



## **CONSULTANT ACCREDITATION DEED**

Greater Western Water (ABN 70 066 902 467)

AND

[INSERT CONSULTANT NAME] ([INSERT ABN])

Consultant Accreditation Deed

Contract No.: [INSERT GWW REFERENCE NUMBER]



Item 5:  
Further Term

[Insert period/date of Further Term]

Item 6:  
GWW'S Representative

[Insert appropriate name or title]

Item 7: Consultant's  
Representative

Key contact name:

Key contact email:

Key contact mobile:

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# General Conditions

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## 1. Background

- A. The Consultant has submitted an application for registration as an Accredited Consultant or is currently registered as an Accredited Consultant with GWW.
  - B. Upon execution of this Deed, the Consultant is Accredited to perform Consultancy Services for the Categories of Services recorded in ARCUS for GWW Works and Development Works.
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## 2. Objectives

The objectives of this Deed are to:

- 2.1 appoint the Consultant as an Accredited Consultant on the terms of this Deed;
  - 2.2 clearly set out the obligations, standards, and commitments of an Accredited Consultant to ensure that all Consultancy Services are carried out by the Consultant in accordance with this Deed and the Land Development Manual (and for Development Works, the terms of the Development Deed for each particular Development the Consultant works on); and
  - 2.3 set out the basis of the relationship between GWW and the Consultant including GWW's powers to accredit and regulate contractors and consultants who design or construct or carry out work on or near water or sewer assets and monitor the performance of all Accredited Consultants.
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## 3. Appointment and Term

### 3.1 Accreditation of Consultant

- 3.1.1 From the Commencement Date, the Consultant agrees that any previous accreditation deed between the Consultant and Western Water Corporation that has been transferred to GWW is terminated and is of no effect.
- 3.1.2 The Consultant is, by this Deed, appointed as an Accredited Consultant for the Categories of Works recorded in ARCUS, and may be engaged to perform Consultancy Services on the terms of this Deed, as set out in these General Conditions and the Special Clauses:
  - (a) for all Development Works: on the terms set out in Attachment 1.
  - (b) for all GWW Works: on the terms set out in Attachment 2.

## **3.2 Accreditation Conditions**

- 3.2.1 If GWW notifies the Consultant, the Consultant will serve an Induction Period as a condition of Accreditation during which the Consultant must regularly interact with GWW (as required by GWW) when performing Consultancy Services.
- 3.2.2 Subject to termination of this Deed under clause 14, the Consultant must comply with the Consultant's obligations contained in this Deed, for the duration of the Term.

## **3.3 Works without Accreditation Status**

In any case where the Consultant has carried out Consultancy Services:

- 3.3.1 before Accreditation occurs; or
- 3.3.2 during any suspension or after termination, of that Accreditation; or
- 3.3.3 after the Consultant's period of Accreditation has ended,
- 3.3.4 GWW may:
  - 3.3.5 declare (and the Consultant must accept such declaration) that the particular Consultancy Services have been carried out by the Consultant on the terms of this Deed, including all obligations of the Consultant in respect of such Development Works (as relevant); or
  - 3.3.6 direct the Consultant to re-perform the Consultancy Services or re-design the relevant GWW Works or the Developer Works impacted by the non-Accredited Consultancy Services.

## **3.4 Term**

- 3.4.1 This Deed begins on the Commencement Date and continues until the Expiry Date unless:
  - (a) extended by GWW, in accordance with clause 3.4.2; or
  - (b) terminated earlier in accordance with its terms.
- 3.4.2 At any time before the Expiry Date, GWW may give the Consultant a written notice that the Deed will be extended for the period of one Further Term commencing on the day after the Expiry Date.

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# **4. Accreditation**

## **4.1 Maintaining Accreditation**

- 4.1.1 During the Term, the Consultant must continue to comply with all GWW requirements to maintain its Accreditation for the Categories of Services in which it is Accredited.

- 4.1.2 Without limiting clause 4.1.1, in order to maintain Accreditation, the Consultant must:
- (a) in each calendar year, provide an annual declaration in the form and containing all details required by GWW; and
  - (b) on a continual basis, upload and keep up to date all required records and information in ARCUS.
- 4.1.3 If the Consultant breaches clause 4.1.1 or 4.1.2, or this Deed is terminated for any reason, the Consultant:
- (a) will immediately lose its Accreditation (without further notice from GWW); and
  - (b) will not be permitted to perform Consultancy Services for any GWW Works or Development Works, including Development Works under any Consultancy Contracts which have been entered into before the date of termination.
- 4.1.4 Despite clause 4.1.3, GWW may by written notice give the Consultant a dispensation to all or part of the prohibitions in clause 4.1.3 whether in respect of one or more GWW Works or Development Works.

## **4.2 Categories of Services**

- 4.2.1 The Consultant is Accredited by GWW for the Categories of Services recorded in ARCUS.
- 4.2.2 The Consultant may at any time during the Term, provide GWW with further information in relation to its experience and areas of expertise in categories outside of the Accredited Categories of Services.
- 4.2.3 GWW may have regard to the information provided by the Consultant under clause 4.2.2, and vary the Categories of Services for which the Consultant is accredited.
- 4.2.4 GWW may, vary the Categories of Works during the Term. If GWW varies the Categories of Works, GWW may also vary the Categories of Works for which the Consultant is Accredited if necessary.
- 4.2.5 Where GWW varies the Categories of Services allocated to the Consultant, GWW will provide the Consultant with a notice of the change to the Categories of Services.
- 4.2.6 GWW will not be liable for any costs, loss or damages suffered or incurred by the Consultant as a result of a change to the Categories of Services or to the Consultant's Accreditation in specified Categories of Services.

## **4.3 Accreditation of other consultants and contractors**

The Consultant acknowledges that at any time GWW may grant Accreditation to any other consultants or contractors for the same Categories of Services as the Consultant.



## **4.4 No representation of volume of Services**

4.4.1 The Consultant acknowledges that:

- (a) nothing in this Deed, nor the Consultant's Accreditation in any way:
  - (i) represents to or assures the Consultant that it will be included in an invitation to tender for work issued by a Developer or GWW, or be appointed by a Developer or GWW to perform Consultancy Services; or
  - (ii) implies or guarantees that the Consultant will be engaged to perform any work or services for a Developer or GWW; and
- (b) the Consultant's Accreditation:
  - (i) only entitles the Consultant to be considered by a Developer or GWW to provide work or services in the Consultant's Accredited Categories of Services; and
  - (ii) does not remove the need for a Consultant to fully comply with any tender invitation issued by, or contractual arrangements entered into with, a Developer or GWW or any other agency which procuring GWW Works.

4.4.2 The Consultant must not make any claim against GWW on the basis that:

- (a) GWW has Accredited any other consultant or contractor for the same Categories of Works as the Consultant.
- (b) the Consultant has not been instructed or engaged by Developers or GWW or an agency to perform any or sufficient Consultancy Services.

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## **5. Accreditation and Performance Assessment**

### **5.1 Performance Reviews**

GWW may conduct performance reviews and prepare performance reports on the Consultant. GWW may retain details of these performance reports for use by GWW when:

- 5.1.1 reviewing the Consultant's Accreditation; and
- 5.1.2 assessing whether to extend the Term for a Further Term from the Expiry Date under clause 3.4.2; and
- 5.1.1 complying with GWW's disclosure and reporting requirements as required by applicable Victorian State Government policies and relevant Laws.

## **5.2 Provision of Information**

The Consultant acknowledges and agrees that:

- 5.2.1 details submitted by the Consultant in respect of its Accreditation application, ongoing reporting of information and performance reports about the Consultant prepared under clause 5.1 including such information provided to or sourced from any external accreditation system adopted by GWW, may be provided to or sourced by, other water companies from GWW or such external accreditation system;
- 5.2.2 the provision of information under clause 5.2.1 to other water companies is excluded from the application and does not constitute a breach of, any of the confidentiality or privacy obligations of this Deed and (to the extent capable by Law) the Consultant waives any rights in relation to confidentiality or privacy in respect of such information pursuant to any Law.

