

# **Developer Works Deed**

## **Schedule 1: Standard Terms**

### **Version 5**

## Contents

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## Part A Carrying out the works

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### A1 General obligations

#### A 1.1 Developer and WSC obligations

- (a) The Developer is responsible for the Developer Works and must ensure that they are performed in line with the Developer Works Deed.
- (b) The Developer must engage a Water Servicing Coordinator (WSC) to manage the design and construction.
- (c) The WSC must ensure that Listed Providers design and construct the works in line with:
  - (i) the Developer Works Deed and any document forming part of it, such as the Notice of Requirements (NOR), Job Specific Schedule Letter and Listed Provider Instructions
  - (ii) relevant Sydney Water policies, forms and specifications
  - (iii) relevant Legal Requirements and Standards.
- (d) If either the Developer or a Listed Provider Party fails to perform an obligation, Sydney Water, at its discretion, may either:
  - (i) ask the Developer to make good the failure at no cost to Sydney Water
  - (ii) make good the failure itself and recover its reasonable costs as a debt to be paid in line with A7.3(b).
- (e) The terms of A1.1(d) do not affect any other rights Sydney Water might have. In particular, if a breach of the Deed causes Sydney Water to breach a Customer Contract, the Developer must pay Sydney Water damages that cover customer redress.
- (f) Where reasonably practicable, Sydney Water will provide prior notice to the Developer and Listed providers of any material change to the Sydney Water policies, forms and specifications set out in A(c)(ii) above.

#### A 1.2 Sydney Water obligations

- (a) Sydney Water must prepare the Developer Works Deed between the parties and set:
  - (i) the functional requirements for water, wastewater and stormwater services
  - (ii) standards for design, construction (including field testing and drilling) and asset recording
  - (iii) acceptable pipeline materials and products
  - (iv) the acceptance requirements.

### A 1.3 Timing of obligations

If the day on which anything is to be done is not a Business Day, it must be done on the next Business Day.

## A2 Design and preparation

### A 2.1 Design

- (a) The WSC must:
  - (i) for Major Works, arrange for a Design Package to be prepared and then submit this package to Sydney Water
  - (ii) for Minor Works, prepare a Design.
- (b) The WSC must ensure the works are designed and located so they do not affect any of Sydney Water's assets, operations or services, or those of another Authority.
- (c) The WSC must ensure that both an Environmental Management Plan and a Project Safety Plan are prepared for the construction before submitting the Construction Commencement Notice (see A2.4).

### A 2.2 Job Specific Schedule Letter for Major Works

- (a) Once it has reviewed the Design Package, Sydney Water will give the Design Plan and the Job Specific Schedule Letter to the WSC.
- (b) The Job Specific Schedule Letter may include:
  - (i) notification that relevant fees and charges will be applied prior to the Transfer of Ownership
  - (ii) connection requirements and related hazards
  - (iii) Sydney Water's share of costs, if any
  - (iv) contact details for Sydney Water's representative.

### A 2.3 Works Warranty Bond

- (a) If the NOR requires it, the Developer must deliver to Sydney Water a Works Warranty Bond by the date and in the amount specified in the NOR or Works Warranty Bonding Letter.
- (b) Sydney Water will keep the Works Warranty Bond as security for the Developer performing its obligations under the Deed.
- (c) The Works Warranty Bond must be either an unconditional bank undertaking or cheques. Sydney Water, acting reasonably, will either approve or reject the form of the Bond and the financial institution issuing it.
- (d) Sydney Water may access the Works Warranty Bond to complete the scope of works or whenever it is entitled to receive money from the Developer:

- (i) under the Deed
  - (ii) because of a breach or termination of the Deed.
- (e) Sydney Water will return or release the Works Warranty Bond once it has issued the Transfer of Ownership Notice and the Developer has paid all costs it owes in line with A7.3(b).

#### **A 2.4 Construction Commencement Notice**

- (a) At least two Business Days before the proposed start of construction (and after receiving the Job Specific Schedule Letter in the case of Major Works), the WSC must give Sydney Water a Construction Commencement Notice (CCN).
- (b) Prior to the proposed start of construction, Sydney Water will return the CCN to the WSC, acknowledging the date for starting construction.
- (c) The WSC must not allow construction to start before:
  - (i) the WSC has delivered to Sydney Water the executed Developer Works Deed and, if the Constructor has not executed the Deed, the executed Deed Poll
  - (ii) the WSC has received the CCN from Sydney Water acknowledging the starting date
  - (iii) all relevant Legal Requirements have been satisfied.
- (d) If construction will not start on the date nominated in the CCN, the WSC must submit a second CCN at least two Business Days before the proposed start.
- (e) If the WSC does not submit a CCN before the Developer Works Term expires, the WSC must resubmit the Design Package to Sydney Water for review (unless the Developer and Sydney Water agree otherwise, acting reasonably). The procedures in A2.1 and A2.2 will apply to the resubmitted Design Package.

### **A3 Access and inspections**

#### **A 3.1 Entry to Other Land**

- (a) The Developer is responsible for obtaining any entry and access rights to Other Land that it needs for the Developer Works.
- (b) The Developer must not start the Developer Works until it has the written consent of the Other Land's owner and any tenants.
- (c) Any site rental, occupation fees, license fees or other amounts paid to any person by the Developer in arranging access to Other Land up to Completion are excluded from any costs payable by Sydney Water under this Deed.
- (d) The Developer must provide safe unfettered access to the Developer Works site for Sydney Water personnel.
- (e) Sydney Water's personnel must comply with the Developer's reasonable safety requirements whilst on site.

- (f) If the Developer requires access to enter Other Land, the Developer must obtain the written permission of the relevant property owners and tenants, and:
  - i. The Developer must use Sydney Water's Permission to Enter form to evidence consent, which is available on Sydney Water's website or can be obtained from the WSC.
  - ii. The Developer must comply with the requirements set out in Sydney Water's Permission to Enter form, including payment of compensation
  - iii. The Developer is responsible for all costs of delay and mediation involved in resolving any disputes.

### **A 3.2 Easements and interests**

- (a) If Sydney Water reasonably requires it, the Developer must:
  - (i) create Sydney Water any easements to cover operational assets through creation of 88B instrument and related deposited plan.
  - (ii) create easements utilising Sydney Water's standard memorandums registered with the department of Land & Property Information.
  - (iii) grant Sydney Water any restrictions on use of land or positive covenants over the site, including those that cover maintaining and using the works or securing indemnities for Sydney Water.
- (b) The Developer must also arrange for the owner and tenants of any Other Land, on which works will be built, to grant Sydney Water any use, restriction on use, positive covenant or other interest that Sydney Water considers necessary.
- (c) The Developer must carry out A3.2(a) and (b) at its own expense, unless agreed otherwise with Sydney Water. Costs might include, preparing and registering plan of easement, paying compensation to the owner or tenants of Other Land under A3.2(b).
- (d) Widths for all easements are to be in line with terms set out in the Easement Operational Guidelines (table 2.1 Calculation of Minimum Easement Widths). Size requirements for interests are at the discretion of Sydney Water (acting reasonably) to allow for any excavations (and the resulting soil) needed to build, maintain, repair, decommission or replace the Developer Works.

### **A 3.3 Auditing, inspection or testing on site**

- (a) Sydney Water will audit the Developer Works, in line with the Listed Provider Instructions, and may also inspect or test the works and related materials.
- (b) If Sydney Water needs to access the site, it will give reasonable notice to the Developer WSC or Constructor, who must then:
  - (i) allow access at any time during the working hours specified in the CCN
  - (ii) if asked, provide reasonable assistance to Sydney Water to safely and easily audit, inspect or test the works.

