



SOUTH AUSTRALIAN WATER CORPORATION
(ABN 69 336 525 019)

LAND DEVELOPER AGREEMENT DOCUMENTATION

LDA – V1.0

FOR

**THE PROVISION OF WATER AND SEWERAGE RETICULATION
SYSTEMS WITHIN LAND DIVISIONS
BY THE DEVELOPER**

This Agreement is made on the date this Agreement is executed

Between SOUTH AUSTRALIAN WATER CORPORATION (a body Corporate under SA Water Corporation Act 1994) (ABN 69 336 525 019) of 77 Grenfell Street Adelaide South Australia (SA Water)

and The Developer as named in Schedule A (item 2)

RECITALS

- (a) The Developer is developing the land described in item 1 of Schedule A for the purpose of construction and requires to make provision for the design and supply of water and/or sewerage services on the land.
- (b) SA Water is the owner of water and/or sewerage infrastructure adjacent to the land and the consent and agreement of SA Water is required to allow the Developer to connect water and/or sewerage services for the land to that infrastructure.
- (c) SA Water agrees and consents to the Developer connecting the water and/or sewerage services for the land to that infrastructure on the terms and conditions contained in this Agreement.

AGREEMENT

1. Interpretation

In this Agreement except where the context otherwise requires:

“**CCF**” means the Civil Contractors Federation;

“**IMS**” means Integrated Management System;

“**Works**” means the whole of the work to be executed in accordance with this Agreement, including all variations ordered by SA Water;

“**Date of Practical Completion of the Works**” means the date specified in the Certificate of Practical Completion for the Works;

“**Date of Practical Completion of a Separable Part of the Works**” means the date specified in the Certificate of Practical Completion of a Separable Part for the Works;

“**Temporary Works**” means the works on the site (other than Constructional Plant) which are required for the execution of the work under this Agreement but which do not form part of the Works to be handed over to the Developer;

“**Constructional Plant**” means all plant, motor vehicles, equipment and things (including scaffolding, formwork and the like) of whatever nature in use or used in or about the execution of the work under this Agreement, but does not include plant, equipment or other things intended to form or forming part of the Works;

“**Certificate of Practical Completion**” means the certificate issued to the Developer under clause 40;

“separable part of the Works” means the part of the Works determined by SA Water to be a separable part under clause 41;

“Defects Liability Period for the Works” means the period set out in Item 4 of Schedule A;

“Defects Liability Period for a separable part of the Works” means the period set out in Item 4 of Schedule A;

“Consultant” means the person named in Item 1 of Schedule B and as specified in Clause 13;

“Final Certificate” means the certificate issued to the Developer under clause 42;

“Land” means the land described in Item 1 of Schedule A;

“Security” means the amount specified in Item 2 of Schedule B and lodged by the Developer with SA Water in accordance with clause 32;

“Site” means the land described in Item 1 of Schedule A where the work to be carried out under this Agreement will be carried out;

“Specification” means documents including drawings as specified in clause 3;

“work under this Agreement” means the work which the Developer is or may be required to execute under this Agreement and includes all variations, remedial work, Constructional Plant and Temporary Works and means such work as is indispensable and necessary for the completion of the reticulation services being the subject of this Agreement;

"customary working hours" means ordinary hours of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State of South Australia or, where hours of work are not so fixed, means the hours of work normally observed in the relevant trade or industry in the State of South Australia;

"ordinary working days" means ordinary days of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State of South Australia or, where days of work are not so fixed, means the days of work normally observed in the relevant trade or industry in the State of South Australia but does not include a day that is a public holiday in the State of South Australia; and

“Practical Completion” means that stage in the execution of the work under this Agreement when

- (a) the Works or a separable part of the Works, as the case may be, are complete except for minor omissions and minor defects –
 - (i) which do not prevent the Works or that separable part of the Works from being reasonably capable of being used for its intended purpose; and

- (ii) in relation to which SA Water determines that the Developer has reasonable grounds for not promptly rectifying them; and
 - (iii) rectification of which will not prejudice the convenient use of the Works or of that separable part of the Works, and
- (b) those tests which are required by this Agreement to be carried out and passed before the Works or the separable part of the Works, as the case may be, are handed over to SA Water have been carried out and passed, and
 - (c) such documents including As Constructed Drawings and other information required under this Agreement which, in the opinion of SA Water, are essential for the use, operation and maintenance of the Works have been supplied, and
 - (d) all requirements specified in the Specification as a pre-requisite for the issue of the Certificate of Practical Completion have been met, and
 - (e) all debts due from the Developer to SA Water have been paid, and
 - (f) the Security has been lodged under clause 32.