## **5.3 Review of Accreditation**

- 5.3.1 If one or more of the following occur, GWW may conduct a review of the Consultant's Accreditation:
  - (a) as part of a periodic review undertaken by GWW;
  - (b) at the request of a Developer;
  - (c) at the request of the Consultant;
  - (d) upon the occurrence of a Notifiable Incident;
  - (e) as a result of any performance review under clause 5.1;
  - (f) if GWW reasonably considers that the Consultant has repeatedly, or in a sustained way, caused or contributed to Defects in the Design Documents or the Development Works or GWW Works (whether on the same or various Development Works or GWW Works); or
  - (g) otherwise at any other time determined by GWW.
- 5.3.2 If a review is conducted under clause 5.3.1, GWW may request the Consultant to do one or more of the following:
  - (a) supply further information; or
  - (b) submit a new application for registration as an Accredited Consultant.
- 5.3.3 The Consultant must provide details specified pursuant to clause 5.3.2 upon request. Failure to comply with any request for such information by GWW may result in suspension of the Consultant's Accreditation.
- 5.3.4 The Consultant will be notified in writing of the result of any review of the Consultant's Accreditation.

## **5.4 Suspension of Accreditation**

- 5.4.1 Following a review of the Consultant's Accreditation under clause 5.3, GWW may suspend or terminate part or all of the Consultant's Accreditation by notice in writing if GWW reasonably considers that the Consultant has:
- (a) performed in a manner which places the Consultant in breach of its obligations under this Deed;
  - (b) breached any conditions of its Accreditation (including the Consultant's obligations under clause 4.1.2); or
  - (c) changed technical capacity significantly (which includes a change in Key Personnel).
- 5.4.2 If the Consultant's Accreditation is suspended under this clause 5.4, the Consultant will be entitled to apply for reinstatement within a period specified by GWW. Such applications will be required to demonstrate, to GWW's reasonable satisfaction, that any matters that led to suspension have been rectified.
- 5.4.3 If an application for reinstatement under clause 5.4.3 is not received by GWW within the period specified by GWW, the Consultant's Accreditation may be terminated under clause 14.1.1.
- 5.4.4 GWW will not be liable for any costs, loss or damages suffered or incurred by the Consultant as a result of a suspension or termination of any part or all of the Consultant's Accreditation under clause 5.4.3.

## **5.5 Request for Review**

The Consultant may, within 20 Business Days of receipt of written notice from GWW under clause 4.2.5 or 5.4.1, apply to GWW for a review of GWW's decision to vary the Consultant's Accreditation in Categories of Services or suspend or terminate the Consultant's Accreditation.

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## **6. Key Personnel**

- 6.1 The Consultant must ensure that its Key Personnel must:
- 6.1.1 be available at all relevant times to manage and coordinate or directly perform the role specified for them in ARCUS; and
  - 6.1.2 have the qualifications, technical skills and professional experience required to undertake their role as specified in ARCUS, including training on and experience in accessing confined spaces and OH&S;
- 6.2 The Consultant must within two Business Days after the date Consultant becomes aware of a change to the Key Personnel or their contact details, notify GWW of all changes to the Key Personnel and their details by updating the key personnel tab in ARCUS.

- 6.3 Without limiting any rights under clause **Error! Reference source not found.** of the General Conditions, GWW may suspend or terminate the Consultant's Accreditation for one or more Categories of Services if in GWW's reasonable opinion the Consultant no longer employs or engages appropriate Key Personnel to perform the Consultancy Services.
- 6.4 If GWW suspend or terminates the Consultant's Accreditation under this clause 0, GWW may require the Consultant to complete any Consultancy Services for Development Works under GWW's supervision (at the Consultant's cost) or require the Developer for which the Consultant is working to terminate the Consultant and engage an alternative Accredited Consultant.
- 6.5 All supervision, documentation and certification for which the Consultant is responsible must be undertaken, prepared or signed by one or more Key Personnel.
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## **7. Personnel**

- 7.1 The Consultant must ensure that all of its personnel, agents, subcontractors and subcontractor personnel providing the Consultancy Services for Development Works during the Term:
- 7.1.1 hold all necessary qualifications and permits, including those required by Law;
  - 7.1.2 are adequately trained and are competent to carry out their duties in performing the relevant Consultancy Services; and
  - 7.1.3 are made aware of and comply with the Consultant's obligations under the Deed, the obligations in the relevant Special Clauses and any applicable Consultancy Contracts.
- 7.2 The Consultant is:
- 7.2.1 responsible for the work and performance of its personnel, agents and subcontractors; and
  - 7.2.2 liable to GWW for the acts, defaults and neglects of its personnel, agents and subcontractors as if they were the acts, defaults or neglects of the Consultant.
- 7.3 The Consultant is responsible for ensuring all personnel, agents and subcontractors attend, at the Consultant's expense, any competency-based training that is from time to time identified or required by GWW in respect of the Consultant's Accredited Categories of Services.
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## **8. Field Compliance Officers**

- 8.1 The Consultant acknowledges that Field Compliance Officers may periodically enter and inspect the site of any Development Works or GWW Works to assess compliance of the works with the terms of the Development Deed, the Design Documents or the Construction Contract (as relevant) and the GWW QA Process (a Compliance Assessment).

- 8.2 The Consultant and its Key Personnel must comply with each reasonable request given by a Field Compliance Officer undertaking a Compliance Assessment.
- 8.3 If in GWW's reasonable opinion, the Consultant or its Key Personnel, fail to comply with a reasonable request given by a Field Compliance Officer undertaking a Compliance Assessment, GWW may initiate a review of the Consultant's Accreditation under clause **Error! Reference source not found..**
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## **9. Communication and Reporting**

- 9.1 If requested by GWW, the Consultant must update GWW's Representative on the status of any Development Works or GWW Works in a form and at a frequency agreed by the parties.
- 9.2 The Consultant must promptly notify GWW of any:
- 9.2.1 substantial change to the Consultant's technical capacity to perform Consultancy Services, including changes in Key Personnel; or
  - 9.2.2 a Change of Control to the Consultant's business.
- 9.3 At GWW's request, the Consultant must provide to GWW a summary of each audit report and the details of its findings pertaining to any Consultancy Services carried out by the Consultant.
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## **10. Representatives**

### **10.1 GWW's Representative**

- 10.1.1 GWW's Representative will represent GWW for all purposes under this Deed. In this regard:
- (a) GWW's Representative has the authority to represent and bind GWW in relation to all matters under and concerning this Deed; and
  - (b) any communication with or information given to GWW's Representative by the Consultant will be deemed to have been made or given to GWW.
- 10.1.2 GWW may revoke or limit the authority of GWW's Representative by giving written notice to the Consultant and may appoint an alternative or substitute for GWW's Representative by giving written notice to the Consultant.

### **10.2 Consultant's Representative**

- 10.2.1 The Consultant has or will appoint the Consultant's Representative to represent it for all purposes under this Deed. In this regard:

- (a) the Consultant's Representative has the authority to represent and bind the Consultant in relation to all matters under and concerning this Deed; and
  - (b) any communication with or information given to the Consultant's Representative by GWW will be deemed to have been made or given to the Consultant.
- 10.2.2 The Consultant may revoke or limit the authority of the Consultant's Representative by giving written notice to GWW and may appoint a single alternative or substitute for the Consultant's Representative by giving written notice to GWW.

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## **11. Confidentiality**

### **11.1 GWW must Treat as Confidential**

Subject to clause 5.2 and to any disclosure in accordance with this clause **Error! Reference source not found.**, GWW must treat as confidential all information provided, made available or accessible to it by the Consultant in accordance with this Deed and marked or otherwise identified as being confidential.

### **11.2 Consultant must Treat as Confidential**

The Consultant must treat as confidential all information provided, made available or accessible to it by GWW under this Deed or as part of Development Works or GWW Works ("GWW's Confidential Information").

### **11.3 Employees must Treat as Confidential**

11.3.1 Subject to clause 11.3.2, the Consultant must not and must ensure that the Consultant's employees, agents, directors, partners, shareholders or consultants do not, disclose to any person, any of GWW's Confidential Information or information relating to GWW, which may have come to the knowledge of the Consultant or the Consultant's employees, agents, directors, partners, shareholders or consultants as a result of this Deed or the Consultant's performance of Consultancy Services.