- (c) The WSC must also provide reasonable assistance to Sydney Water to audit, inspect or test the works, but should not rely on the findings for the WSC's own obligations [see A1.1(c) and B7.2].
- (d) If an audit or inspection shows that a party must take particular action, that party must:
  - (i) take action in the manner, and within the time, Sydney Water reasonably requires
  - (ii) at Sydney Water's request, provide evidence that it has been done.
- (e) If an audit or inspection shows that the Developer Works have not been performed in line with this Deed, the Developer must pay any costs Sydney Water incurs in the audit or inspection.
- (f) Sydney Water may decide, acting reasonably, that the design or construction of the Developer Works needs an intensive audit (ie a series of frequent performance reviews). If so, Sydney Water will calculate the fee for this audit and the Developer must pay it in line with A7.3.

## **A4 Records, notices and access to information**

### **A 4.1 Information and records**

- (a) Within 14 days of a request from Sydney Water, the Developer must provide information on the progress, status and likely completion of the Developer Works.
- (b) If Sydney Water, acting reasonably, needs to inspect records on the Developer Works, it will give reasonable notice to the relevant party. At the Developer's expense, that party must then allow access to its premises, or the site, at any time during business hours.
- (c) Sydney Water may copy any records that relate to the Developer Works.

### **A 4.2 Notices**

- (a) Pro forma notices or other communications given to a party under the Developer Works Deed are only given if they are in writing and delivered to that party's address by hand, registered post, fax or email.
- (b) A notice or communication will be seen as delivered:
  - (i) if given by hand, when it is handed to a representative of the party or left at its last known business address
  - (ii) if given by registered post, two Business Days after it is posted if within Australia, or nine Business Days if international
  - (iii) if given by fax or email, as soon as the sender's fax machine or computer reports an error-free transmission to the correct number or address.
- (c) If a notice or communication is given after 5 pm, or on a day that is not a Business Day, at the receiver's end, it will be seen as delivered at the start of the next Business Day.

## A5 Completion

### A 5.1 Obligation to complete

If the Developer does not complete the Developer Works before the Developer Works Term expires, and the failure to complete was not caused by Sydney Water's failure to perform its obligations under this Deed, Sydney Water may, at its discretion:

- (a) terminate the Developer Works Deed
- (b) terminate the Developer Works Deed and perform as much of the Developer Works as it needs to provide water, wastewater or stormwater services to its customers; or
- (c) negotiate with the Developer to extend the Developer Works Term including the precondition that the Developer pays any revised fees, charges, levies or contributions.

### A 5.2 Connection of Major Works

- (a) When the WSC believes that the Developer Works are ready to be connected to a Sydney Water Asset, the WSC must ensure the works are tested and validated in line with the relevant Instructions to Water Servicing Coordinators. The WSC must also notify Sydney Water.
- (b) Sydney Water and the WSC must then follow the process set out in those instructions to:
  - (i) inspect the works
  - (ii) complete the Project Validation Certificate, which allows the works to be connected and certifies that they conform to this Deed
  - (iii) connect the works.
- (c) After signing section 3 of the Project Validation Certificate and before issuing a Transfer of Ownership Notice, Sydney Water may authorise in writing for customer connections to be made to any water, wastewater or stormwater assets that make up the Developer Works.

### A 5.3 Connection of Minor Works

- (a) When the WSC believes that the Developer Works are ready to be connected to a Sydney Water Asset, the WSC must:
  - (i) notify Sydney Water at least two days before inspection so it can arrange the inspection in line with the relevant Instructions to Water Servicing Coordinators
  - (ii) make sure the Developer Works are connected in line with the same instructions.
- (b) After connection:



- (i) the WSC must make sure the Constructor supplies a Work As Constructed Report in line with the Instructions to Water Servicing Coordinators
  - (ii) Sydney Water will sign the Minor Sewer Main Construction/Protection Inspection Report (see the instructions).
- (c) After connection but before issuing a Transfer of Ownership Notice, Sydney Water may authorise in writing for customer connections to be made to any wastewater assets that make up the Developer Works.

#### **A 5.4 Project Completion Package**

After completing testing and validation, the WSC must deliver to Sydney Water a Project Completion Package:

- (a) that includes all the documents listed in the relevant Instructions to Water Servicing Coordinators
- (b) within 28 days of connecting the Developer Works.

### **A6 Transfer of ownership**

#### **A 6.1 Section 73 Compliance Certificate**

- (a) Sydney Water will issue a Transfer of Ownership Notice and a Section 73 Compliance Certificate to the Developer within 14 days of receiving the Project Completion Package (see A5.4), if:
  - (i) the Developer has satisfied all of the requirements of the NOR
  - (ii) the Project Completion Package is acceptable.
- (b) The Developer must provide its ABN before Sydney Water will issue this certificate or release the Works Warranty Bond, even if it has already met the requirements of the NOR.

#### **A 6.2 Vesting of the works**

- (a) Until Sydney Water issues a Transfer of Ownership Notice, the Developer owns the Developer Works. Where the works involve building water mains that will be cut in to a Sydney Water Asset at the start, all works and fittings from the point of cut-in will belong to the Developer until this notice is issued.
- (b) Before the Developer Works are vested in Sydney Water, the WSC must detail the total costs for managing, designing and building the works. These must:
  - (i) include Sydney Water's costs (see A7.3)
  - (ii) include costs for any Variations to the works
  - (iii) exclude costs for any Property Service (main to meter) or Private Service Line built under the Developer Works
  - (iv) be in the format Sydney Water reasonably requires.
- (c) At the date of the Transfer of Ownership Notice, all Developer Works will vest in Sydney Water:

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- (i) except for any Property Service (main to meter) or Private Service Line, built under the works
  - (ii) without the need for any other instrument of transfer or assignment
  - (iii) at no cost to Sydney Water, unless the NOR states otherwise.
- (d) The Developer must do everything reasonably necessary to ensure that the vesting is legally effective, including managing third parties.
- (e) Sydney Water issuing the Transfer of Ownership Notice and Section 73 Compliance Certificate, and so vesting the works (or part of the works), will not relieve the Developer or any Listed Provider Party of:
- (i) its remaining obligations under the Developer Works Deed
  - (ii) liability for any breach of the Deed.

### **A 6.3 Care of the works**

- (a) The Developer is responsible for care of the Developer Works until the date Sydney Water issues the Transfer of Ownership Notice.
- (b) On this date, care of the works (or the relevant part of the works) will pass to Sydney Water.

## **A7 Payment**

### **A 7.1 Cost of delivering the works**

The Developer must:

- (a) meet the full cost of performing the Developer Works (except for any amounts that Sydney Water expressly agrees to pay)
- (b) pay all taxes, fees, charges, levies and contributions that relate to the Developer Works.

### **A 7.2 Cost of preparing and executing documents**

Unless a clause of the Developer Works Deed states otherwise, each party must pay its own expenses for preparing, negotiating, executing and completing the Deed and any related document.

### **A 7.3 Cost of goods and services provided by Sydney Water**

- (a) The Developer must pay all expenses Sydney Water incurs and any related fees or levies (including GST under A7.5) for:
  - (i) work Sydney Water does for the Developer
  - (ii) goods or services Sydney Water provides to the Developer.
- (b) Unless a clause of the Developer Works Deed states otherwise, the Developer or a Listed Provider Party must pay Sydney Water any money it owes:

- (i) within 30 days of the date of Sydney Water's invoice
- (ii) before the Section 73 Compliance Certificate is issued or the Works Warranty Bond is released whichever is earlier.

#### **A 7.4 ABNs and GST registration**

- (a) The terms used in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*, unless defined in this Deed.
- (b) Sydney Water warrants that it is registered under the GST Law and will immediately notify the Developer and Listed Provider Parties if it ceases to:
  - (i) be registered
  - (ii) satisfy any of the Commissioner of Taxation's requirements for issuing recipient-created tax invoices.
- (c) The Developer and Listed Provider Parties warrant that they are registered under the GST Law and that their ABNs are as shown on this Deed. They must:
  - (i) prove to Sydney Water that they are registered for GST and quote their ABNs on all relevant claims for payment
  - (ii) immediately notify Sydney Water if their ABN or GST registration is cancelled or revoked during the term of this Deed.
- (d) Where the Developer or Listed Provider Party fails to notify Sydney Water that it is registered, Sydney Water is entitled to withhold any tax as required by law from payments it makes.