2. **Consideration**

SA Water agrees to pay to the Developer the sum of one dollar (\$1.00) and the Developer agrees to construct the Works in accordance with this Agreement.

3. **Compliance**

The Developer must install water and/or sewerage facilities to the land in accordance with:

WATER

- Water Supply Code of Australia (WSA 03-1999)
- SA Water Annex to (WSA 03-1999)
- SA Water's - Water Construction Manual/Drawings
- SA Water's - Authorised Items for Water Reticulation Systems
- Developer's Endorsed Design Drawings (list numbers)

And/or

SEWERAGE

- Sewerage Code of Australia (WSA 02-1999)
- SA Water Annex to (WSA 02-1999)
- SA Water's - Sewer Construction Manual/ Drawings
- SA Water's - Authorised Items for Sewer Systems Catalogue
- Developer's Endorsed Design Drawings (list numbers)

The Developer must ensure that any contractor and sub-contractor engaged by the Developer to carry out the Works complies with the requirements of clause 3. The contractor must be qualified in accordance with and informed about those requirements and must also provide evidence of compliance with the CCF's IMS or an approved equivalent as a pre-qualification to tendering. The minimum for an approved equivalent management system must incorporate and address relevant aspects for quality assurance (ISO 9001), environmental requirements (ISO 14001) and health and safety requirements

(AS 4801) and be audited by a Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredited third party certification body.

The Developer must comply with all statutory and regulatory requirements relating to the Works, including but not limited to:

- the Workers Rehabilitation & Compensation Act 1986
- the Environment Protection Act 1993
- the Development Act 1993
- the Waterworks Act 1932
- the Sewerage Act 1929

4. **Indemnity**

The Developer must indemnify SA Water and keep SA Water indemnified from and against any claim, demand, action, suit or proceedings that may be brought by any person against SA Water, or any of its employees, professional consultants or agents, in respect of personal injury to, or death of any person, or loss of or damage to any property arising out of or in connection with the execution of the works under this Agreement by the Developer or any of its employees, agents, contractors or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceedings, except to the extent that the personal injury, death of any person or loss or damage to property is contributed to by any negligent act, omission or breach of the Agreement by SA Water, or its servants or agents.

The Developer must indemnify SA Water and keep SA Water indemnified from and against any action, suit, proceeding, claim or demand, in respect of all costs or expenses arising, whether directly or indirectly, from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, trademark or name, copyright or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing or working, or any arrangement used or fixed or supplied by the Developer for the purposes of this Agreement.

5. **Notices**

All notices required or permitted to be given under this Agreement must be in writing and must be sent to the address of the intended recipient set out in Item 2 of Schedule A, or to such other address as the intended recipient may designate in writing. Any such notice may be delivered by hand or sent by prepaid letter, facsimile transmission, or e-mail and will be deemed to have been served if

- by hand, when delivered;
- by post, 48 hours after posting; and
- by facsimile or e-mail, when dispatched.

6. **Developer's Liability up to the Date of Practical Completion**

From the commencement of this Agreement to the Date of Practical Completion of the Works, the Developer will be solely liable for the care of the Works, the Temporary Works and all materials, Constructional Plant and all

other things that are brought on to the site by or on behalf of the Developer or any of the Developer's contractors or sub-contractors for the purpose of carrying out the works under this Agreement, or which are entrusted to the Developer by SA Water for that purpose.

The Developer must, at the Developer's own cost, make good any loss of or damage to the Works, the Temporary Works or the materials and other things previously mentioned in this clause 6, resulting from any cause whatever, to the satisfaction of SA Water.

If a Certificate of Practical Completion is issued for a separable part of the Works then the Contractor's liability for the care of that separable part of the Works must, subject to this clause 6, cease on the Date of Practical Completion of that separable part of the Works.