11.3.2 Clause 11.3.1 does not apply to the disclosure of GWW's Confidential Information to a Developer that has engaged the Consultant to perform Consultancy Services for Development Works, to the extent reasonably necessary to perform those Consultancy Services.

### **11.4 Return of Confidential Information**

11.4.1 Except to the extent necessary to comply with requirements under Law, and wherever practicable, the Consultant must, upon completion of Consultancy Services, return to GWW, GWW's Confidential Information, and all copies of GWW's Confidential Information, in a material form.

11.4.2 To the extent that information provided, made available or accessible to the Consultant by GWW under this Deed or as part of the process for accrediting the Consultant is also made available or accessible to the Consultant by GWW or a Developer under a Consultancy Contract, this clause **Error! Reference source not found.** will apply to such information.

## **11.5 Use of Confidential Information**

The Consultant must use GWW's Confidential Information solely for the purposes of, and only to the extent necessary for, the delivery of the Consultancy Services for which GWW's Confidential Information was provided.

## **11.6 Injunction or other equitable relief**

GWW will be entitled (in addition to any entitlement to damages) to apply for an injunction or other equitable relief with respect to any actual or threatened breach by the Consultant of this clause **Error! Reference source not found.** and without the need on the part of GWW to prove any special damage.

## **11.7 Limit of obligations**

A party's obligations under this clause **Error! Reference source not found.** will not extend to:

- 11.7.1 information already in the public domain other than due to a breach of this Deed by the other party;
- 11.7.2 any disclosure required by the listing rules of the Australian Stock Exchange; or
- 11.7.3 any disclosure required by Law.

## **11.8 Survival of obligations**

The obligations in this clause **Error! Reference source not found.** survive any termination or expiry of this Deed.

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## **12. Amendment, Assignment and Change of Control**

### **12.1 Amendment**

- 12.1.1 Subject to clause 12.1.2, GWW may at any time, with notice, vary this Deed.
- 12.1.2 The Consultant is deemed to agree to the proposed variation of this Deed referred to in clause 12.1.1, unless the Consultant notifies GWW of the Consultant's objection to the variation to this Deed within 10 Business Days of receiving the notice from GWW under clause 12.1.1.
- 12.1.3 If the Consultant does not notify GWW of the Consultant's objection in accordance with clause 12.1.2, the variation to this Deed will be effective from 10 Business Days after the Consultant received GWW's notice under clause 12.1.1.

12.1.4 Where GWW receives an objection under clause 12.1.2, in respect of the proposed variation under clause 12.1.1, GWW may:

- (a) issue a revised proposed variation to this Deed, to which clause 12.1.2 and clause 12.1.3 will apply; or
- (b) meet with the Consultant to discuss the Consultant's objection received under clause 12.1.2.

12.1.5 Where GWW decides to meet with the Consultant to discuss the Consultant's objection in accordance with clause 12.1.4(b), and GWW and the Consultant cannot resolve the Consultant's objection to the proposed variation within 15 Business Days from GWW receiving an objection under clause 12.1.2, GWW may exercise its rights under clause 12.1.4(a) or terminate this Deed.

## **12.2 Assignment**

12.2.1 The Consultant may assign, transfer, novate, dispose of, declare a trust over or otherwise create an interest in its rights under this Deed only with the prior written consent of GWW.

12.2.2 The Consultant acknowledges that GWW has entered into this Deed in reliance on the expertise and capability of the Consultant and may withhold its consent under clause 12.2.1.

12.2.3 GWW may terminate this Deed if the Consultant does not obtain the prior written consent of GWW in accordance with this clause.

## **12.3 Change of Control**

12.3.1 For the purpose of clause 12.2.1, a Change of Control of the Consultant is deemed to be a disposal of an interest under this Deed.

12.3.2 In this clause, "Change of Control" means:

- (a) in relation to a corporation, a change in:
  - (i) Control of the composition of the board of directors of the corporation;
  - (ii) Control of more than half the voting rights attaching to shares in the corporation; or
  - (iii) Control of more than half the issued shares of the corporation (excluding any part which carries no right to participate beyond a specified amount in the distribution of either profit or capital); and
- (b) in relation to a partnership, association or unincorporated joint venture, Control of its day-to-day policy management procedures or operations.



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## **13. Disputes**

### **13.1 Application**

Subject to clauses 13.4 and 13.5, the parties must first seek to resolve all disputes or differences in accordance with the procedure in this clause 13.

### **13.2 Senior executives**

13.2.1 In the event of a dispute or difference arising between GWW and the Consultant, as to any matter or thing or omission connected with the Consultant's Accreditation, Consultancy Services or performance under this Deed, GWW or the Consultant may give to the other party notice of the dispute or difference.

13.2.2 Such notice must:

- (a) not be unreasonably given;
- (b) indicate that it is a notice under subclause 13.2.1; and
- (c) give sufficient details of the dispute or difference as to enable the party receiving the notice to ascertain the nature of the dispute or difference alleged.

13.2.3 Within 7 Days of the receipt of any notice of dispute under subclause 13.2.1 by either party, a senior executive of each party must meet to discuss ways of resolving the dispute or difference.

13.2.4 The senior executives may resolve the dispute or difference themselves or refer the dispute or difference to any form of alternative dispute resolution procedure on which they agree. The representatives must be authorised by the parties to resolve the dispute or difference on their behalf should this prove to be practicable.

### **13.3 Dispute will not affect performance**

Despite the existence of a dispute, the parties must continue to perform their respective obligations under this Deed.

### **13.4 Injunction**

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

### **13.5 Suspension and termination rights**

This clause 13 does not affect the rights of GWW to suspend the Consultant's Accreditation or to terminate this Deed.

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## **14. Termination**

### **14.1 Termination by GWW for cause**

- 14.1.1 GWW may terminate this Deed and the Consultant's Accreditation with immediate effect by written notice to the Consultant, if:
- (a) an Insolvency Event occurs in relation to the Consultant;
  - (b) the Consultant has breached a provision of this Deed and the breach that has occurred:
    - (i) is capable of being remedied, and is not remedied to the reasonable satisfaction of GWW within a reasonable period specified by GWW; or
    - (ii) is not capable of being remedied, and the Consultant has not complied with the reasonable requirements of GWW in relation to the breach by the time required by GWW;
  - (c) the Consultant does not apply for reinstatement of its Accreditation after it has been suspended under clause 5.4; or
  - (d) otherwise in accordance with clause 5.4.
- 14.1.2 Notwithstanding any other term of this Deed, GWW may terminate this Deed and the Consultant's Accreditation immediately on notice being given by GWW, where GWW and the Consultant cannot agree on a variation to this Deed under clause 12.1.
- 14.1.3 Termination of this Deed does not limit any other rights, powers and remedies of GWW or the Consultant under this Deed or at Law.

### **14.2 Termination by the Consultant**

This Deed may be terminated by the Consultant on notice in writing to GWW immediately on notice being given if an Insolvency Event occurs in relation to GWW.

### **14.3 Effect of Termination of Deed**

- 14.3.1 If this Deed is terminated by GWW pursuant to clause 14.1.1 then:
- (a) the Consultant will have no right to make any claim in respect of the termination of this Deed; and
  - (b) the rights of GWW will be the same as they would have been under the law governing this Deed had the Consultant repudiated the Deed and GWW had elected to treat the Deed at an end and recover damages.
- 14.3.2 If this Deed is terminated pursuant to clause 14.1.2, then neither party will have any claim against the other in respect of the termination of this Deed.

- 14.3.3 If this Deed is terminated by the Consultant pursuant to clause 14.2 then:
- (a) GWW will have no right to make any claim in respect of the termination of this Deed; and
  - (b) the rights of the Consultant will be the same as they would have been under the law governing this Deed had GWW repudiated the Deed and the Consultant had elected to treat the Deed at an end and recover damages.

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## **15. General**

### **15.1 Liability for expenses**

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

### **15.2 Giving effect to this Deed**

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

### **15.3 Discretion and Consents**

Where this Deed contemplates that GWW may do or agree to or consent to something (however it is described), GWW may:

- 15.3.1 do, agree or consent, or not agree or consent, in its absolute discretion; and
- 15.3.2 do, agree or consent subject to conditions, unless this Deed expressly contemplates otherwise.