#### **A 7.5 GST invoices**

- (a) The terms used have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.
- (b) Unless Sydney Water states otherwise, it will issue a recipient-created tax invoice for any taxable supply by the Developer or Listed Provider Parties. The Developer or Listed Provider Parties must not issue their own tax invoice for the supply.
- (c) Where Sydney Water cannot issue a recipient-created invoice for a particular supply under the GST Act, the Developer or Listed Provider Party must issue a tax invoice to Sydney Water within 14 days of a request.
- (d) Where Sydney Water makes a taxable supply under this Deed, the Developer or Listed Provider Party must pay Sydney Water the GST on the supply when it pays for the supply.
- (e) The Developer and Listed Provider Parties must provide a valid tax invoice to Sydney Water for any taxable supply they make under this Deed, at least 28 days before Sydney Water needs to pay for that supply. Sydney Water does not have to pay for a supply until it has received a valid invoice that sets out the GST.

- (f) If, in paying a tax invoice, Sydney Water pays the Developer or Accredited Provider Party more or less GST than it owes on a supply, an adjustment must be made. Either:
  - (i) Sydney Water must pay an extra amount if it has paid too little, or
  - (ii) the Developer or Listed Provider Party must reimburse Sydney Water if it has paid too much.
- (g) The Developer or Listed Provider Party must give Sydney Water an adjustment note within 14 days of becoming aware of any discrepancy.

## Part B Meeting other conditions

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### B1 Environment

#### B 1.1 General environmental requirements

- (a) The Developer and Listed Providers must be aware of all their responsibilities and liabilities under environmental laws, such as the *Protection of the Environment Operations Act 1997* (NSW), and the *Environmental Planning and Assessment Act 1979* (NSW). They must comply with these laws.
- (b) The Developer and Listed Providers must also be aware of any requirements relating to Sydney Water's operating licence or environmental plans or policies (see the website). They must comply with these documents. Where reasonably practicable, Sydney Water will provide prior notice to the Developer and Listed Providers of any material change to these documents.
- (c) The Developer must ensure that its agreements with the Listed Providers reflect these requirements.
- (d) Where Sydney Water is the Proponent for the Developer Works, under Part 5, Division 1 of the *Environmental Planning and Assessment Act 1979*, the Developer must act in line with Sydney Water's determination and any conditions of approval.

#### B 1.2 Environmental audits

- (a) Where Sydney Water is the Proponent [see B1.1(d)], it may conduct environmental audits and site inspections of the Developer Works to assess whether they comply with this Deed and the Planning Approval Documents.
- (b) If the audit or site inspection identifies a non-conformance with the Deed or opportunity for improvement, Sydney Water may issue a Corrective Action Request (CAR) to the WSC. The WSC must take action to ensure that the Listed Provider addresses the CAR and fixes the works within the reasonable time period stated on the CAR to Sydney Water's reasonable satisfaction (see also C2.2).
- (c) If the Developer fails to comply with B1.1 or B1.2, it will be responsible for any damages, losses or costs and indemnifies Sydney Water against any claims arising from this failure to comply.

## B2 Occupational health and safety

### B 2.1 General WHS requirements

- (a) Developer acknowledges that it is the Principal Contractor under Chapter 6 of the Work Health and Safety Regulation 2011 (NSW), unless and until such time that the Developer engages the Constructor, or another person conducting a business or undertaking, to be the Principal Contractor for the Developer Works, and authorises the Constructor (or such other person engaged) to have management or control of the workplace and to discharge the duties of a Principal Contractor under the Work Health and Safety Regulation 2011 (NSW). Where the Constructor or Developer terminates their relationship or the Constructor no longer acts as the Principal Contractor, the Developer will be the Principal Contractor until such time as a new Constructor is appointed.
- (b) The Developer or the Constructor and Listed Providers must comply with relevant WHS Law and procedures, including but not limited to:
  - (i) following the NSW Government's *WHS Management System Guidelines*, available from the Department of Procurement's website
  - (ii) providing WHS induction training
  - (iii) keeping and regularly updating WHS records about the Listed Providers' activities
  - (iv) preparing and maintaining an WHS management plan
  - (v) providing safe work method statements for all tasks and ensuring they are complied with
  - (vi) directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law.
- (c) The Developer and WSC must promptly inform Sydney Water of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover. (d) The Developer and the Constructor must also perform its obligations under the Developer Works Deed in such a way that:
  - (i) Sydney Water staff, agents or contractors can inspect, test or evaluate the Developer Works without breaching WHS Law
  - (i) after giving reasonable notice, Sydney Water staff can access and use the Developer Works (as they are intended to be used) without breaching WHS Law.

### B 2.2 Safe working requirements

- (a) The Developer must ensure that Listed Providers comply with the WHS Law including requirements to:
  - (i) identify hazards and assess risks
  - (ii) eliminate or control risks in line with WorkCover requirements
  - (iii) review risk assessments and control measures
  - (iv) provide information to employers and contractors about WHS

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- (v) document site-specific safety procedures.
- (b) The Developer must ensure Listed Providers and their Key Personnel operate with due diligence throughout the Developer Works in identifying and controlling safety hazards.
- (c) The WSC must ensure Listed Providers prepare a Project Safety Plan that:
  - (i) details safety strategies, including how the Listed Provider and its Key Personnel must act to comply with WHS Law
  - (ii) operates throughout the Developer Works and is kept up to date.

### B 2.3 Serious accident or dangerous occurrences

- (a) The Developer must notify WorkCover by telephone and Sydney Water’s representative via the WSC as soon as it becomes aware of any serious accident or dangerous occurrence. It must then oversee the steps in B2.3(b), (c) and (d).
- (b) Within seven days, the relevant Listed Provider or the WSC must formally notify WorkCover in line with WHS Law, using the prescribed online form. The WSC must give Sydney Water’s representative a copy of the WorkCover report.
- (c) The Listed Provider must give the Developer and Sydney Water’s representative (via the WSC) a written report in the form specified by Sydney Water. It must then cooperate with WorkCover and Sydney Water if the incident is investigated.
- (d) The Listed Provider must immediately give the Developer and Sydney Water’s representative (via the WSC) a copy of any improvement or prohibition notices that WorkCover issues.

## B3 Insurance

### B 3.1 Listed Provider insurance policies

The WSC must ensure that each Listed Provider has the insurance set out in the table below, as a minimum, before the Developer Works start.

Insurance	Constructor	Designer and WSC	Field Tester	Connection Driller <sup>(A)</sup>
<b>Public liability</b> with a limit of liability per occurrence of:	\$10 million	\$10 million	\$10 million	\$10 million
<b>Products liability</b> with a limit of liability per occurrence and in the annual aggregate of:	\$10 million	N/A	N/A	N/A
<b>Professional indemnity or errors and omissions</b> with a limit of liability per claim and in the annual aggregate of:	N/A	\$10 million	\$5 million	N/A

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<b>Motor vehicle third party property damage</b> with a limit of liability per occurrence per vehicle of:	\$20 million	\$20 million	\$20 million	\$20 million
<b>Workers compensation</b> as required by law:	✓	✓	✓	✓

(A) Water Service Connection Driller.

### B 3.2 Content of policies

- (a) Each Listed Provider must ensure that all insurance policies that it is required to effect:
  - (i) are obtained from an insurer authorised by the Australian Prudential Regulatory Authority or regulated by the Financial Services Authority in the United Kingdom or an insurer reasonably acceptable to Sydney Water
  - (ii) do not contain conditions or exclusions detrimental to the cover required to perform the Developer Works
  - (iii) contain provisions normally included in insurance policies to cover similar contracts.
- (b) Each Listed Provider must prove its insurance coverage by giving certificates of currency to Sydney Water, or the WSC on request.
- (c) Each Listed Provider must use its best endeavours to ensure that its insurances (apart from professional indemnity) include Sydney Water as an additional Insured, either:
  - (i) with a cross liability clause so that the cover applies to each insured party as though it was issued a separate policy, and a waiver of subrogation clause in which the Insurer agrees to waive any subrogation rights against any party insured by the policy, or
  - (ii) covering any liability to Sydney Water arising from the Developer or Listed Providers performing the Developer Works.
- (d) Each Listed Provider must also do its best to ensure that its insurances (apart from professional indemnity) provide that:
  - (i) the failure by any insured to meet the terms of the policy will not affect the insurance for the other insured
  - (ii) any non-disclosure or misrepresentation by one insured does not affect the right of any other insured to claim on the policy.
- (e) Each Listed Provider must not do anything that could vitiate, impair, derogate or prejudice cover under an insurance policy or that could prejudice any claim under the policy.
- (f) Each Listed Provider's insurance policies remain in effect for:
  - (i) the duration of the Developer Works Deed if based on 'occurrence'
  - (ii) seven years after the Developer Works Deed ends if based on 'claims made'
  - (iii) as long as the law requires or the Developer Works Deed specifies.