7. Indemnity after Date of Practical Completion

After the Date of Practical Completion of the Works or a separable part of the Works, the Developer must, subject to the remainder of this clause, indemnify SA Water and keep SA Water indemnified against all loss or damage to the Works or the separable part of the works arising out of or resulting directly or indirectly from any negligent act or omission of the Developer or any contractor or sub-contractor or any employee or agent of the Developer or of any contractor or sub-contractor or out of any default of the Developer under this Agreement.

If a Certificate of Practical Completion is issued for the Works and no Certificate of Practical Completion has been issued for any separable part of the Works, the indemnity must extend to the Works during the period commencing on the Date of Practical Completion of the Works and ending on the day on which the Defects Liability Period for the Works, specified in item 4 of Schedule A, expires or on the Date of Final Completion whichever is the latter.

If a Certificate of Practical Completion is issued for a separable part of the Works, the indemnity must extend to that separable part of the Works during the period commencing on the Date of Practical Completion of that separable part of the Works and ending on the day on which the Defects Liability Period for that separable part of the Works specified in item 4 of Schedule A, expires or on the Date of Final Completion of that separable part of the Works whichever is the latter.

For the purpose of this clause 7, the word "default" must be construed, but without restricting the generality of its meaning, as including faulty design, workmanship and materials.

8. Working Hours

If the Developer wishes to work outside the customary working hours or on other than ordinary working days as defined in this Agreement, the Developer must give two days written notification to SA Water of the hours involved and the proposed work being performed. If SA Water deems it necessary to have a representative present for any period of time outside customary working

hours then the Developer must pay all costs for SA Water's representative's attendance.

If in the interests of safety of the Works or to protect life or property the Developer finds it necessary to carry out, without the prior approval of SA Water, work outside customary working hours or on other than ordinary working days, the Developer must inform SA Water in writing of the circumstances as soon as possible.

9. Directions to Developer

The work under this Agreement must be executed in accordance with this Agreement and in accordance with any directions of SA Water or any person appointed to be SA Water's representative under the provisions of this Agreement. The authorities of SA Water's representative may be further delegated to an officer nominated in writing to the Developer.

Any direction given to the Developer by SA Water under the provisions of this Agreement may, unless the Agreement expressly provides otherwise, be given either orally or in writing. When any such direction is given orally, SA Water must, as soon as practical after the direction is so given, confirm it in writing addressed to and issued or given to or served on the Developer.

For the purposes of this clause 9, the word "direction" means and includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which SA Water may make, give or issue under the provisions of this Agreement.

10. Personal Supervision of the Works

The Developer, or a competent representative of the Developer acceptable to SA Water, must personally supervise the Works under this Agreement during which any activities relating to the execution of the Works under this Agreement take place.

If the Developer's representative changes during the term of this Agreement, SA Water must be notified in writing of that change.

Any direction, as defined in clause 9,

- if given to the Developer's representative on the site in respect of the execution of the Works under this Agreement on the site, or
- if given to the Developer's representative at any other place in respect of the execution of part of the Works under this Agreement in that place,

will be deemed to be a direction issued or given to or served on the Developer.

Any matter within the knowledge of the Developer's representative will be deemed to be within the knowledge of the Developer.

If the Developer or the Developer's representative is absent from the site, SA Water may take any action which it considers necessary to prevent loss of or damage to the whole or any part of the Works being executed under this Agreement or to any property or to prevent personal injury to any person on the site. The cost of any action taken by SA Water is, at the discretion of SA Water, a debt due from the Developer to SA Water.

Any action taken by SA Water under this clause does not relieve the Developer of any of its liabilities or obligations under this Agreement.

11. Connection to existing reticulation system

SA Water must supply the necessary information for the Developer to locate the connection point where the Works will be connected to the existing reticulation system. However, all survey information supplied must be checked against the nearest Australian Height Datum Bench Mark by the Developer before the commencement of the Works.

12. Setting out the Works

Subject to clause 11 the Developer must set out the Works correctly in accordance with this Agreement and must provide all instruments and materials necessary for that purpose at its own expense.

13. The Consultant

The Developer must engage a person to be the Consultant. The person approved to be the Consultant must be named in Item 1 of Schedule B and the Developer must not engage any other person to be the Consultant without the written consent of SA Water.