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## **16. Interpretation and Definitions**

### **16.1 Interpretation**

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

16.1.2 A reference to:

- (a) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document, standard or agreement (or a provision of a document, standard or agreement), is to that document, standard, agreement or provision as amended, supplemented, replaced or novated;

- (c) a party to this Deed or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party; a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (d) anything (including a right, obligation or concept) includes each part of it.

16.1.3 A singular word includes the plural and vice versa.

16.1.4 A word which suggests one gender includes the other genders.

16.1.5 If a word is defined, another part of speech has a corresponding meaning.

16.1.6 If an example is given of anything (including a right, obligation or concept) such as by saying it includes something else, the example does not limit the scope of that thing.

16.1.7 The expression this document includes the agreement, arrangement, understanding or transaction recorded in this Deed.

16.1.8 The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

16.1.9 The words body corporate, listed, wholly owned subsidiary, entity, subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.

16.1.10 Inconsistency with other documents

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

16.1.11 Governing Law

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

16.1.12 Whole Understanding

- (a) This Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.
- (b) Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.

- (c) Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

#### 16.1.13 Non-Business Days

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

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

## 16.2 Relationship between the Parties

### 16.2.1 No Partnership

Nothing in this Deed will operate or be deemed to create a partnership between GWW and the Consultant.

### 16.2.2 Joint and Several Liability

If a party to this Deed is made up of more than one person, or a term is used in this Deed to refer to more than one party, then unless otherwise specified in this Deed:

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

### 16.2.3 Waiver of rights

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

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

### 16.2.4 Parties empowered to agree

Each of the parties covenants that:

- (a) it has full legal capacity and power to:
    - (i) own its property and to carry on its business; and
    - (ii) enter into this Deed and to carry out the transactions that this Deed contemplates; and
  - (b) it holds each authorisation that is necessary to:
    - (i) enable it to properly execute this Deed and to carry out the transactions that this Deed contemplates;
    - (ii) ensure that the Deed is legal, valid, binding and admissible in evidence; and
  - (c) enable it to properly carry on its business,
- and it is complying with any conditions to which any of these authorisations is subject.

#### 16.2.5 Requirement to Examine Information

The Consultant agrees that in entering into this Deed it has not relied upon any representation, warranty or inducement by GWW nor is any representation, warranty or thing made or done by GWW to be inferred, incorporated or implied into the Deed.

#### 16.2.6 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

### **16.3 Notices**

#### 16.3.1 Method of Giving Notices

A notice required or permitted to be given by one party to another under this Deed must be in writing, legible and in the English language, be addressed to the party to receive it in accordance with the notice details in Schedule 1, and:

- (a) handed to that party's representative;
- (b) delivered to that party's address;
- (c) sent by pre-paid mail to that party's postal address; or
- (d) sent by email to that party's email address.

#### 16.3.2 Time of Receipt

A notice given to a party in accordance with subclause 16.3.1 must be treated as having been duly given and received:

- (a) if handed to the party's representative, immediately;

- (b) if delivered to a party's address, on the day of delivery;
- (c) if sent by pre-paid mail, on the third day after posting; or
- (d) if sent by email, only upon acknowledgement that the email has been received.

#### 16.3.3 After Hours Communications

If any notice is given after 5.00pm on any day, it is, for the purposes of this Deed, to be taken to have been given and received at 9.00am on the next day which is not a Saturday, Sunday or Public Holiday.

#### 16.3.4 Addresses of Parties

For the purposes of sub-clauses 16.3.1 and 16.3.2 the addresses (including an email address) of a party are the addresses stated in item 2 of Schedule 1 unless notice of another address has been given to the other party.

## 16.4 Definitions

The following definitions apply in this Deed.

**Acceptance of Works Certificate** means a certificate issued by GWW that, subject to the Certificate of Completion, the Development Works have been completed in accordance with all relevant requirements.

**Accreditation** means the status of being an Accredited Consultant in accordance with GWW's Accreditation Process and this Deed in designated Categories of Services and Accredited has a corresponding meaning.

**Accreditation Process** means the process by which suppliers are invited to register in ARCUS and to complete its application questionnaire for the purpose of obtaining Accreditation, whether on a probationary or final basis and being included on a list of eligible suppliers approved by GWW to carry out one or more categories of works or services related to Development Works or GWW Works.

**Accredited Consultant** means a Consultant approved in accordance with GWW's Accreditation Process to perform a particular Category of Work and includes the Accredited Consultant's Key Personnel.

**Accredited Contractor** means a Contractor approved in accordance with GWW's Accreditation Process to perform a particular category of work and includes the Accredited Contractor's Key Personnel.

**ARCUS** means the ARCUS Supplier Information Management system which is a cloud-based system designed to support the Accreditation Process and for the ongoing management of accreditation requirements under this Deed, and any equivalent replacement system or software implemented and used by GWW for this purpose.

**As-constructed Verification Form** has the meaning as described in the Land Development Manual.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Victoria.

**Categories of Services** means one or more of the designated categories of works or services recorded in ARCUS that best characterise the Consultancy Services that the Consultant is Accredited to perform.

**Certificate of Completion** means a letter issued by GWW at the end of the Defects Liability Period when all requirements under clause 7.4 of Schedule 1 of the Development Deed are met in relation to Development Works. The issue of Certificate of Completion signifies the beginning of the two (2) year Works Warranty Period under clause 9 of Schedule 1 of the Development Deed for the Development Works.

**Change of Control** has the meaning set out in clause 12.3.

**Commencement Date** means the date set out in Item 3 of Schedule 1.

**Confined Space Entry Procedure** means the procedures and requirements relating to working on, in or near confined spaces and GWW assets, published by GWW and as updated or replaced from time to time. As at the date of the Deed, these procedures are set out in *Confined Space Entry and Associated Works PRO-69*.

**Consultancy Contract** means the contract executed by the Developer and the Consultant, under which the Consultant is engaged to perform Consultancy Services.

**Consultancy Services** means the engineering design and audit consultancy services required to be performed in relation to Development Works or GWW Works, in the Consultant's Accredited Categories of Services.

**Consultant's Representative** means the person or people specified in item 7 of Schedule 1 or as the Consultant notifies GWW in writing pursuant to clause 10.2.

**Contractor** means a works contractor, who may be an Accredited Contractor, engaged to, amongst other things, perform construction services for the Development Works or GWW Works.

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

**Corporations Act** means the *Corporations Act 2001* (Cth).

**COVID-19** means the novel coronavirus 2019 (2019-nCoV) disease caused by severe acute respiratory syndrome and which was first identified in Wuhan, Hubei, China, and any mutation or variant strain of such virus.

**COVID-19 Event** means any event occurring before or after the execution of this Deed that is the result of, or consequential to, the COVID-19 pandemic, including:

- (a) any resulting governmental action;
- (b) work stoppages;
- (c) mandatory business, service or workplace closures;



- (d) full or partial lockdowns of affected areas;
- (e) quarantines; or
- (f) border closures and travel restrictions,

that was not caused by an act or omission of a party and the effect of which could not have been:

- (a) prevented, avoided, mitigated, remedied or overcome by a party taking steps a prudent and reasonable person would have taken in the circumstances; and
- (b) reasonably foreseen by the parties at the time of executing this Deed.

**Deed** means this deed and includes the schedules, attachments and any documents incorporated by reference.

**Defect** includes any error, omission or defect in the Design Documents and any error, omission or defect in the works or materials for the Development Works or GWW Works, which is not in accordance with the:

- (a) Design Documents; or
- (b) GWW Standards and Specifications; or
- (c) MRWA Standards,

whether due to the act, omission or negligence of the Developer, Consultant or Contractor (unless the context indicates otherwise), including any fault, error, omission, shrinkage or other defect, but does not include ordinary fair wear and tear or damage caused by third parties.

**Defects Liability Period** means the period between the date of issuing an Acceptance of Works Certificate and a Certificate of Completion for Development Works in accordance clause 8 of Schedule 1 of the Development Deed.