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### **B 3.3 Subcontractors to effect and maintain insurance**

- (a) Before commencing the developer works, the Listed Provider must obtain appropriate evidence that all subcontractors engaged by the Listed Provider to perform the Developer Works, are:
  - (i) either covered by the insurances the Listed Provider is required to effect under the Developer Works Deed, or effect and maintain insurance policies that are the same types and the same amounts and periods as the Listed Provider is required to effect and maintain and
  - (ii) insured by reasonable additional Public Liability and Professional Liability cover that are at or above the minimum limits of insurance the Listed Provider is required to maintain and has regard to the nature of the risks that may result from the Developer Works performed by the subcontractor.

## **B4 Confidentiality**

### **B 4.1 Confidential information**

- (a) Each party must keep confidential and must not publicly announce or disclose information about:
  - (i) documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential
  - (ii) any tender by the Developer or a Listed Provider relating to the Developer Works.
- (b) In particular, any party receiving confidential information must:
  - (i) treat the information as it would its own confidential material
  - (ii) promptly notify Sydney Water if it becomes aware that the law might require the information to be disclosed
  - (iii) ensure that only authorised staff have access to the information and that it is stored safely and securely.
- (c) If any party becomes aware of a breach of B4.1(a) or (b), it must notify Sydney Water immediately.
- (d) The obligations in B4.1(a) survive the termination of Developer Works Deed by five years, unless an alternative term has been agreed in writing.

### **B 4.2 Confidentiality exceptions**

A party's obligation not to disclose information under B4.1(a) does not apply if disclosure is required:

- (a) by law
- (b) by the Listing Rules of the Australian Securities Exchange Limited
- (c) to enable the party to perform its obligations or to make or defend any claim under the Developer Works Deed

- (d) under the Developer Works Deed provided that before the party discloses anything, it notifies the other party in writing of the information it plans to disclose and explains why it is doing so.

## **B5 Intellectual Property**

### **B 5.1 Ownership of Intellectual Property**

- (a) Nothing in the Developer Works Deed affects the ownership of Background IP or Third Party IP.
- (b) Sydney Water owns all Foreground IP once it is created.
- (c) Sydney Water has the exclusive right to apply to register any Foreground IP it owns in any country.

### **B 5.2 Intellectual Property licences**

- (a) The Developer and Listed Provider Parties grant to Sydney Water a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background IP that they own, including the right to sub-license it for the purpose of:
  - (i) using, maintaining and disposing of the Developer Works or support systems
  - (ii) modifying and developing the works or any support system, linked works or associated infrastructure
  - (iii) completing the works on termination of the Developer Works Deed in line with C4 and other provisions of the Deed
  - (iv) rectifying defects or omissions in the works.
- (b) The Developer and Listed Provider Parties must ensure that Sydney Water is granted a licence from each of their contractors and subcontractors on the same terms.
- (c) The Developer and Listed Provider Parties must ensure that Sydney Water is granted a licence to use all Third Party IP on the best commercial terms reasonably available.

### **B 5.3 Technical Data**

- (a) The Developer and Listed Provider Parties must give Sydney Water any Technical Data that Sydney Water considers reasonably necessary to exercise its rights under the Developer Works Deed, at no extra cost.
- (b) Sydney Water may provide Technical Data to a third party for the purposes set out in B5.2(a).
- (c) The Developer and Listed Provider Parties must ensure that all Technical Data it gives Sydney Water will enable a reasonably competent person to perform the acts in B5.2(a) effectively.

## B 5.4 Moral rights

- (a) The Developer and Listed Provider Parties must not enforce any moral rights against Sydney Water that they might have relating to the Developer Works Deed.
- (b) The Developer and Listed Provider Parties must obtain written consent from each author of IP vested in or licensed to Sydney Water, so:
  - (i) Sydney Water can act as the licences in B5 allow
  - (ii) Sydney Water, or an authorised Person, can use the Foreground IP Sydney Water owns because of the Developer Works Deed.
- (c) Actions under B5.4(b) may be with or without attribution of authorship.
- (d) The Developer and Listed Provider Parties must, on request, give Sydney Water the executed original of any consent.

## B6 General warranties

### B 6.1 Developer warranties

- (a) The Developer warrants to Sydney Water that it has:
  - (i) not been found by the Independent Commission Against Corruption (ICAC) to have engaged in Corrupt Conduct
  - (ii) read and will comply with Sydney Water's Business Ethics Guide on Sydney Water's website.
- (b) The Developer warrants that, in ensuring the performance of the Developer Works, it will not employ or continue to employ an employee or subcontractor found by the ICAC to have engaged in Corrupt Conduct, or who has had their listing terminated by Sydney Water for a breach of the Business Ethics Guide.

Sydney Water may direct the Developer to stop employing an employee or subcontractor to ensure the performance of the Developer Works and stop them from being on Sydney Water's premises or worksites if the employee or subcontractor has:

- (i) had their listing terminated by Sydney Water for a breach of the Business Ethics Guide
- (ii) been found to have engaged in Corrupt Conduct by the ICAC.

The Developer must then stop employing that employee or subcontractor for ensuring the performance of the Developer Works and appoint a replacement subcontractor under the Developer Works Deed.

- (c) The Developer warrants to Sydney Water that:
  - (i) it is the site's registered proprietor or has the registered proprietor's authority to enter the site and perform the Developer Works

- (ii) if Sydney Water is the site's registered proprietor or has an easement over the site, it has gained all necessary approvals from Sydney Water to perform the works (with the WSC)
  - (iii) it has reviewed the NOR with the WSC and is satisfied that the Developer Works can be designed and constructed in line with the requirements
  - (iv) it will arrange for the Developer Works to be designed and constructed in line with the NOR
  - (v) it accepts that, if any work does not meet the terms of this Deed, Sydney Water is entitled to stop the work on site immediately and seek compensation under section 45 of the *Sydney Water Act 1994*
  - (vi) when the Developer Works are completed, they must be fit for purpose and comply with this Deed, all Legal Requirements and Standards
  - (vii) only Listed Providers will perform the Developer Works
  - (viii) if the Listed Provider performing the works is found to have connected to a Sydney Water asset without appropriate approval then, at the direction of Sydney Water, the Listed Provider will immediately cease work. The Developer must then stop employing that Listed Provider for ensuring the performance of the developer works and appoint a replacement Listed Provider under the Developer Works Deed.
- (d) The Developer warrants that it will notify Sydney Water, the Designer, the WSC and the Constructor in writing immediately if it becomes aware that it might:
- (i) discontinue its involvement with the Developer Works
  - (ii) transfer ownership of the site to another Person before the works are finished

Sydney Water will then either negotiate transitional arrangements for the Developer Works or ask the Developer to immediately stop performing them.

- (e) The Developer warrants that, after giving the notification in B6.1(d), it will make sure the Developer Works do not restart until all parties (including incoming parties) have executed the Novation Deed in Schedule 2.
- (f) The Developer warrants that it accepts the Novation Deed.

