracts, dealings or relationships with the Applicant, other than reasonably contemplated by clause 7.3, and the Accredited Entity has not received prior Approval of Unitywater to continue those dealings and the Functions under clause 37.1(b).
- (b) Where a Conflict of Interest would, but for this clause 37.1(b), be deemed to occur under clause 37.1(a)(iii), the Accredited Entity must:
  - (i) promptly give notice of the potential Conflict of Interest under clause 37.1(a)(iii), and prior to undertaking any Functions for the Applicant;

- (ii) provide Unitywater with any further information requested in connection with the potential Conflict of Interest; and
- (iii) not proceed to provide any Functions, unless Unitywater provides its Approval to do so (such Approval may be subject to any conditions imposed by Unitywater, and the Accredited Entity and its Personnel are also bound to adhere to those conditions in performance of the Functions).

### **37.2 Conflict of Interest**

- (a) The Accredited Entity warrants that to the best of its knowledge, as at the date of its entering into this Accreditation Deed, neither the Accredited Entity nor any of its Personnel have, or are likely to have, any Conflict of Interest in any matters connected with this Accreditation Deed.
- (b) If a Conflict of Interest or any potential, perceived or risk of a Conflict of Interest arises during the Term, the Accredited Entity must immediately give written notice to the Unitywater Representative.
- (c) The Accredited Entity must:
  - (i) address any actual, potential or perceived Conflict of Interest, to Unitywater's satisfaction;
  - (ii) sign any document (including any statutory declaration) and provide additional information required by Unitywater in respect of any actual, potential or perceived Conflict of Interest; and
  - (iii) comply with Unitywater's Conflict of Interest requirements, as notified by Unitywater from time to time.
- (d) Upon receipt of a notice in accordance with this clause, or upon Unitywater otherwise identifying a real, perceived, anticipated or identified Conflict of Interest, Unitywater may:
  - (i) direct the Accredited Entity as to how to manage the Conflict of Interest, and the Accredited Entity must comply with that direction in accordance with clause 21;
  - (ii) suspend the Accreditation Deed in accordance with clause 19; or
  - (iii) terminate the Accreditation Deed in accordance with clause 28.
- (e) If Unitywater does not terminate the Accreditation Deed in accordance with clause 28, the Accredited Entity must give notice to Unitywater when the Conflict of Interest, or risk of the Conflict of Interest, is resolved to Unitywater's satisfaction.

### **37.3 Collusion**

- (a) In submitting any Deliverable to Unitywater, the Accredited Entity warrants to Unitywater that, other than reasonably contemplated by clause 7.3, that:
  - (i) the Deliverable was not prepared with any other understanding with the Applicant or any other party;
  - (ii) it will not provide the Applicant or any other party with any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any relating in any

way to the Accreditation Deed (including to influence any outcome for the Deliverable);

- (b) The Accredited Entity warrants and undertakes that it has not, and will not during the Term:
- (i) use any information in performing the Functions that it or its Personnel have obtained unlawfully;
  - (ii) solicit any of Unitywater's Personnel to enter into the employment of either the Accredited Entity or its Personnel, or contract with the Accredited Entity or its Personnel, for the performance of any of the Functions;
  - (iii) other than reasonably contemplated by clause 7.3, receive any benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any third party in relation to the performance of the Functions;
  - (iv) attempt to unreasonably influence or persuade Unitywater or any of Unitywater's Personnel;
  - (v) engage in any activity, or obtain any interest, that is likely to result in a Conflict of Interest between Unitywater and the Accredited Entity;
  - (vi) engage in any conduct in relation to the Functions that is misleading or deceptive; or
  - (vii) consult, communicate or enter into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Functions or this Accreditation Deed; and
  - (viii) including that all corporations and persons associated with the Accredited Entity, (including directors and senior management), be or become subject to any proceedings relating to anti-competitive conduct in Australia or overseas.
- (c) Any proceedings relating to anti-competitive conduct in Australia or overseas to which the Accredited Entity and/or any corporation or person associated with the Functions or this Accreditation Deed, including directors and senior management, have been subject, requires full disclosure prior to entry into this Accreditation Deed, or if it arises at any time during the Term, promptly by the Accredited Entity, including:
- (i) the names of the parties to the proceedings;
  - (ii) the case number;
  - (iii) the general nature of the proceedings; and
  - (iv) the outcome or current status of the proceedings.
- (d) Unitywater reserves the right, in its sole and unfettered discretion, to suspend this Accreditation Deed under clause 19 or terminate this Accreditation Deed under clause 28, if the Accredited Entity or any corporation or person, including directors or senior management associated with the Functions or this Accreditation Deed, have ever contravened any anti-competitive laws in Australia (including the *Competition and Consumer Act 2010* (Cth)) or equivalent laws overseas.