**Deliverables** means all documents, Design Documents, information and other materials (whether in physical form or digital formats) developed or supplied by the Developer, the Consultant or the Contractor (as relevant) in performing the Consultancy Services.

**Design** means a design for Development Works and/or GWW Works and includes all materials and equipment and prototypes, samples, models, processes for construction, commissioning and use of the works and other information and recommendations provided by the Consultant.

**Design and Construction Forms** means the notices and other information, in the form approved by GWW from time to time, that the Land Development Manual requires an Accredited Consultant to lodge with GWW to verify that Development Works have been designed and constructed in accordance with GWW's requirements, and includes:

- (a) design verification forms;
- (b) pre-construction verification forms;

- (c) construction verification forms;
- (d) as-constructed verification forms; and
- (e) end of defects liability verification forms.

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

**Developer** means the person that requests a new connection to GWW's infrastructure, or that will construct or procure the construction of Shared Assets, that is authorised to execute a transfer of the land. The Developer may also be the owner of the Property.

**Development** means a particular development of a Property which includes the procurement of Development Works.

**Development Deed** means the deed entered into by GWW and a Developer, by execution of the formal instrument, regarding the Development Works.

**Development Works** means:

- (a) the works to be designed and constructed under the Development Deed for water supply, recycled water or sewerage Assets and infrastructure to service each Lot;
- (b) Reimbursement Works; and
- (c) works carried out in response to a notice issued by GWW during the Defects Liability Period and Warranty Period under a Development Deed.

**Expiry Date** means the date specified in item 4 of Schedule 1.

**Field Compliance Officer** means officers employed by GWW to audit compliance and who are authorised by GWW to enter the site of any Developer Works or GWW Works to audit compliance of those works with the terms of the Development Deed, Design Documents or Construction Contract (as applicable).

**Force Majeure Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, pandemic, currency restriction, embargo, action or inaction by a Government Agency (other than GWW), or a failure of a Consultant, public utility (other than GWW) or common carrier and includes a COVID-19 Event.

**Further Term** means the period specified in item 5 of Schedule 1.

**GWW QA Process** means the policies and procedures developed by GWW for the quality assurance of Developer Works and GWW Works including all GWW compliance manuals and the Land Development Manual, copies of which are available from GWW on request, and as may be amended or replaced by GWW from time to time.

**GWW's Confidential Information** means that information so described in clause 11.2.

**GWW's Representative** means the person specified in item 6 of Schedule 1 who will represent GWW for the purposes of this Deed or as notified by GWW in writing pursuant to clause 10.1.

**GWW Standards and Specifications** means all standards, specifications or requirements specified by GWW which relate to the design of works, as notified to the Consultant by GWW.

**GWW Works** means:

- (a) operating expenditure works including operations works, maintenance works and emergency works carried out by or on behalf of GWW; and
- (b) capital expenditure works including asset renewals, capital delivery, replacement or augmentation of existing assets, major government works and construction of new assets carried out by or on behalf of GWW, or the Victorian State Government.

**Induction Period** means a period of 12 months commencing on the Commencement Date.

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

**Intellectual Property Rights** means all and any patents, patent applications, trademarks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Key Personnel** means personnel, subcontractors, or agents of an Accredited Consultant who have completed the ARCUS questionnaire and declaration and who are recognised as key personnel by GWW. The Consultant's Key Personnel are recorded in ARCUS.

**Land Development Manual** means GWW's policies and procedures in the document of the same name applying from time to time, relating to land development and the supply of water and sewerage services which:

- (a) is available on GWW's website; and
- (b) a copy of which is available from GWW upon request; and
- (c) as may be amended by GWW from time to time.

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

**MRWA** means Melbourne Retail Water Agency.

**MRWA Standards** means the Melbourne Retail Water Agency specifications, standards, manuals, and guidelines as set out in Appendix A of the Land Development Manual.

**Near Miss** means an incident at a workplace that exposed a person in the immediate vicinity of the incident to an immediate risk to the person's health and safety.

**Notifiable Incident** has the meaning given to it under the Relevant Legislation and includes the death of a person, a person requiring immediate treatment as an inpatient in a hospital, a serious head or eye injury or a serious laceration.

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

**Other Incidents** means all incidents including accidents, Near Misses and external regulator visits (including EPA Victoria and the Victorian WorkCover Authority) which are not Notifiable Incidents.

**Property** means land which is the subject of a Development.

**Records** means originals and copies, in electronic or printed form, of all books, files, reports, records, correspondence, documents and other materials of or relating to or used in connection with the provision of the Consultancy Services, including, any book, file, report, record, correspondence, document or material containing confidential information.

**Reimbursement Works** means any part of the Development Works identified in Schedule 4 of a Development Deed as Shared Assets, for which a reimbursement may be payable from GWW to the Developer as set out in the Land Development Manual.

**Relevant Legislation** means all applicable OH&S and environmental statutes, ordinances, regulations and by-laws whether Federal, State or local.

**Shared Assets** has the meaning described in the Land Development Manual.

**Special Clauses** means the terms and conditions in addition to the General Conditions, of Accreditation applicable to the respective Categories of Works, set out in Attachment 1 and Attachment 2.

**Term** means the following periods:

- (a) the period from the Commencement Date to the Expiry Date; and
- (b) any Further Term granted under clause 3.4.2 .

**WSAA** means the Water Services Association of Australia.

**WSAA Codes** means the codes and industry standards prepared by the WSAA.

**Workplace Injury** means a serious injury requiring treatment from a medical practitioner which does not constitute a Notifiable Incident.

Executed as a deed by the parties on the Commencement Date.

EXECUTED as a DEED

GWW

EXECUTED by **Greater Western Water  
ABN 70 066 902 467** by its authorised  
representative under Instrument of  
Delegation current as at the date of signing:

\_\_\_\_\_  
Authorised representative signature

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Position of authorised representative

\_\_\_\_\_  
Date signed

EXECUTED by **[insert Consultant's name]**:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date signed

**OR**

**SIGNED, SEALED** and **DELIVERED** for  
**[insert Consultant's name]** under  
power of attorney in the presence of:

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date signed

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# Attachment 1 Development Works–Special Clauses

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## 1. Consultant’s Confirmations and Obligations

### 1.1 Application of this Deed and this Attachment 1 to Development Works

- 1.1.1 The Consultant acknowledges that Developers are only permitted to engage Accredited Consultants to perform Consultancy Services for Development Works in their Accredited Categories of Services.
- 1.1.2 If a Developer engages the Consultant to perform Consultancy Services for Development Works, the Consultant agrees that its obligations to GWW under this Attachment 1 will apply to those Consultancy Services.

### 1.2 Consultant confirmations

The Consultant warrants to GWW, that:

- 1.2.1 the Consultant is prepared, competent, appropriately qualified and adequately resourced to undertake each of the obligations of the Consultant set out in the Deed and this Attachment 1; and
- 1.2.2 any person nominated by the Consultant to perform any function (including signing any document) relating to things contemplated by the Deed, a Consultancy Contract or Consultancy Services in relation to Development Works, is duly authorised to perform that function.