## **B 6.2 Listed Provider Party warranties**

- (a) Each Listed Provider Party warrants to Sydney Water that it has:
- (i) not been found by the ICAC to have engaged in Corrupt Conduct
  - (ii) read and will comply with Sydney Water's Business Ethics Guide on Sydney Water's website.
- (b) Each Listed Provider Party warrants that, in performing the Developer Works, it will not employ or continue to employ an employee or subcontractor found by the ICAC to have engaged in Corrupt Conduct, or who has had their listing terminated by Sydney Water for a breach of the Business Ethics Guide.

Sydney Water may direct the Listed Provider Party to stop employing an employee or subcontractor to provide the Developer Works and stop them from being on Sydney Water's premises or worksites if the employee or subcontractor has:

- (i) had their listing terminated by Sydney Water for a breach of the Business Ethics Guide
- (ii) been found to have engaged in Corrupt Conduct by the ICAC.

The Listed Provider Party must then stop employing that employee or subcontractor for providing the Developer Works and appoint a replacement subcontractor under the Developer Works Deed.

- (c) Each Listed Provider Party warrants that it:
  - (i) has entered into an agreement with the Developer
  - (ii) will perform all its obligations under that agreement in line with its terms
- (d) Each Listed Provider Party warrants that it will, while performing the Developer Works:
  - (i) Be listed on Sydney Water's web site and maintain its obligation to meet the relevant Mandatory Criteria for Listed Providers of Developer Works
  - (ii) ensure that any person it nominates to perform any function (including signing documents) relating to the Developer Works or this Deed, is authorised to perform that function.
- (e) Each Listed Provider Party warrants that if the Developer decides to transfer its rights and obligations under this Deed, the Listed Provider Party will execute the Novation Deed in Schedule 2.
- (f) Each Listed Provider party warrants that it has a Quality Management System (QMS) and a Product Specific Quality Plan (PSQP) which will maintain the following minimum quality assurance certification requirements:
  - (i) Third Party certification of the Listed Providers QMS including processes to address Sydney Water's requirements for PSQP by an independent JAS/ANZ registered certification company to AS/NZS ISO 9001. The QMS must address all warranties, activities and services that relate to the provider under this Developer Works Deed, or
  - (ii) third party certification of the providers QMS and the PSQP that documents the Listed Providers processes to address Sydney Water's requirements for a PSQP by an independent JAS/ANZ registered certification company firm to AS/NZS ISO 9001
  - (iv) In the case of a Listed Provider that performs construction work only in relation to Developer Works, a third party accredited Product Specific Integrated Management system that complies with the Civil Construction Management Code.
- (g) The Listed Provider will ensure and warrants to Sydney Water that Developer Works performed by it will be fit for the purpose or purposes detailed in its agreement with the Developer.

Without limiting any other right which Sydney Water may have, if within 12 months of the date of Transfer of Ownership Notice, the Developer Works prove

to be defective or not fit for purpose due to acts, errors or omissions of the Listed Provider, the Listed Provider must remedy the defects, by repairing, replacing or modifying the defects within the reasonable period specified by Sydney Water.

The Listed Provider must meet all costs of the remedial work.

If the Listed Provider does not remedy the defects by the period specified by Sydney Water, Sydney Water may remedy the defects at the cost of the Listed Provider. The Listed Provider must pay any costs Sydney Water incurs in remedying the defects within 30 days of the date of Sydney Water's invoice.

Sydney Water may remedy the defects without first giving the Listed Provider the opportunity to do so where it is reasonably necessary. The Listed Provider must pay any reasonable costs Sydney Water incurs in remedying the defects within 30 days of the date of Sydney Water's invoice.

### **B 6.3 Sydney Water warranties**

- (a) Sydney Water makes no representations about the financial viability of any Listed Provider.
- (b) Sydney Water makes no representations about, and will not be responsible for:
  - (i) examining or approving any drawings
  - (ii) inspecting or testing any Developer Works or materials
  - (iii) giving any advice to the Developer.

## **B7 Specific warranties, indemnities and release**

### **B 7.1 Designer warranties**

- (a) As well as the warranties under B6.2, the Designer warrants that:
  - (i) it will perform all its obligations under the Instructions to Designers – Major Works
  - (ii) it has prepared or will prepare the Design using due skill, care and diligence
  - (iii) the Design will be fit for purpose
  - (iv) the Developer Works depicted in the Design can be constructed in line with the Design.
- (b) The Designer also warrants that it has reviewed the NOR and is satisfied that a Design can be prepared that will:
  - (i) meet the requirements
  - (ii) respond to any comments made by Sydney Water
  - (iii) satisfy all Legal Requirements and Standards that applied when the Design Package was completed.

### **B 7.2 WSC warranties**

As well as the warranties under B6.2, the WSC warrants that it:

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- (a) will perform all its obligations under the relevant Instructions to Water Servicing Coordinators, its contract with Sydney Water and related documents
- (b) will monitor the performance of all Listed Providers in line with:
  - (i) the Developer Works Deed
  - (ii) any comments made by Sydney Water about the Design Package
  - (iii) all relevant Legal Requirements and Standards
- (c) will meet its obligations under its agreement with the Developer to help complete the Developer Works
- (d) for Major Works, will work with the Designer to monitor the design and construction of the Developer Works to ensure that they will be fit for purpose and comply with:
  - (i) the Developer Works Deed
  - (ii) any comments made by Sydney Water about the Design Package
  - (iii) all Legal Requirements and Standards
- (e) for Minor Works, will also act as the Designer and assume any obligations of the Designer identified in the Developer Works Deed
- (f) if the Constructor vacates the site [see B7.3(d)], will notify Sydney Water in writing at least two days before the Constructor plans to resume construction.

### **B 7.3 Constructor warranties**

- (a) As well as the warranties under B6.2, the Constructor warrants that it will perform all its obligations under the relevant Instructions to Constructors and related documents.
- (b) The Constructor warrants that it will ensure each element of the Developer Works is constructed in line with:
  - (i) the Design
  - (ii) the Developer Works Deed
  - (iii) the relevant Instructions to Constructors and related documents, including Standards
  - (iv) any reasonable instruction from Sydney Water.
- (c) The Constructor warrants that it will ensure any person it engages:
  - (i) has the qualifications specified in the Listed Provider Instructions on Sydney Water's website
  - (ii) if undertaking work in confined spaces, complies with the Safe Entry and Working in Confined Spaces Procedures – HSP 001 on Sydney Water's website
  - (iii) if working on any live assets (ie those involving a hydraulic system that normally conveys or stores fluid), will comply with the relevant Instructions to Constructors, and any written instructions from Sydney Water.
- (d) The Constructor warrants that it will immediately notify Sydney Water and the WSC if it vacates the site.

- (e) The Constructor warrants that, as far as practicable, any construction work will be wholly contained within an easement granted or land transferred to Sydney Water under A3. If any part of an excavation is not within an easement or transferred land, it will either:
  - (i) promptly rectify any work outside that easement or transferred land, or
  - (ii) increase the area of the easement or transferred land to include the work.
- (f) The Constructor warrants that documents are in place, before construction begins and at all times during the Developer Works, in line with the Listed Provider Instructions, including:
  - (i) an Environmental Management Plan
  - (ii) a Project Safety Plan.
- (g) The Constructor warrants that it will comply with:
  - (i) the plans in B7.3(f) when performing the Developer Works (but acknowledging that this does not discharge any of its obligations under the Deed)
  - (ii) any request made by Sydney Water after the CCN is completed, within the time Sydney Water specifies.
- (h) The Constructor warrants that it will construct the Developer Works:
  - (i) in line with the terms of its agreement with the Developer
  - (ii) in a good and workmanlike manner
  - (iii) in line with the Design
- (v) to ensure they meet all Legal Requirements and Standards, including the Listed Provider Instructions.
- (i) The Constructor warrants that, if it has been notified by Sydney Water that it has connected to a Sydney Water asset without appropriate approval, it will cease work immediately. A replacement Constructor will be appointed by the Developer under the Developer Works Deed.