The Consultant must be a member of, or have qualifications acceptable for membership of, the Institution of Engineers Australia, and must be experienced in the type of work to be carried out under this Agreement. The Consultant will preferably be a member of the Association of Consulting Engineers Australia.

The Consultant must carry out all work in this Agreement required to be done by the Consultant.

If this Agreement requires the Consultant to carry out design work, the Developer must be responsible for the soundness and adequateness for the purposes of this Agreement of that design. If such design is, in the reasonable opinion of SA Water, unsound or inadequate for the purposes of this Agreement, the Developer will be liable for the costs and consequences of that unsound or inadequate design. Any work required by SA Water to be carried out by the Developer to rectify the effects of such unsound or inadequate design must be carried out by the Developer to SA Water's representative's satisfaction.

If the Developer fails to carry out such rectification work to SA Water's representative's satisfaction, SA Water may terminate this Agreement and

carry out the rectification work at the Developer's expense, recoverable as a debt due from the Developer to SA Water under the terms of this Agreement.

The Developer must ensure that the Consultant complies with all of SA Water's directions in relation to the work under this Agreement which is required to be carried out by the Consultant.

The Developer must pay all fees and costs of and incurred by the Consultant in carrying out the work that is required to be carried out by the Consultant for the purposes of this Agreement.

14. Materials or Work Not Complying with the Agreement

SA Water may, at any time before the issue of the Final Certificate, reject any material or work under this Agreement which is not in accordance with the Agreement and/or is not adequate for its intended purpose. SA Water may direct that such material or work be replaced, corrected or removed and such rejection or direction must be made or given as soon as practicable after the discovery by SA Water of its non-compliance with this Agreement.

If SA Water directs the Developer to replace or correct any material or work, the Developer must commence the work of replacement or correction within seven (7) days after the receipt by the Developer of the direction. The Developer must complete the work promptly and to the satisfaction of SA Water.

If SA Water directs the Developer to remove from the site any material that is not in accordance with this Agreement, the Developer must do so promptly. All such replacements, corrections and removals will be at the Developer's own cost.

If the Developer fails to comply with the directions given by SA Water under this clause, SA Water may terminate this Agreement and have the work of replacement, correction or removal carried out by other persons. The cost incurred by SA Water in having the work so carried out will be a debt due from the Developer to SA Water recoverable in accordance with the provisions of this Agreement.

15. Defects Liability Period for the Works

The Defects Liability Period for the Works will commence on the Date of Practical Completion of the Works and continue for the period specified in Item 4 of Schedule A. Any extension of the Defects Liability Period must be in accordance with Clause 18.

16. Defects Liability Period for a Separable Part

If a Certificate of Practical Completion is issued for a separable part of the Works prior to the Practical Completion of the Works, then the Defects Liability Period for that separable part of the Works will commence on the Date of Practical Completion for the separable part of the Works and continue for the period specified in Item 4 of Schedule A.

The Defects Liability Period for the remaining portion of the Works will be as determined by clause 15.

Any extension of the Defects Liability Period must be in accordance with Clause 18.

17. Liability for Fault in the Works

If, during the Defects Liability Period any omission, defect, imperfection, shrinkage, or any other fault in the Works becomes apparent under proper use of the Works, or separable part of the Works, and such defects are due to design, workmanship, or materials for which the Developer is responsible, SA Water will serve on the Developer a written notice specifying the nature of the defects and the time within which the Developer must remedy such defects. The Developer must comply with such notice at the Developer's own expense.

Notwithstanding the provisions of this clause, the Developer will not be responsible for the effects of fair wear and tear during the Defects Liability Period.

For the purposes of clauses 17 and 18

“defects” means, any omission, defect, imperfection, shrinkage or any other fault in the Works which become apparent during the Defects Liability Period under proper use of the Works;

“Defects Rectification Notice” means a written notice served by SA Water on the Developer which notice specifies the nature of the defects and the time within which those defects must be rectified; and

“remedial work” means work carried out by the Developer to rectify the defects specified in the Defects Rectification Notice.

18. Remedial Work

If it becomes necessary for the Developer to execute any remedial work under clause 17, the provisions of that clause will apply to the remedial work as if it were the Works and the Defects Liability Period will commence on the date on which the remedial work is completed. SA Water may, in its discretion, approve a shorter defects liability period than that provided for by clause 15 in respect of any remedial work.