### 1.3 Consultant's obligations

In relation to any Consultancy Services performed by the Consultant for Development Works, the Consultant must:

- 1.3.1 be familiar and comply with:
  - (a) all Laws affecting the Development Works, or which may affect the Development Works, including OH&S Laws; and
  - (b) the GWW Standards and Specifications, the MRWA Standards, the WSAA Codes and the Land Development Manual as they affect the Development Works;
  - (c) the Confined Space Entry Procedures, when accessing such spaces on a Property or Development Works site;
- 1.3.2 except with GWW's prior written consent, design Development Works in accordance with:
  - (a) GWW Standards and Specifications;
  - (b) the WSAA Codes and MRWA Standards;
  - (c) the Development Deed for the particular development; and

- (d) any reasonable directions given to the Consultant by GWW;
- 1.3.3 before the Contractor proposes to commence construction of the Development Works, the Consultant have carried out all activities necessary to provide a pre-construction verification form to GWW;
- 1.3.4 lodge all Design Documents and Design and Construction Forms and other specified information with GWW in accordance with GWW's lodging requirements, as specified in the Land Development Manual or as GWW otherwise notifies the Consultant from time to time;
- 1.3.5 in relation to Development Works, ensure that all Design Documents, and the Design Requirements and Construction Requirements specified in Schedules 5 and 6 of a Development Deed for a project:
- (a) are consistent with all Laws; and
  - (b) do not contain any material discrepancies, ambiguities and inconsistencies; and
  - (c) are in accordance with GWW Standards and Specifications prior to their lodgement with GWW;
- 1.3.6 only vary the Development Works as directed or consented to in writing by GWW;
- 1.3.7 if the design of Development Works changes, provide GWW with a complete set of the most recent version of the Design Documents for the relevant Development Works as soon as reasonably practicable;
- 1.3.8 as required by GWW, audit designs and confirm compliance with all relevant standards and requirements;
- 1.3.9 as required by GWW, audit Development Works to confirm that the Contractor is constructing the Development Works in accordance with the Design Documents and the GWW Standards and Specifications;
- 1.3.10 when the Consultant believes that:
- (a) Development Works for a Development have been completed in compliance with the requirements set out in this agreement; and
  - (b) all other services and roads to be constructed in relation to the relevant Development Works are complete,
- certify this by lodging the required construction verification form and as-constructed verification form, and any other Design and Construction Form or other specified information with GWW;
- 1.3.11 not earlier than the end of the Defects Liability Period for Development Works and not later than six months after the end of the Defects Liability Period for Development Works, lodge with GWW the required End of Defects Liability Verification Form and any other information specified by GWW if, in the opinion of the Consultant, any Defect notified to the Consultant by GWW or the Developer has been remedied;



- 1.3.12 ensure that the form submitted under clause 1.3.11 is accompanied by:
- (a) evidence that an Acceptance of Works Certificate has been issued by GWW with respect to the relevant Development Works;
  - (b) evidence that any Defect of which the Consultant has been notified by GWW or the Developer has been remedied; and
  - (c) such other documents specified by the form;
- 1.3.13 at any time after GWW is provided with a form submitted by the Consultant under clause 1.3.11, comply with any request made by GWW that the Consultant provide GWW with such other information as GWW considers desirable to assist it in determining whether everything referred to in clause 1.3.10 has occurred;
- 1.3.14 effect and maintain the insurances required to be effected and maintained by the Consultant in accordance with clause 6 of this Attachment 1; and
- 1.3.15 in any case where the Consultant conducts Consultancy Services on Reimbursement Works, provide a statutory declaration (in a form required by GWW) as relevant to the circumstances, that any tender process in respect of the Reimbursement Works was conducted in accordance with appropriate probity requirements and without any known conflict of interest, collusion or inappropriate benefit or advantage to any person or entity.

#### **1.4 Inconsistency between Standards**

If there is a conflict or inconsistency between provisions in any of the GWW Standards and Specifications, the MRWA Standards, the WSAA Codes and the Land Development Manual, then, unless otherwise expressly agreed in writing by the parties, the conflict or inconsistency is to be resolved in order of precedence as follows:

- 1.4.1 the GWW Standards and Specifications;
- 1.4.2 the MRWA Standards; and
- 1.4.3 the WSAA Codes.

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## **2. Quality Management System**

The Consultant must provide the Consultancy Services for the Development Works in accordance with the Consultant's:

- 2.1.1 quality management system;
- 2.1.2 environmental management system, processes or procedures; and
- 2.1.3 OH&S management system, processes or procedures,
  - (a) which must comply with all requirements of Relevant Legislation.

## **2.2 The Consultant must:**

- 2.2.1 ensure by no later than the Commencement Date that it has obtained and then maintains throughout the Term, certification of the quality management system referred to in clause 2.1.1 to ISO 9001:2015 or an equivalent standard approved by GWW, as assessed by a suitably qualified, independent third party agreed by the parties; and
- 2.2.2 the Consultant must notify GWW of any change to the assessed status of the Consultant's quality management system within five Business Days of the change; and
- 2.2.3 All relevant Records must be made available to GWW, GWW's Representative or such other persons engaged by GWW for the purposes of auditing the Consultant's compliance with the management systems referred to in clause 0 at such times as directed by GWW's Representative.

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## **3. Information**

### **3.1 Provision of Information by GWW**

To the extent that GWW provides the Consultant with any information in relation to the Consultancy Services for the Development Works, the Consultant acknowledges and agrees that:

- 3.1.1 GWW gives no warranty, representation or undertaking (express or implied) as to the accuracy or reliability of the information supplied;
- 3.1.2 if any information provided to the Consultant by GWW is to be used by the Consultant in undertaking the Consultancy Services for the Development Works, the Consultant must reasonably satisfy itself as to the suitability and accuracy of the information for the Consultant's purpose and accept complete responsibility for its use and application;
- 3.1.3 the Consultant must undertake its own reasonable enquiries to test the accuracy and veracity of any information provided for and on behalf of GWW before relying on that information for the purpose of providing the Consultancy Services for the Development Works; and
- 3.1.4 GWW will not be liable for any loss or damage arising from the use of the information supplied, including any liability in negligence (whether foreseeable or not).

### **3.2 Security of Information**

- 3.2.1 Each party must ensure that all information and materials of the other party in its custody or control in connection with the Deed, this Attachment 1 or a Consultancy Contract are protected from unauthorised access or use by a third party or misuse, damage or destruction by any person.
- 3.2.2 The Consultant must comply with all security regulations, procedures or directions as may be given by GWW from time to time regarding any aspect of security or access to GWW's information or materials, including

managing login access to GWW's online Development Works portal and controlling the use of digital signatures.

- 3.2.3 The Consultant acknowledges that an Accredited Consultant:
- (a) may be granted limited access to GWW's information technology systems for the sole purpose of obtaining information in order to provide the Consultancy Services for Development Works; and
  - (b) must ensure that only Key Personnel or other personnel approved in writing by GWW have access to GWW's information technology systems.

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## **4. Defects and Remedy**

### **4.1 Defects: GWW Rights**

The Consultant acknowledges that, in respect of any particular Development Works, GWW may exercise any one or more of the following general rights in accordance with this clause **Error! Reference source not found.**:

- 4.1.1 notify the Developer singly, or jointly with the Consultant, in writing of any Defect;
- 4.1.2 require the Developer or Consultant to remedy any Defect, which includes obligations to re-perform the Consultancy Services or to remedy a Defect in the Design Documents or to re-design any relevant part of the Development Works;
- 4.1.3 perform or procure a third party to perform works or services in respect of any Defect contemplated in this clause 4.1;
- 4.1.4 recover costs to remedy a Defect under the Development Deed; or
- 4.1.5 initiate a review of the Consultant's Accreditation under clause 5.3.

### **4.2 Defects: End of DLP and Certificate of Completion**

If, at the end of six (6) months after the end of the Defects Liability Period for Development Works under a Development Deed (or any greater period prescribed by GWW):

- 4.2.1 the Consultant has not given GWW the required Design and Construction Forms and related Deliverables in respect of a particular Development; or
- 4.2.2 GWW has not (for appropriate cause in connection with the Consultancy Services the Consultant performed for the particular Development) issued the Certificate of Completion;

GWW may, without giving further notice to the Consultant, exercise any of its rights under clauses 4.1.3, 4.1.4 or 4.1.5.

### **4.3 Defects: Design Documents or Development Works**

If at any time up to 2 years after issuing a Certificate of Completion, GWW discovers a Defect in the Design Documents, Deliverables or Development Works which GWW reasonably considers is attributable to the Consultant having performed the Consultancy Services for the particular Development Works, GWW may:

- 4.3.1 notify the Developer and the Consultant in writing of the Defect; and
- 4.3.2 require the Developer and the Consultant to remedy the Defect, within 14 Days after the date of the notice or any greater period specified in the notice, given under clause 4.3.1,

in which case the Consultant must promptly remedy the Defect, including to re-perform the Consultancy Services or to re-design any relevant part of the Development Works, and no later than 14 Days after receiving the notice under clause 4.3.1.