#### **B 7.4 Indemnities and releases**

- (a) The Developer and Listed Provider Parties indemnify Sydney Water against any liability, damages, losses or costs (including legal costs assessed on a solicitor and own client basis) that it might otherwise incur, if they, their staff, agents or contractors:
  - (i) breach this Deed or a Legal Requirement
  - (ii) act negligently or unlawfullyexcept where the negligence, fraud, wilful misconduct or breach of this Deed by Sydney Water, its staff, agents or contractors causes the liability, damage, loss or cost.
- (b) This indemnity covers:
  - (i) any loss, destruction or damage to any real or personal property because of the Developer Works
  - (ii) any customer redress owed under the Sydney Water Customer Contract



- (iii) death or injury to any person
  - (iv) infringement or alleged infringement of any IP, including moral rights
  - (v) a breach or alleged breach of any duty of confidentiality.
- (c) The Developer and Listed Provider Parties:
- (i) forever release and discharge Sydney Water from any liability arising from the fact that the Listing of a Listed Provider it has engaged is changed, suspended or revoked
  - (ii) indemnify Sydney Water against any liability, damages, losses or costs (including legal costs assessed on a solicitor and own client basis) that Sydney Water would otherwise incur if the Listing of a Listed Provider it has engaged is changed, suspended or revoked.

## **B8 Laws and other legal conditions**

### **B 8.1 State laws, including the Sydney Water Act**

- (a) The Developer Works Deed is governed by the law of New South Wales. The parties must:
- (i) submit to the non-exclusive jurisdiction of its courts and courts of appeal
  - (ii) not object to these courts exercising jurisdiction on any basis.
- (b) Nothing in this Deed will affect Sydney Water's discretion to exercise its functions and powers under the *Sydney Water Act 1994*, its operating licence or any other Legal Requirement. The Developer and Listed Provider Parties will have no claim against Sydney Water for anything it does under the Act, its operating licence or another Legal Requirement.
- (c) The Developer Works are governed exclusively by the Developer Works Deed, which is a specific agreement for the construction of works under section 57 of the Sydney Water Act. This is not affected by any other agreement between the parties, except for the WSC's contract with Sydney Water.
- (d) Part 4 of the *Civil Liability Act 2002* (NSW) does not apply under this Deed, as far as that law permits.

### **B 8.2 Joint and individual liability and benefits**

Except where the Developer Works Deed states otherwise:

- (a) any agreement, covenant, representation or warranty by two or more people binds them all jointly and each of them individually
- (b) any benefit in favour of two or more people benefits them all jointly and each of them individually.

### **B 8.3 Survival and severability**

- (a) Provisions of the Developer Works Deed that, by their nature, are intended to survive the Deed's termination or expiry will do so. These include:

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- (i) A7.5 on GST
  - (ii) B3 on professional indemnity insurance
  - (iii) B4 on confidentiality
  - (iv) B5 on Intellectual Property
  - (v) B6 and B7 on warranties and indemnities
  - (vi) C3 on dispute resolution.
  - (vii) B6.2(g) on defects liability
- (b) Each provision of the Developer Works Deed is severable. If any provision becomes illegal, invalid or unenforceable in any jurisdiction, it is to be treated as being severed from the Deed in that jurisdiction. The rest of the Deed will not be affected and the provision will still be legal, valid and enforceable in other jurisdictions.

#### **B 8.4 Variations and further acts**

- (a) No Variation to the Developer Works Deed will take effect unless it is in writing and signed by each party.
- (b) Each party must, at its own expense, promptly perform all further acts and execute all documents that another party reasonably requests to:
- (i) give effect to the Developer Works Deed
  - (ii) complete the Developer Works.

#### **B 8.5 Waivers**

- (a) A waiver of any right or remedy under the Developer Works Deed:
- (i) must be in writing and signed by the party granting it
  - (ii) only affects the obligation or breach for which it is given, in the circumstances defined, and must not be taken as an implied waiver in any other circumstances
  - (iii) must not be taken as an implied waiver of any other obligation or breach.
- (b) If a party fails to do, or delays doing, something it is entitled to do under the Developer Works Deed, this does not amount to a waiver.

#### **B 8.6 Parties' rights and relationship**

- (a) Nothing in the Developer Works Deed:
- (i) makes the Developer or Listed Provider Parties partners, agents or legal representatives of Sydney Water
  - (ii) creates a partnership, agency or trust
  - (iii) confers on the Developer or Listed Provider Parties any authority to bind Sydney Water in any way.
- (b) The rights of the parties do not merge once the Developer Works are completed or terminated.

## Part C Managing changes or problems

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### C1 Variations to Major Works

#### C 1.1 Variations from Sydney Water

- (a) The Developer and Listed Providers must not vary the Developer Works unless Sydney Water agrees to in writing with reasonable prior notice.
- (b) Acting reasonably, Sydney Water may give the Developer written notice of a proposed Variation and the Developer must comply with this direction, once the Variation is accepted by the parties.
- (c) The Variation might entitle the Developer to extend the Developer Works Term, but Sydney Water must agree.

#### C 1.2 Variations from the Developer or Listed Providers

- (a) If the Developer or Listed Providers wish Sydney Water to approve a Variation, they must ensure that the WSC lodges a written request.
- (b) Acting reasonably, Sydney Water will either approve or reject the Variation. It may place reasonable conditions on an approval.
- (c) Unless the approval states otherwise, the Variation will not entitle the Developer to:
  - (i) any damages, losses or costs
  - (ii) extend the Developer Works Term.

### C2 Non-conformance or damage during construction

#### C 2.1 Damage to Sydney Water property

The Developer must replace or fix any Sydney Water Asset it loses or damages while performing the Developer Works.

#### C 2.2 Corrective action for non-conformance or damage

- (a) If an inspection or audit of the Developer Works shows that they:
  - (i) do not conform to the Developer Works Deed
  - (ii) have damaged a Sydney Water Asset or third party property

Sydney Water may give the Listed Provider Party, via the WSC, a Corrective Action Request (CAR). This CAR will apply to the Developer as well.

- (b) The Listed Provider Party must ensure that it addresses the CAR and rectifies the Developer Works to Sydney Water's satisfaction, within the reasonable time stated.
- (c) If the Listed Provider Party does not rectify the Developer Works as the CAR specifies, Sydney Water may do so and the Developer must pay the costs Sydney Water incurs in line with A7.3(a).

### **C 2.3 Urgent action for non-conformance or damage**

- (a) If urgent work is needed on water or wastewater services to any of Sydney Water's customers, Sydney Water may carry out this work without first notifying the Developer and WSC. This might include work to protect the Developer Works, a Sydney Water Asset or third party property.
- (b) The Developer must pay any reasonable costs Sydney Water incurs in doing this work in line with A7.3(a).

## **C3 Dispute resolution**

### **C 3.1 If a dispute arises**

- (a) Sydney Water, the Developer and the Listed Provider Parties must follow the resolution process in C3.2 before starting legal proceedings, unless:
  - (i) they need to seek an urgent injunction or declaration
  - (ii) following the process means a limitation period for a relevant cause of action will expire.
- (b) If the dispute is between the Developer and an Listed Provider Party about payment, Sydney Water will not become involved.
- (c) Each party must continue to perform its obligations under the Developer Works Deed, despite the dispute. This is to ensure the Developer Works are completed before the Developer Works Term expires.
- (d) Each party must bear its own costs in resolving a dispute.

### **C 3.2 Process for dispute resolution**

- (a) If a party becomes aware of a dispute, it must submit a dispute notice to the other party's authorised representative within 28 days. The notice must clearly describe the issues behind the dispute.
- (b) Within 14 days of a dispute notice, a senior executive from each party, who has the authority to bind the party, must meet at a time and place that is mutually convenient. The senior executives may invite other staff to attend this meeting, as long as they give a list of names to the other executive at least 24 hours before.
- (c) If the parties agree on a resolution, the terms must be documented and signed by both senior executives. The agreement will then bind both parties.

- (d) If the parties cannot agree on a resolution within 21 days of the dispute notice, either party may start litigation after notifying the other party in writing.