If any defects are not remedied by the Developer within the time specified in the Defects Rectification Notice or such extension of that time as SA Water may determine, SA Water may remedy the defects at the Developer's risk and expense, but without prejudice to any other rights which SA Water may have against the Developer in respect of such defects. Any costs incurred by SA Water for remedying the defects will be a debt due from the Developer to SA Water recoverable in accordance with the provisions of this Agreement.

Unless the Developer is directed otherwise in writing by SA Water's representative, any remedial work on active mains constructed under this

Agreement must be carried out by SA Water at the Developer's expense. SA Water may recover the cost of that remedial work as a debt due from the Developer to SA Water in accordance with the provisions of this Agreement.

For the purposes of this clause "active mains" means those mains, including all appurtenances and structures along the mains which come into contact with any flows through the mains, which have been connected (linked up) to existing SA Water mains.

19. Use of Works by SA Water

Subject to such restrictions on the use of the Works as, in the opinion of SA Water, may be necessary for the execution of remedial works by the Developer, SA Water must have the full, free and unrestricted use of the Works, without interference from the Developer during the Defects Liability Period. Such use of the Works by SA Water must not be held as relieving the Developer of any liability or obligation under this Agreement.

20. Tests on Remedial Work

If any remedial work is of such character as may affect the efficiency of the Works, SA Water may, within one month of completion of that remedial work, notify the Developer that further tests are to be made in accordance with this Agreement. The costs of such further tests must be borne by the Developer.

21. Warranties

The Developer must ensure that SA Water will have the benefit of any warranties available from the manufacturer for the materials used in the work under this Agreement.

22. Prevention of Loss or Damage

If at any time during the currency of this Agreement SA Water determines that any remedial, protective, repair or other like work is urgently needed to prevent loss of or damage to the Works or to any property or to prevent personal injury to or the death of any person, SA Water will, as soon as practicable after such determination, verbally notify the Developer of that determination and the Developer must carry out the work immediately on receipt of that notification. SA Water will, as soon as practicable after such notification provide the Developer with a written notification of that determination. If the Developer is unable or unwilling to do the work at once or cannot be contacted, SA Water may, by its own or other workforce, do such work as SA Water may determine to be necessary. If the work done by SA Water in accordance with this clause is work which SA Water determines to be work that the Developer was liable to do at the Developer's expense under this Agreement, all costs and charges properly incurred by SA Water in doing the work will be a debt due from the Developer to SA Water recoverable in accordance with the provisions of this Agreement.

23. Unacceptable Progress

If at any time during the currency of this Agreement SA Water determines that any Works are not being carried out in accordance with this Agreement, or that the rate of progress is unacceptable to SA Water and/or as a

consequence of that unacceptable progress undue inconvenience is caused to users of a public road or roads in the vicinity of the Works, to allotments adjoining the Site or allotments not located on the Site which require the Works to provide water or sewer reticulation for houses on such allotments, then SA Water may give written notice to the Developer requiring the Developer to rectify the situation.

24. Non-rectification

If, 2 weeks after SA Water gives a written notice to the Developer under clause 23, SA Water is of the opinion that the Developer has not rectified the situation described in clause 23, then SA Water may, on giving written notice of such opinion to the Developer, proceed to construct the Works or a separable part of the Works.

25. Costs

Any costs or charges properly incurred by SA Water in undertaking the Works, or a separable part of the Works, under clause 23, will be a debt due from the Developer to SA Water recoverable in accordance with the provisions of this Agreement.

26. SA Water's Contribution for Additional Infrastructure

If SA Water wishes to cater for the provision of reticulation services to land other than the Land and as a result of that SA Water requires the Developer to provide infrastructure in the Works in excess of what would otherwise be required for the provision of reticulation services to allotments on the Land, SA Water must pay to the Developer the amount stated in Item 3 of Schedule B as a contribution and a contribution only towards the cost of the provision of such additional infrastructure.

The Works at the time of execution of this Agreement include the full extent of the additional infrastructure for which the contribution referred to in this clause must be made.

The payment of the contribution, if applicable, will become due and payable on the issuing of the Certificate of Practical Completion for the Works or the separable part of the Works as SA Water determines.

Where no amount is specified in Item 3 of Schedule B no contribution is payable and the parties will disregard this clause.