### **4.4 GWW may remedy**

- 4.4.1 If GWW reasonably considers that the Consultant negligently, recklessly or willingly fails to remedy each identified Defect within the period required or stated in a notice, GWW may:
  - (a) arrange, or procure a third party, to remedy the Defect; and
  - (b) initiate a review of the Consultant's Accreditation under clause 5.3.
- 4.4.2 The Consultant acknowledges and agrees that GWW and GWW's contractor may use any part of the Deliverables to carry out works or services to remedy a Defect that GWW reasonably considers to be attributable to the Consultant.

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## **5. Indemnity**

- 5.1 The Consultant indemnifies GWW and must keep GWW indemnified against all claims, loss (including economic loss), liability, damage, cost and expense suffered by GWW arising, whether directly or indirectly, from, or in the course of, or caused by, the Consultancy Services, or any breach by the Consultant of its obligations in relation to the Development Works, or any act or omission of the Consultant or persons under its control arising out of this Deed, except to the extent that any such accident, destruction, damage, loss, injury or death has been caused by the unlawful act or omission of GWW, or persons under its control (other than the Consultant).
- 5.2 To the extent permitted by Law, the Consultant indemnifies GWW from and against any claim, loss, liability, damage, cost and expense suffered or incurred by GWW as a result of any difference between the amount GWW would otherwise have been entitled to recover, but for the operation of the Wrongs Act 1958 (Vic), including as a result of the insolvency or incapacity of a concurrent wrongdoer (as that term is defined in the Wrongs Act 1958 (Vic)).

- 5.3 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 5.4 A party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.
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## **6. Insurance**

### **6.1 Public liability insurance**

- 6.1.1 Before the Commencement Date the Consultant must effect, and must then maintain for the Term, a public liability insurance policy.
- 6.1.2 The policy must:
- (a) be in the name of the Consultant, indemnifying GWW, for liabilities GWW incurs arising out of negligent acts or omissions of the Consultant, and be on an occurrence basis;
  - (b) cover liabilities of the Consultant and subcontractors and their respective employees from time to time, whenever engaged in the Development Works;
  - (c) cover the insured's liability to third parties for loss or damage to property and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance policy);
  - (d) provide insurance cover for an amount in respect of each and every occurrence of at least \$10 million for public liability claims;
  - (e) be on terms (as set out in the certificate of currency) approved in writing by GWW (which must not unreasonably withhold approval);
  - (f) be with an insurer with a financial security rating of "A-" or better with Standard and Poors or the equivalent rating with another recognised ratings agency; and
  - (g) include provision for cross liability.

### **6.2 Professional Indemnity Insurance**

- 6.2.1 Before the Commencement Date the Consultant must effect, and must then maintain for the Term, a professional indemnity insurance policy with a limit of indemnity not less than \$10 million for each and every claim and in the aggregate for all claims in any 12 month policy period which covers the Consultant's liability arising from a breach of professional duty, whether owed in contract or otherwise caused by any negligent act or omission of the Consultant, its employees, subcontractors, contractors or agents.
- 6.2.2 The policy of insurance referred to in clause 6.2.1 must be maintained until the expiration of seven years after the Certificate of Completion is issued for the last Development Works for which the Consultant provided Consultancy Services.

### **6.3 Insurance of employees**

- 6.3.1 Before the Commencement Date, the Consultant must insure against statutory liability for death of or injury to persons employed by the Consultant and, where common law claims are permissible outside of the relevant statutory scheme, the must also insure against common law liability for an amount as is good practice for that jurisdiction. The insurance cover must be maintained until the expiration of two years after the date of the Certificate of Completion is issued for the last Works for which the Consultant provided Consultancy Services.
- 6.3.2 Where permitted under the relevant statutory scheme, and for all common law liability policies, the insurance policy or policies must be extended to provide indemnity for GWW's liability to the Consultant's employees.
- 6.3.3 The Consultant must ensure that all subcontractors have similarly insured their employees.

### **6.4 Inspection and provision of insurance policies**

#### **6.4.1 Proof of insurance**

- (a) The Consultant must ensure that, on or before the Commencement Date, GWW receives by upload to ARCUS:
- (i) a copy of the certificate of currency for each insurance policy that the Consultant is required to effect under this clause 6.4; and
  - (ii) a copy of the Consultant's WorkSafe certificate of currency.
- (b) The Consultant must, within two Business Days of a change to details set out in the certificate of currency previously provided to GWW, notify GWW of each change that has the potential to materially reduce or prejudice cover under the insurance by providing an update in ARCUS.
- (c) Whenever otherwise requested in writing by GWW, the Consultant must provide satisfactory evidence (in the form of copies of certificates of currency) of the Consultant's insurance policies.
- (d) Insurance must not limit liabilities or obligations at general law, under other provisions of this Deed or any Consultancy Contract.

#### **6.4.2 Notices from or to insurer**

- (a) If an insurer gives the Consultant notice of its intention to cancel an insurance policy that is the subject of this clause 6.4 (other than workers' compensation insurance), the Consultant must immediately give written notice to GWW through GWW's Representative of the insurer's intention to cancel the policy.

- (b) The Consultant must provide to GWW through GWW's Representative a copy of any notice given by an insurer of a policy effected by the Consultant whenever a notice is received, and must procure that its subcontractors agree to provide GWW a copy of any notice received by them from an insurer of a policy effected by the Consultant whenever a notice is received.

#### 6.4.3 Notice of potential claims

The Consultant must, as soon as practicable, inform GWW in writing through GWW's Representative of any occurrence that gives or may give rise to a claim under an insurance policy referred to in this clause 6.4 and must keep GWW informed of subsequent developments concerning the claim or potential claim. The Consultant must ensure that its subcontractors in respect of their operations, similarly inform the parties.

#### 6.4.4 Currency and Notification of Insurance Policies

- (a) The Consultant must renew or replace all insurance policies it is obliged to effect, at least 3 Business Days before expiry.
- (b) Evidence of the renewal of insurance policies must be submitted to GWW within 2 Business Days after each renewal by providing an update in ARCUS.

#### 6.4.5 Compliance with insurance policies

- (a) The Consultant must ensure its policies of insurance provide that:
  - (i) failure by the Consultant to observe and fulfil the terms of the policy will not prejudice the insurance with regard to GWW; and
  - (ii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against GWW.
- (b) The Consultant must not do any act or permit or suffer any circumstances by which any policy of insurance taken out under this clause 6.4 may at any time become void, voidable or cancellable or which would entitle the insurer to reduce its liability (including to nil) for a claim under the policy, and the Consultant must at all times at its own expense comply.

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## **7. Intellectual Property**

### **7.1 Intellectual Property in Deliverables**

All Intellectual Property in the Deliverables will be owned absolutely by the party creating the Deliverable and vest in that party immediately on creation by that party.

## **7.2 Licence**

To the extent that any Intellectual Property in the Deliverables is owned by the Consultant, the Consultant grants GWW a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence of the Intellectual Property in those Deliverables for whatever purpose required by GWW.

## **7.3 No infringement**

The Consultant warrants to the best of its knowledge and belief after making all reasonable enquiries that GWW's use of the Deliverables will not infringe any Intellectual Property Rights of any person nor give rise to any liability to make royalty or other payments to any person.



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## **Attachment 2                      GWW Works – Special Clauses**

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### **1.                      Consultant’s Confirmations and Obligations**

#### **1.1                      Application of the Deed and this Attachment 2 to GWW Works**

- 1.1.1                      The Consultant acknowledges it may be engaged by GWW directly, or by another entity including a Victorian State Government agency, to provide Consultancy Services for the GWW Works in their Categories of Services.
- 1.1.2                      If the Consultant is engaged as an Accredited Consultant to deliver Consultancy Services for GWW Works, the Consultant agrees that its obligations to GWW under this Attachment 2 will apply to those Consultancy Services.