## C4 Termination

### C 4.1 Termination by Sydney Water for cause

- (a) Sydney Water may immediately, in writing, either terminate the Developer Works Deed or take all or part of the Developer Works out of the hands of the parties if the Developer:
- (i) acts fraudulently
  - (ii) at any time is (or, if a company, any of its Officers are) found by the ICAC to have engaged in Corrupt Conduct
  - (iii) breaches, or any of its employees (or, if a company, any of its Officers) breach Sydney Water's Business Ethics Guide
  - (iv) allows a Listed Provider to continue work after it has been made aware that the Listed Provider does not maintain the relevant Mandatory Criteria for Listed Providers of developer works and is not listed on Sydney Water's web site
  - (v) fails to engage another Listed Provider who meets the relevant Mandatory Criteria for Listed Providers and is listed on Sydney Water's web site in line with C5.2 within 20 Business Days of the Developer being made aware that the current Listed Provider lost its listing; or
  - (vi) ceases to carry on business or faces an Insolvency Event.
- (b) Without limiting Sydney Water's rights under C4.1(a), Sydney Water may immediately, in writing, terminate the Developer Works Deed against a Listed Provider Party and take the Developer Works out of the hands of that Listed Provider Party if that Listed Provider Party:
- (i) acts fraudulently
  - (ii) at any time is (or, if a company, any of its Officers are) found by the ICAC to have engaged in Corrupt Conduct
  - (iii) breaches, or any of its employees (or, if a company, any of its Officers) breach Sydney Water's Business Ethics Guide; or
  - (iv) ceases to carry on business or faces an Insolvency Event.
- (c) If Sydney Water terminates the Developer Works Deed as against the Listed Provider Party under clause C4.1(b):
- (i) Sydney Water must notify the Developer as soon as practicable;
  - (ii) the Developer must engage a replacement Listed Provider, unless the status of the works does not warrant it; and

- (iii) the Developer must ensure that any replacement for a Listed Provider Party executes the Deed Poll (see Schedule 3) before starting work and within 14 Business Days of Sydney Water's notification under C4.1(c)(i);
- (d) If the Developer does not comply with C4.1(c), Sydney Water may terminate the Developer Works Deed (provided that the failure to comply is not caused by an act or omission of Sydney Water).

#### **C 4.2 Effect of termination**

- (a) If Sydney Water terminates the Developer Works Deed under C4.1:
  - (i) the parties must stop performing the Developer Works (or the relevant part of the works)
  - (ii) no rights or liabilities of the parties existing at the date of termination will be affected
  - (iii) the Developer and Listed Provider Parties will not be entitled to any payment or compensation for damages, losses or costs because of the termination
  - (iv) the Developer must pay any costs Sydney Water incurs in completing the Developer Works in line with A7.3(a).
- (b) If, after a termination, the Developer wishes to proceed with the Developer Works, it must:
  - (i) obtain Sydney Water's consent
  - (ii) enter into another Developer Works Deed with Sydney Water
  - (iii) pay Sydney Water any extra or revised fees, costs and contributions.

#### **C 4.3 Effect of take out**

- (a) If Sydney Water takes work out of the hands of the Developer or a Listed Provider Party under C4.1, Sydney Water may:
  - (i) complete that work
  - (ii) without paying compensation, take possession of any plans, drawings and specifications that document the Design and as much of the site as it reasonably needs to complete the work, including any part the Developer owns
  - (iii) calculate the costs it incurs in completing the work and issue an invoice to the Developer for that amount.
- (b) The Developer must pay Sydney Water's invoice in line with A7.3(b).

## C5 Change of Provider Party Listing

### C 5.1 Provider listing and Mandatory Provider Criteria maintenance

- (a) If a Listed Provider fails to maintain its listing or does not meet the relevant Mandatory Criteria for Listed Providers of the specified developer works:
  - (i) Sydney Water will notify the Developer as soon as practicable
  - (ii) the Developer Works Deed may be terminated against that Listed Provider immediately
  - (iii) the Listed Provider must give all information and documents about the Developer Works to Sydney Water and the Developer
  - (iv) the Listed Provider consents to Sydney Water and the Developer giving this information and these documents to any third party later engaged to perform the works
  - (v) if required, the Developer must engage a replacement Listed Provider, unless the status of the works does not warrant it.
- (b) The Developer must ensure that any replacement for a Listed Provider Party executes the Deed Poll (see Schedule 3) before starting work and within 14 Business Days of Sydney Water's notification under C5.1(ai).
- (c) If the Developer does not comply with C5.1(b), Sydney Water may terminate the Developer Works Deed in line with C4.1(a).

### C 5.2 Change of Listed Provider

- (a) If the Developer plans to terminate its engagement of a Listed Provider Party during the Developer Works Term, the Developer must notify Sydney Water in writing.
- (b) Once this termination has taken place, the terminated Listed Provider Party:
  - (i) must give all information and documents about the Developer Works to Sydney Water and the Developer
  - (ii) consents to Sydney Water and the Developer giving this information and these documents to any third party later engaged to perform the Developer Works for the purpose of the third party performing the works.
- (c) The replacement Listed Provider Party must execute the Deed Poll (see Schedule 3) before starting work and within 14 days of being engaged by the Developer.

### C 5.3 Suspension or termination of listing

Sydney Water may at any time review the performance of a Listed Provider and issue a notice to suspend or terminate that Listed Provider's listing if the Listed Provider:

- (i) fails to comply with the environmental or OH&S requirements under this Developer Works Deed
- (ii) has connected to a Sydney Water asset without appropriate approval

- (iii) fails to ensure that the Developer Works performed by it are fit for the purpose or purposes detailed in its agreement with the Developer
- (iv) fails to comply with any Legal Requirements
- (v) fails to comply with any notices or instructions or Corrective Action Requests given by Sydney Water to the WSC in accordance with this Deed
- (vi) fails to comply with Sydney Water's Business Ethics Guide.

If the Listed Provider is given a Suspension or Termination Notice the Listed Provider must stop performing all Developer Works immediately, unless notified otherwise by Sydney Water. The Listed Provider company details will be removed from the list on Sydney Water's web site.

A Suspension Notice will specify:

- (i) the reason it has been given
- (ii) the duration of the suspension and what the Listed Provider must do to have the suspension lifted and their listing restored.

Any suspension will continue until Sydney Water, at its absolute discretion, is satisfied that the Listed Provider has complied with the Suspension Notice.

## **C6 Force Majeure Events**

### **C6.1 Notification**

If a party is affected, or likely to be affected, by a Force Majeure Event, that party must promptly notify the other parties, giving:

- (a) full details of the event
- (b) an estimate of its duration
- (c) the obligations it affects and how much it will affect them
- (d) the steps either taken or planned to manage its effects.

### **C6.2 Effect on obligations**

- (a) A party's obligations under the Developer Works Deed are suspended if those obligations are affected by a Force Majeure Event, for as long as the event continues.
- (b) A party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.



## Part D Understanding this document

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In this document, please note that a word:

- derived from a defined word has the corresponding meaning
- importing a gender includes all genders
- in the singular includes the plural, and vice versa.

Authority	Any government department or other public body, including local councils, with jurisdiction over the Developer Works or assets that might be affected by the works.
Background IP	IP that: <ul style="list-style-type: none"><li>• relates to the Developer Works</li><li>• exists at the date of the Developer Works Deed or is later created but not as a result of performing the Deed</li><li>• does not belong to a third party.</li></ul>
Business Day	Any day other than a Saturday, Sunday or public holiday in New South Wales, and 27, 28, 29, 30 and 31 December.
Completion	The time when the WSC has provided Sydney Water with all documents needed for the Project Completion Package.
Constructor	The Listed Provider who will build the Developer Works.
Corrective Action Request (CAR)	A document that identifies a problem, fault or non-conformance and asks the recipient to rectify it.
Corrupt Conduct	Conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW).
Customer Contract	A contract of the type in section 3(2) of the <i>Sydney Water Act 1994</i> , the terms of which are on Sydney Water's website.
Deed Poll	A deed that is executed by only one Listed Provider Party, if engaged after the Developer Works Deed is executed.