27. Variations

If, at any time during the progress of the Works, SA Water determines that the form, quality or quantity of the work under this Agreement should be varied, SA Water may order the Developer to do all or any one or more of the following things -

- (a) increase, decrease or omit any part of the Works;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the Works;

- (d) execute additional work;
- (e) vary the programme or the order of the work;
- (f) execute any part of the work outside normal or agreed working hours.

No variation may be made by the Developer without an order being given by SA Water.

No variation will invalidate this Agreement.

Whenever possible, to allow for proper planning of the Works by the Developer, SA Water must give the Developer notice of variations before the time they are to be carried out.

28. Payment and Value of Payable Variations

Variations other than payable variations will be at the Developer's expense.

Payable variations are those variations that are determined by SA Water to be required in relation to the provision of water or sewerage reticulation to land other than the Land.

SA Water will pay the Developer for payable variations. The amount of such payment will be the value of payable variations determined under this clause.

The value of payable variations must be determined by agreement between the Developer and SA Water, but if the Developer and SA Water fail to agree on the value of payable variations, SA Water will determine each such value as it considers reasonable.

29. Goods and Services Tax (GST)

GST Price Adjustment

If the Contractor is obliged to pay a Goods and Services Tax (GST) in respect of a taxable supply or taxable importation under this Agreement then the price for the goods &/or services supplied under this Agreement must be adjusted so that;

- (a) the Developer's net revenue under this Agreement, taking into account the Developer's liability for GST, any input tax credits, and benefits from tax reform, should not, by reason only of the imposition of GST, be less than it otherwise would be; and
- (b) any increase in payments due from SA Water as a result of the imposition of GST should be reduced to the extent that the Developer is not able to benefit from input cost reductions as a result of tax reforms associated with the introduction of GST.

Tax Invoice

If the Developer is liable to pay GST in respect of any taxable supply or taxable importation to SA Water under this Agreement, the Developer must deliver to SA Water's Representative a tax invoice in respect of a payment under this Agreement at the time when payment is made as a condition of such payment.

30. Security and Performance Undertakings

The provision of Security is for the purpose of ensuring the due and proper performance by the Developer of the Works during the Defects Liability Period and for the purpose of satisfying (to the extent that the amount of the Security is sufficient to do so) any debt or debts due from the Developer to SA Water.

Nothing in this clause will limit SA Water 's rights under any other provision of this Agreement.

31. Provision of and Form of Security

The Developer must provide Security by way of an unconditional bank guarantee in a form acceptable to SA Water.

The amount of the Security for the Works must be the amount specified in Item 2 of Schedule B. The amount of the Security for a separable part of the Works must be a portion, as determined by SA Water, of the amount specified in Item 2 of Schedule B.

32. Lodgement of Security

The Security must be lodged by the Developer with SA Water when the Works, or a separable part of the Works, have been brought to a stage ready for Practical Completion.

The Certificate of Practical Completion will not be issued prior to the lodgement of the Security.

33. Conversion of Security

If SA Water becomes entitled to exercise all or any of the rights under this Agreement in respect of the Security, SA Water may convert the security into money if that Security does not consist of money. SA Water will not be liable for any loss occasioned by such a conversion.

34. Right of SA Water to Recover Monies

Without limiting SA Water's rights under any other provision of this Agreement, any debt or debts due from the Developer to SA Water, whether under this Agreement or otherwise, may be deducted by SA Water from the Security and retained by it.

Nothing in this clause will affect the right of SA Water to recover from the Developer the whole of any debt or any balance that remains owing after such deduction. SA Water will therefore be entitled to recover damages, including general damages, that it may have suffered by reason of any breach of this Agreement by the Developer.

35. Release of Security

Unless SA Water has retained the whole, or part, of the Security under this Agreement, SA Water must release the Security to the Developer within 28 days after the Final Certificate has been issued. SA Water will only be obliged

to return to the Developer such part (if any) of the Security that has not been retained by it.

36. Deed of Guarantee

Where the Developer is a corporation that is a subsidiary of another corporation, or is a corporation that is related to another corporation, the Developer must, if so requested in writing by SA Water, lodge with SA Water, at the time of entering into this Agreement, a Deed of Guarantee in the written form required by SA Water, duly executed by the Developer and that other corporation.