### **37.4 Commissions and incentives**

- (a) The Accredited Entity must not, and must ensure that its officers, employees, agents and/or subcontractors do not, give or offer anything to Unitywater, or any of its Personnel, or to a parent, spouse, child or associate of any Personnel of Unitywater, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to, influence Unitywater's actions in relation to any Deliverables, Approvals of Unitywater or Unitywater's statutory functions.
- (b) If Unitywater discovers at any time that an Accredited Entity has breached this clause, Unitywater may without limitation to any other rights, suspend this Accreditation Deed under clause 19 or terminate this Accreditation Deed under clause 28.

## **38 General**

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### **38.1 Amendments**

This Accreditation Deed may only be amended by written agreement between all parties.

### **38.2 Counterparts**

This Accreditation Deed may be signed in any number of counterparts. All counterparts together make one instrument.

### **38.3 If a party consists of more than one person**

If a party to this document consists of more than one person, or a term is used in this document to refer to more than one party, an obligation of those persons is owed by them separately, together, and in any combination.

### **38.4 No merger**

The rights and obligations of the parties under this Accreditation Deed do not merge on completion of any transaction contemplated by this Accreditation Deed.

### **38.5 Entire agreement**

- (a) Subject to clause 38.5 (b), this Accreditation Deed supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except;
  - (i) For the statements representations and promises made by Unitywater in the annexure to the accreditation appointment letter described as "Administration of the Accreditation Deed" and;
  - (ii) To the extent expressly set out or incorporated by reference in this Accreditation Deed.

### **38.6 Further assurances**

Each party must do all things reasonably necessary to give effect to this Accreditation Deed and the transactions contemplated by it.

### **38.7 No waiver**

- (a) The failure of a party to require full or partial performance of a provision of this Accreditation Deed does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this Accreditation Deed may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

### **38.8 Governing law and jurisdiction**

- (a) The law of Queensland governs this Accreditation Deed (**Governing Law**).
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of the Governing Law and courts competent to hear appeals from those courts.

### **38.9 Severability**

- (a) A clause or part of a clause of this Accreditation Deed that is illegal or unenforceable may be severed from this Accreditation Deed and the remaining clauses or parts of the clause of this Accreditation Deed continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Accreditation Deed in the relevant jurisdiction, but the rest of this Accreditation Deed will not be affected.

### **38.10 Notice**

- (a) A notice, consent or communication under this Accreditation Deed is only effective if it is:
  - (i) in writing, signed by or on behalf of the person giving it;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) given as follows:
    - (A) delivered by hand to that person's address;
    - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
    - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.
    - (D) sent by email to that person's email address where the sender receives an email receipt, or other written confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.
- (b) A notice, consent or communication delivered under clause 38.10(a) is given and received:

- (i) if it is hand delivered or sent by fax or email:
  - (A) by 5.00pm (local time in the place of receipt) on a Business Day – on that day; or
  - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day – on the next Business Day; and
- (ii) if it is sent by post:
  - (A) within Australia – three Business Days after posting; or
  - (B) to or from a place outside Australia – seven Business Days after posting.

A person's address, fax number and email address are those set out in the Particulars, or as the person notifies the sender.