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**WARNING – Document current at time of printing or downloading**

Design	<p>For Minor Works, the documented design servicing solution as described in the Instructions to Water Servicing Coordinators – Minor Works.</p> <p>For Major Works, the design prepared by the Designer and included as part of the Design Package.</p>
Design Package	The package described in the Instructions to Water Servicing Coordinators – Major Works.
Design Plan	The plan released by Sydney Water (as a part of the Design Package) showing works to be constructed as a requirement of an NOR.
Designer	The Listed Provider who will design, and specify classes of infrastructure for, the Developer Works.
Developer	<p>A Person who either:</p> <ul style="list-style-type: none"><li>• has been given an approval under Part 6, Division 9 of the <i>Sydney Water Act 1994</i> and is seeking a Section 73 Compliance Certificate, or</li><li>• is seeking approval to adjust, deviate or extend an existing Sydney Water asset</li></ul> <p>on whose behalf the WSC has made an e-Developer Application.</p>
Developer Works	The works to be performed under the Developer Works Deed, including design, construction, supervision, testing and certification. Works might relate to drinking water, recycled water, wastewater or stormwater.
Developer Works Deed	The deed for performing the Developer Works, including these Standard Terms, any other documents it refers to and any attachments.
Developer Works site	The area of land over which part or all of the Developer Works are to be constructed.
Developer Works Term	<p>The period of 12 months, starting from the date of either:</p> <ul style="list-style-type: none"><li>• the Job Specific Schedule Letter (for Major Works), or</li><li>• the NOR (for Minor Works), as modified by a Section 73 Compliance Certificate or Works Warranty Bonding Letter.</li></ul>
Documents (including laws)	The original and any document that amends, consolidates, supplements, replaces, assigns or novates the original.
Dollars or \$	Australian currency.

e-Developer	Sydney Water's web-based software that WSCs can use to manage and distribute applications and related documents about Developer activity.
e-Developer Application	The initial application the WSC submits to Sydney Water in e-Developer on behalf of a Developer seeking either a Section 73 Compliance Certificate or approval to adjust, deviate or extend an existing asset.
Environmental Management Plan	A set of documents identifying environmental issues on a site and how those issues will be dealt with during construction.
Field Tester	The Listed Provider who will carry out specified classes of field testing for the Developer Works.
Force Majeure Event	An earthquake, cyclone, fire, riot or civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.
Foreground IP	IP that: <ul style="list-style-type: none"><li>• relates to the Developer Works Deed</li><li>• is created directly as a result of performing the Developer Works</li><li>• does not belong to a third party.</li></ul>
ICAC	Independent Commission Against Corruption
Insolvency Event	An event that results in: <ul style="list-style-type: none"><li>• the provider disposing of all its assets, operations or business, other than in the normal course of business</li><li>• the provider entering into an arrangement with creditors, other than for reconstruction under Part 5.1 or 5.3A of the <i>Corporations Act 2001</i></li><li>• the provider being unable to pay its debts</li><li>• a receiver, trustee in bankruptcy, liquidator, administrator or other like person being appointed over the whole or any part of the provider's assets or business</li><li>• a voluntary administrator being appointed.</li></ul>

Instructions to Constructors	The document available at Sydney Water's website
Instructions to Water Servicing Coordinators	The document available at Sydney Water's website
Intellectual Property (IP)	All copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Job Specific Schedule Letter	A letter issued by Sydney Water releasing the Design Package and detailing any conditions for construction.
Key Personnel	Those staff of a Listed Provider with expertise relevant to the category for which the provider is listed on Sydney Water's website.
Legal Requirements	<ul style="list-style-type: none"><li>• Acts, Ordinances, regulations, by-laws, orders, awards and proclamations in the relevant jurisdiction.</li><li>• Certificates, licences, consents, permits, approvals and requirements of any Authority, including all obligations under the development consent.</li></ul>
Listed Provider	A party, listed on Sydney Water's web site, to carry out particular parts of the developer works eg WSC under it's contract with Sydney Water or a Designer, Constructor, Minor Constructor, Field Tester and Water Service Connection Driller.
Listed Provider Instructions	Instructions on Sydney Water's web site detailing the roles and responsibilities of Listed Providers
Listed Provider Party	A Listed Provider that has executed the Developer Works Deed, Novation deed or Deed Poll.
Major Works	Works in the construction categories W1, W2 W3, S1, S2 and RW, on Sydney Water's website.
Mandatory Criteria for Providers	Information posted on Sydney Water's web site and used by a Listed Provider company to determine the required capabilities for the specified developer works.
Minor Works	Works in the construction category MS, on Sydney Water's website.

Notice of Requirements (NOR)	<p>Either:</p> <ul style="list-style-type: none"><li>• the notice in Part 6, Division 9 of the <i>Sydney Water Act 1994</i>, or</li><li>• a letter under section 44 of the <i>Sydney Water Act 1994</i> that states requirements, which must be met before Sydney Water will allow its assets to be adjusted, deviated or extended</li></ul> <p>that Sydney Water issues to the Developer.</p>
Other Land	Land owned or occupied by a Person other than the Developer or Sydney Water, which the Developer and the Accredited Providers need entry and access to.
Person	A natural person, body corporate, company, trust, partnership, joint venture, association or government agency.
Planning Approval Documents	Documents, approvals and certificates that need to be prepared or obtained before starting any activities in line with laws and Sydney Water requirements, such as a Review of Environmental Factors or development consent.
Private Service Line	A pipe carrying wastewater from a property to the reticulation main, owned and maintained by the property owner.
Principal Contractor	The Person defined in as the Principal Contractor under the Work Health and Safety Act 2011 (NSW) or Work Health and Safety Regulation 2011 (NSW) or an equivalent under federal work health and safety laws.
Property Service (main to meter)	A pipe supplying water from the reticulation main to the consumer (meter), owned by the property owner and maintained by either Sydney Water or the owner.
Project Safety Plan	A document prepared by the Listed Provider outlining how it will manage WHS, including hazards, responsibilities, induction, training, incident management, Corrective Action Requests and inspections.
Section 73 Compliance Certificate	A certificate issued under section 73 of the <i>Sydney Water Act 1994</i> .

Standards	<ul style="list-style-type: none"><li>• The Building Code of Australia, Australian Standards and Codes by the Water Services Association of Australia.</li><li>• Any other documents published or adopted by Sydney Water setting out its requirements for the design, construction, manufacture and supply of works or products.</li></ul>
Suspension Notice	A notice issued by Sydney Water to a Listed Provider company advising the suspension of that company's eligibility to perform Developer Works.
Sydney Water	Sydney Water Corporation, ABN: 49 776 225 038.
Sydney Water Asset	Works as defined in section 3 of the <i>Sydney Water Act 1994</i> .
Technical Data	All technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.
Termination Notice	A notice issued by Sydney Water to a Listed Provider company advising the Termination of that company's eligibility to perform Developer Works.
Third Party IP	IP owned by a party other than Sydney Water, the Developer or Listed Providers that relates to the Developer Works.
Transfer of Ownership Notice	The e-Developer document that shows the Developer Works are vested in Sydney Water.
Variation	A change to the nature or design of the Developer Works after Sydney Water has released the Design Package.
Water Service Connection Driller	The Listed Provider who will carry out specified classes of drilling for the Developer Works.
Water Servicing Coordinator (WSC)	The Listed Provider who will manage the design and construction of any water, wastewater or stormwater works and asset protection.

WHS Act	means <i>Work Health and Safety Act 2011 (NSW)</i> .
WHS Law	means: <ul style="list-style-type: none"><li>• the laws, approvals, standards and codes relating to work, health and safety (including the WHS Act and WHS Regulation) with respect to the Services;</li><li>• the requirements of any authority relating to work, health and safety with respect to the services; or</li><li>• any directions or notices relating to work, health and safety issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the Services.</li></ul>
WHS Regulation	means <i>Work Health and Safety Regulations 2011 (NSW)</i> .
Works Warranty Bonding Letter	A letter issued by Sydney Water to the Developer including the terms of the Works Warranty Bond.