For the purposes of this clause:

- (a) a corporation is a subsidiary of another corporation if, under the Corporations Law, an Act of the State or an Act or Ordinance of the Territory under which the first mentioned corporation is incorporated or registered, it is deemed to be, for the purpose of that Law, Act or Ordinance a subsidiary of that other corporation; and
- (b) a corporation is related to another corporation if, under the Corporations Law, an Act of the State or an Act or Ordinance of the Territory under which the first mentioned corporation is incorporated or registered, it and the other corporation are deemed to be, for the purpose of that Law, Act or Ordinance, related to each other.

Where the Developer is not a corporation, the Developer must, if so requested in writing by SA Water, lodge with SA Water at the time of entering into this Agreement, a Deed of Guarantee in the written form required by SA Water, duly executed by the Developer and such guarantor as SA Water may approve.

37. Procedure on Default of Developer

If the Developer defaults in the performance or observance of any covenant, obligation or provision imposed on the Developer by this Agreement, or if the Developer refuses or neglects to comply with any direction of SA Water or SA Water's representative ("breach"), SA Water may give notice in writing to the Developer requiring the developer to rectify any such breach within the time specified in the notice. If the developer fails to rectify a breach within the time specified, SA Water may immediately terminate this Agreement by giving written notice of termination to the Developer.

If the Developer has rectified a breach notified to it under this clause and at a later time, in the opinion of SA Water, commits the same or a similar breach, SA Water may immediately terminate this Agreement by giving written notice of such termination to the Developer.

If the Developer acts dishonestly or illegally in any way affecting or in relation to the Works or the execution of the work under this Agreement, SA Water may give notice in writing to the Developer specifying such acts and requiring the Developer to supply SA Water with an explanation for such acts within the time specified in the notice. If SA Water considers that such explanation does not excuse the alleged dishonesty of the Developer, or if the Developer fails to

supply any explanation of such acts within the time so specified, SA Water may immediately terminate this Agreement by giving written notice of such termination to the Developer.

If SA Water forms the opinion that the Developer is or will be unable to perform the obligations under this Agreement, SA Water may immediately terminate this Agreement by giving written notice of such termination to the Developer.

If SA Water terminates this Agreement, SA Water must give the Developer written notice of that termination and a termination of this Agreement on the grounds of a particular breach by the Developer will be without prejudice to any right of action that SA Water may have in respect of any antecedent breach by the Developer.

38. Dispute Resolution

It is the intention of this clause to provide a procedure to enable the parties to ensure that a dispute is dealt with, and to ensure that the parties explore the possibilities for resolving a dispute before considering legal proceedings.

Except in the case of genuine urgency requiring immediate interlocutory or interim relief or remedy, neither party may commence legal proceedings in relation to any dispute or other matter arising out of this Agreement without first doing everything in that party's power to comply with the following procedure:

- In this clause, Dispute Representative means each of the persons nominated in Item 3 of Schedule A or otherwise nominated by SA Water as SA Water's Dispute Representative and by the Developer as the Developer's Dispute Representative.
- The procedure under this clause is initiated by either SA Water or the Developer sending to the other party by certified mail a written notice requiring the implementation of dispute resolution procedures under this clause ("a dispute resolution notice").
- Within twenty one (21) calendar days of receipt of a dispute resolution notice or by agreement of the parties, each party must, if no Dispute Representative for that party is named in Item 3 of Schedule A, nominate a Dispute Representative and must reduce to writing the nature and scope of the disputed matter, and the issues raised by it, and submit the disputed matter to the Dispute Representatives.
- The Dispute Representatives must meet and attempt to resolve the disputed matter as soon as practicable.
- Each of the Dispute Representatives is hereby sufficiently authorised by the relevant party so that they may meet and endeavour to resolve the dispute without detailed reference to another person, within a period of ten (10) business days, or such longer period as the parties may agree, after reference of a disputed matter to them. In so doing they may be supported (at their election) by legal, financial, technical or other experts.

Nothing in this clause is intended to preclude the parties from agreeing to use any form of arbitration or alternative dispute resolution at their mutual discretion.