#### **1.2                      Consultant confirmations**

The Consultant warrants to GWW, that:

- 1.2.1                      the Consultant is prepared, competent, appropriately qualified and adequately resourced to undertake each of the obligations of the Consultant set out in the Deed and this Attachment 2; and
- 1.2.2                      any person nominated by the Consultant to perform any function (including signing any document) relating to things contemplated by the Deed, this Attachment 2 or Consultancy Services in relation to GWW Works, is duly authorised to perform that function; and
- 1.2.3                      if the Consultant is performing or will perform Consultancy Services for or on behalf of a Victorian State Government agency (or its appointed head contractor) (a Major Government Project), the Consultant will act collaboratively with GWW and do all things reasonably necessary to:
  - (a)                      facilitate the GWW Works to the extent the assets to be constructed interface with the Major Government Project;
  - (b)                      enter into or give effect to an arrangement to establish a project governance or collaborative framework between GWW, the project owner of the Major Government Project and the head contractor; and
  - (c)                      give GWW the benefit of all warranties (whether contractual, collateral or statutory) in connection with those GWW Works, including to execute any document to give or assign those warranties to or in favour of GWW.

#### **1.3                      Consultant's obligations**

In relation to any Consultancy Services performed by the Consultant for GWW Works, the Consultant must:

- 1.3.1                      be familiar and comply with:

- (a) all Laws affecting the Works, or which may affect the GWW Works, including OH&S Laws; and
  - (b) the GWW Standards and Specifications, the MRWA Standards, the WSAA Codes and the Land Development Manual as they affect the Works;
  - (c) the Confined Space Entry Procedures, when accessing such spaces on a GWW Works site;
- 1.3.2 except with GWW's prior written consent, design GWW Works in accordance with:
- (a) GWW Standards and Specifications;
  - (b) the WSAA Codes and MRWA Standards;
  - (c) the Development Deed for the particular development; and
  - (d) any reasonable directions given to the Consultant by GWW;
- 1.3.3 before the Contractor proposes to commence construction of the GWW Works, the Consultant must have performed all activities necessary to provide a pre-construction verification form to GWW;
- 1.3.4 lodge all Design Documents and Design and Construction Forms and other specified information with GWW in accordance with GWW's lodging requirements, as specified in the Land Development Manual or as GWW otherwise notifies the Consultant from time to time;
- 1.3.5 only vary the GWW Works as directed or consented to in writing by GWW;
- 1.3.6 if the design of GWW Works changes, provide GWW with a complete set of the most recent version of the Design Documents for the relevant GWW Works as soon as reasonably practicable;
- 1.3.7 as required by GWW, audit designs and confirm compliance with all relevant standards and requirements;
- 1.3.8 as required by GWW, audit GWW Works to confirm that the Contractor is constructing the GWW Works in accordance with the Design Documents and the GWW Standards and Specifications;
- 1.3.9 when the Consultant believes that:
- (a) the GWW Works have been completed in compliance with the requirements set out in the Deed; and
  - (b) all other services and roads to be constructed in relation to the relevant GWW Works are complete,
- certify this by lodging the required construction verification form and as-constructed verification form, and any other Design and Construction Form or other specified information with GWW; and

- 1.3.10 in any case where the Consultant conducts or is the Head Consultant for a contract or tender relating to Reimbursement Works, provide a statutory declaration (in a form required by GWW) as relevant to the circumstances, that any tender process in respect of the Reimbursement Works was conducted in accordance with appropriate probity requirements and without any known conflict of interest, collusion or inappropriate benefit or advantage to any person or entity.

#### **1.4 Inconsistency between Standards**

If there is a conflict or inconsistency between provisions in any of the GWW Standards and Specifications, the MRWA Standards, the WSAA Codes and the Land Development Manual, then, unless otherwise expressly agreed in writing by the parties, the conflict or inconsistency is to be resolved in order of precedence as follows:

- 1.4.1 the GWW Standards and Specifications;
- 1.4.2 the MRWA Standards; and
- 1.4.3 the WSAA Codes.

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## **2. Quality Management System**

- 2.1 The Consultant must provide the Consultancy Services for the GWW Works in accordance with the Consultant's:

- 2.1.1 quality management system;
- 2.1.2 environmental management system, processes or procedures; and
- 2.1.3 OH&S management system, processes or procedures,

which must comply with all requirements of Relevant Legislation.

- 2.2 The Consultant must:

- 2.2.1 ensure by no later than the Commencement Date that it has obtained and then maintains throughout the Term, certification of the quality management system referred to in clause 2.1.1 of this Attachment 2 to ISO 9001:2015 or an equivalent standard approved by GWW, as assessed by a suitably qualified, independent third party agreed by the parties; and
- 2.2.2 the Consultant must notify GWW of any change to the assessed status of the Consultant's quality management system within five Business Days of the change; and

- 2.3 All relevant Records must be made available to GWW, GWW's Representative or such other persons engaged by GWW for the purposes of auditing the Consultant's compliance with the management systems referred to in clause 0 of this Attachment 2 at such times as directed by GWW's Representative.

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### **3. Information**

#### **3.1 Provision of Information by GWW**

To the extent that GWW provides the Consultant with any information in relation to the Consultancy Services for the GWW Works, the Consultant acknowledges and agrees that:

- 3.1.1 GWW gives no warranty, representation or undertaking (express or implied) as to the accuracy or reliability of the information supplied;
- 3.1.2 if any information provided to the Consultant by GWW is to be used by the Consultant in undertaking the Consultancy Services for the GWW Works, the Consultant must reasonably satisfy itself as to the suitability and accuracy of the information for the Consultant's purpose and accept complete responsibility for its use and application;
- 3.1.3 the Consultant must undertake its own reasonable enquiries to test the accuracy and veracity of any information provided for and on behalf of GWW before relying on that information for the purpose of providing the Consultancy Services for the GWW Works; and
- 3.1.4 GWW will not be liable for any loss or damage arising from the use of the information supplied, including any liability in negligence (whether foreseeable or not).

#### **3.2 Security of Information**

- 3.2.1 Each party must ensure that all information and materials of the other party in its custody or control in connection with the Deed or this Attachment 2 are protected from unauthorised access or use by a third party or misuse, damage or destruction by any person.
- 3.2.2 The Consultant must comply with all security regulations, procedures or directions as may be given by GWW from time to time regarding any aspect of security or access to GWW's information or materials, including managing login access to any of GWW's online portals and controlling the use of digital signatures.
- 3.2.3 The Consultant acknowledges that an Accredited Consultant:
  - (a) may be granted limited access to GWW's information technology systems for the sole purpose of obtaining information in order to provide the Consultancy Services for GWW Works; and
  - (b) must ensure that only Key Personnel or other personnel approved in writing by GWW have access to GWW's information technology systems.

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## **4. Indemnity**

- 4.1 The Consultant indemnifies GWW and must keep GWW indemnified against all claims, loss, liability, damage, cost and expense suffered by GWW arising, whether directly or indirectly, from, or in the course of, or caused by, the Consultancy Services, or any breach by the Consultant of its obligations in relation to the GWW Works, or any act or omission of the Consultant or persons under its control arising out of this Deed, except to the extent that any such accident, destruction, damage, loss, injury or death has been caused by the unlawful act or omission of GWW, or persons under its control (other than the Consultant).
- 4.2 To the extent permitted by Law, the Consultant indemnifies GWW from and against any claim, loss, liability, damage, cost and expense suffered or incurred by GWW as a result of any difference between the amount GWW would otherwise have been entitled to recover, but for the operation of the *Wrongs Act 1958* (Vic), including as a result of the insolvency or incapacity of a concurrent wrongdoer (as that term is defined in the *Wrongs Act 1958* (Vic)).
- 4.3 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 4.4 A party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

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## **5. Intellectual Property**

### **5.1 Minimum General Licence**

- 5.1.1 If the terms of an agreement between GWW and the Consultant in respect of
- 5.1.2 particular GWW Works, grant or purport to grant GWW licence rights which are narrower, less than or inferior to the rights granted in clause 5.1.3, the rights granted in clause 5.1.3 take precedence.
- 5.1.3 To the extent that any Intellectual Property Rights in the Deliverables are owned by or vest in the Consultant, the Consultant grants GWW a non exclusive (including the right to sub-licence), perpetual, irrevocable, royalty free and worldwide licence of the Intellectual Property Rights in those Deliverables for whatever purpose required by GWW.

### **5.2 No infringement**

The Consultant warrants to the best of its knowledge and belief after making all reasonable enquiries that GWW's use of the Deliverables will not infringe any Intellectual Property Rights of any person nor give rise to any liability to make royalty or other payments to any person.