# Schedule 1

## Particulars

<b>Unitywater's</b> <b>Address:</b> <b>Fax number:</b> <b>Email address:</b> <b>(for service of notices)</b>	Ground Floor, 33 King Street Caboolture, QLD 4510 (07) 5431 8288 Accreditation.Coordinator@unitywater.com
<b>Unitywater's Representative:</b> <b>Name:</b> <b>Contact phone:</b> <b>Email address:</b>	Praveen Chand (07) 5431 8541 Accreditation.Coordinator@unitywater.com
<b>Accredited Entity:</b> <b>ABN:</b>	
<b>Accredited Entity's</b> <b>Name:</b> <b>Fax Number:</b> <b>Email address:</b> <b>(for service of notices)</b>	
<b>Accredited Entity's Representative:</b> <b>Name:</b> <b>Contact phone:</b> <b>Email address:</b>	
<b>Commencement Date:</b>	20 March 2020
<b>Completion Date:</b>	19 March 2022
<b>Insurances:</b>	<p>Professional indemnity insurance in accordance with clause 22.9, for an amount of no less than \$5,000,000 for each and every occurrence that is to be maintained from the Commencement Date until the expiration of 7 years after the Completion Date. The policy must contain one automatic reinstatement provision.</p> <p>Public liability insurance for an amount of no less than \$20,000,000 for each and every occurrence, to be maintained from the Commencement Date until the Completion Date.</p> <p>Workers' Compensation insurance as required by Legislative Requirements to be maintained from the Commencement Date until the Completion Date.</p> <p>Third party comprehensive motor vehicle insurance in the amount required by Legislative Requirements, to be maintained from the Commencement Date until the Completion Date.</p>

# Schedule 2

List of Registered Certifiers

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# Schedule 3

## Guarantee and Indemnity

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### 1 Guarantee and Indemnity

#### 1.1 Definitions

For the purposes of this guarantee and indemnity:

<b>Accreditation Deed</b>	means the deed between Unitywater and the Accredited Entity.
<b>Accredited Entity</b>	means [#insert accredited entity name (in title case)] ACN [#insert]
<b>Guarantor</b>	means the following party: <b>Name</b> <b>ACN/ABN</b> <b>Address</b> <b>Contact person</b>
<b>Guaranteed Obligations</b>	means all express and implied obligations to be observed or performed by or on behalf of the Accredited Entity under the Accreditation Deed.
<b>Insolvency Event</b>	has the meaning given in the Accreditation Deed.
<b>Unitywater</b>	means the Northern Distribution Retail Authority established under the <i>South-East Queensland Water (Distribution and Retail Restructuring) Act 2009</i> (Qld).

#### 1.2 Consideration

The Guarantor gives this guarantee and indemnity in consideration of Unitywater agreeing to enter into the Accreditation Deed.

#### 1.3 Guarantee

The Guarantor guarantees to Unitywater the performance and observance of all the Guaranteed Obligations. If the Accredited Entity fails to perform and observe the Guaranteed Obligations, the Guarantor agrees to perform the Guaranteed Obligations on demand or at a time or times as directed by Unitywater.

#### 1.4 Indemnity

- (a) As a separate liability, the Guarantor indemnifies Unitywater, and agrees to keep Unitywater indemnified, against loss or damage suffered or incurred by Unitywater arising out of:
- (i) any failure by the Accredited Entity to perform the Guaranteed Obligations; or
  - (ii) a Guaranteed Obligation being ineffective for any reason, including:

- (A) a legal limitation, disability or incapacity of the Accredited Entity or a lack or improper exercise of a power or authority in relation to the Accredited Entity;
  - (B) the Accredited Entity suffers an Insolvency Event; or
  - (C) if a Guaranteed Obligation is or becomes illegal, invalid, void, voidable or unenforceable.
- (b) Each indemnity in this clause 1.4 is a continuing obligation separate and independent from the other obligations of the Guarantor despite the description of the party giving it as a 'Guarantor' and survives the termination of the Accreditation Deed. It is not necessary for Unitywater to enforce the Guaranteed Obligations against the Accredited Entity or otherwise to incur expense, loss, damage or make payment before enforcing a right of indemnity conferred by this clause 1.4.

### 1.5 **Continuing security**

This guarantee and indemnity is a continuing security despite termination or expiration of the Accreditation Deed by Unitywater, settlement of account, intervening payment, express or implied revocation or other matter or thing whatever, until a final discharge of this guarantee and indemnity is given to the Guarantor.

### 1.6 **Acknowledgment by Guarantor**

The Guarantor confirms that:

- (a) it has not entered into the Accreditation Deed in reliance on, or as a result of a statement by or conduct of or on behalf of Unitywater; and
- (b) Unitywater is not obliged to do anything (including disclosing anything or giving advice) except as expressly set out in the Accreditation Deed.