Notwithstanding any dispute or proceedings, the Developer must, if the work under this Agreement has not been completed, at all times (unless otherwise provided for in this Agreement) proceed without delay to continue to execute the Work under this Agreement and perform the Developer's obligations under this Agreement, and in so doing must comply with all directions given to the Developer under the provisions of this Agreement by SA Water in writing, and SA Water must pay to the Developer any moneys due under this Agreement from time to time.

39. Payment to Developer

The Developer will only be entitled (where applicable under the terms of this Agreement) to the following payments from SA Water under this Agreement:

- (a) the nominal contract sum specified in clause 2,
- (b) the value of a payable variation under clause 27,
- (c) a contribution under clause 26 in the sum specified in Item 3 of Schedule B.

40. Certificate of Practical Completion

When SA Water is satisfied that the Practical Completion of the Works, or of a separable part of the Works, has been reached and the Security has been lodged, SA Water will issue to the Developer a Certificate of Practical Completion for the Works or for that separable part of the Works.

The Certificate of Practical Completion must state the date of Practical Completion of the Works or of that separable part of the Works to which it applies and such date must, for the purposes of this Agreement, be known as the Date of Practical Completion of the Works or of that separable part of the Works.

On issue of the Certificate of Practical Completion of the Works or a separable part of the Works the Developer must give SA Water possession and control of the Works or the separable part of the Works in respect of which the Certificate was issued.

On issue of a Certificate of Practical Completion of the Works or a separable part of the Works, SA Water will notify Planning SA that the requirements referred to in the Agreement relating to the provision of water and/or sewerage services have been met for the Works or that part of the land comprising the separable part of the Works for which a Certificate of Practical Completion has been issued.

41. Separable Part of the Works

SA Water may determine that a section or portion of the Works is a separable part of the Works.

SA Water must determine what portion (if any) of the Security will apply to each separable part of the Works (determined in accordance with this clause).

A Certificate of Practical Completion for the separable part of the Works will be issued by SA Water in accordance with clause 40.

The provisions of this Agreement will apply to a separable part of the Works in the same manner as they do to the Works and terms will have the same meaning as they apply to the Works.

42. Final Certificate

When all work under this Agreement, including that of remedying defects during the Defects Liability Period as provided in clause 17 has been finally and satisfactorily executed and the Developer has fulfilled all the other obligations under this Agreement, SA Water will issue to the Developer a Final Certificate.

-ooo0ooo-

EXECUTION OF AGREEMENT

Signed for and on behalf of
South Australian Water Corporation
(ABN 69 336 525 019)
by a person duly authorised
so to do in the presence of:

.....
Witness signatory

.....
Authorised signatory

.....
Print name

.....
Print name

.....
Print title/position

.....
Print title/position

Dated / /

Dated / /

Signed for an on behalf of
[Insert Developer]
(ABN)
by a person duly authorised so
to do in the presence of:

.....
Witness signatory

.....
Authorised signatory

.....
Print name

.....
Print name

.....
Print title/position

.....
Print title/position

Dated / /

Dated / /

Or for sealing

The Common Seal of)
[Insert Developer])
(ABN))
was affixed in the presence of)
)

(Place Seal Above)

.....
Authorised Signatory

.....
Authorised Signatory

.....
(Print full name)

.....
(Print full name)

SCHEDULE B

South Australian Water Corporation (ABN 69 336 525 019)

This Schedule is issued with the Land Developer Agreement (LDA-V1.0) and must be read as part of the Agreement.

Item 1 The Consultant
Under clause 13 of the Agreement, the Consultant will be
.....

Item 2 The Security
Under clause 31 of the Agreement, the amount of the
security is (\$)

Item 3 SA Water’s Contribution for Additional Infrastructure
Under clause 26 of the Agreement, the amount of
SA Water’s contribution is (\$)

Item 4 Developer’s Contribution
Under this Agreement, the Developer’s Contribution is as
follows:

Water Supply

.....	\$
.....	\$
Water Supply Agreement Payment	\$
Less Determination Fee	\$
Water Supply Contribution Required	\$

And/or

Sewerage Supply

.....	\$
.....	\$
Sewerage Supply Agreement Payment	\$
Less Determination Fee	\$
Sewerage Supply Contribution Required	\$

This contribution will be valid until / / following which a redetermination fee of \$ will be required.

I have read and understood the contents of this Schedule and agree that everything contained in it is true and correct and forms part of the Agreement.

.....
for and on behalf of (Developer)