### 1.7 **Preservation of rights**

The Guarantor's liability as a guarantor, principal debtor or indemnifier, and the rights of Unitywater under the Accreditation Deed, are not affected by anything that could otherwise have that effect in law or equity, including one or more of the following:

- (a) a person granting time, waiver, a covenant not to sue or other indulgence or concession (whether or not an additional burden is imposed) to, or making of an arrangement, compromise or composition with a person, or compounding a liability, in any way;
- (b) laches, acquiescence, delay, omission, mistake or other act by Unitywater or other person or both of them;
- (c) the Accreditation Deed or another document or payment or other transaction under one or more of them being or becoming wholly or partially illegal, invalid, void, voidable, unenforceable or otherwise of limited force or effect;
- (d) a variation, renewal, amendment or novation or a dealing with the Accreditation Deed or other document irrespective of whether or not their effect is material, or imposes an additional liability, or is onerous on the Guarantor or any other person;
- (e) an invalidity or irregularity in the execution of the Accreditation Deed by the Accredited Entity or the Guarantor or a deficiency or irregularity in the powers of the Accredited Entity to enter into the Accreditation Deed and observe and perform the Guaranteed Obligations or of the Guarantor to enter into or observe its obligations under this guarantee and indemnity;

- (f) a judgment against the Guarantor, Accredited Entity or other person; or
- (g) a change in capacity, rights or obligations of the Guarantor, Accredited Entity or other person.

#### 1.8 **Guarantor limitations**

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Accredited Entity against Unitywater in reduction of its liability under this guarantee and indemnity;
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by Unitywater in connection with the Accreditation Deed;
- (c) make a claim or enforce a right against the Accredited Entity or its property; or
- (d) prove in competition with Unitywater if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Accredited Entity or the Accredited Entity is otherwise unable to pay its debts when they fall due,

until all money payable to Unitywater in connection with the Accreditation Deed has been paid.

#### 1.9 **Void or voidable payments**

If a claim that a payment to Unitywater in connection with the Accreditation Deed or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised, then Unitywater is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not been made.

#### 1.10 **Reimbursement**

The Guarantor agrees to pay or reimburse Unitywater on demand for Unitywater's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity.

#### 1.11 **Warranties**

The Guarantor represents and warrants to Unitywater that the Guarantor:

- (a) has sought and obtained independent legal advice on the legal effect of this guarantee and indemnity and understands their effect; and
- (b) is satisfied after due investigations as to the credit worthiness of the Accredited Entity.

#### 1.12 **More than one guarantor**

Where the Guarantor comprises more than one party:

- (a) the obligations in the Accreditation Deed to be performed and observed by the Guarantor bind such parties and any two or more of them jointly and each of them severally;
- (b) the liability of any such party will not be affected if this guarantee or indemnity on the part of another party or person is void, voidable or unenforceable;

- (c) this guarantee and indemnity bind each of such parties who execute the Accreditation Deed notwithstanding that one or more of the other such persons may never execute the Accreditation Deed;
- (d) Unitywater may release or enter into a composition with any one or more of them without limiting or affecting the liability of the others; and
- (e) any demand or notice required to be served on the Guarantor is sufficiently served if served on any one of the persons constituting the Guarantor.

**1.13 Assignment of rights**

Unitywater may assign its rights under this guarantee and indemnity.

Signed sealed and delivered by  
 [#insert guarantor name (in title case)] ACN [#insert  
 ACN] on / /20 by:

^ \_\_\_\_\_  
 Director

^ \_\_\_\_\_  
 Director/Secretary

^ \_\_\_\_\_  
 Full name of Director

^ \_\_\_\_\_  
 Full name of Director/Secretary

Signed sealed and delivered  
 on behalf of Unitywater by [#insert unitywater  
 representative] on / /20 in the presence  
 of:

^ \_\_\_\_\_  
 Signature of [#insert name]

^ \_\_\_\_\_  
 Signature of witness

^ \_\_\_\_\_  
 Name of witness (print)

# Schedule 4

Registration Deed Poll

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# Execution

Signed sealed and delivered by

ACN                      on                      by:

▲ \_\_\_\_\_  
Director

▲ \_\_\_\_\_  
Director/Secretary

▲ \_\_\_\_\_  
Full name of Director

▲ \_\_\_\_\_  
Full name of Director/Secretary

Signed sealed and delivered by Executive  
Manager Sustainable Infrastructure Solutions  
on:

▲ \_\_\_\_\_  
Signature of