

DEVELOPMENT DEED

[INSERT PROJECT NAME]

[INSERT GWW REFERENCE NUMBER]

Greater Western Water
ABN 70 066 902 467

[Insert Developer Name]
ABN [Insert ABN]

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DEVELOPMENT DEED

Dated

Parties

|  |  |
| --- | --- |
| Name | **Greater Western Water (ABN 70 066 902 467)**  |
| Address | 36 Macedon St, Sunbury, Victoria 3429 |
| Email | designs@gww.com.au  |
| Short name | **GWW**  |

|  |  |
| --- | --- |
| Name | **<OwnerdeveloperCompanyName>(ABN#)** |
| Address | **[## insert]** |
| Email | **[## insert]** |
| Contact | **[## insert]** |
| Short name | **The Developer** |

Background

1. The Developer wishes to undertake the Development and has lodged the Development Works Application seeking GWW's approval to undertake the Development Works.
2. GWW has approved the Development Works Application on the condition that the Developer enters into this Development Deed.
3. By executing this Development Deed, the parties record their respective rights and obligations in relation to the Development Works.
4. In accordance with the Development Deed:
5. the Developer must procure the design, construction and completion of the Development Works;
6. the Developer must engage Accredited Consultants and Accredited Contractors in the appropriate categories of works or services for the Development Works; and
7. once GWW is satisfied that the Development Works have been completed, GWW will certify the completion of the Development Works.
8. It is agreed that this Development Deed, the Development Deed Standard Conditions contained in Schedule 1 to this Development Deed and all other Schedules to this Development Deed together comprise the Development Deed.

# Introductory Issues

## Definitions

The following definitions apply in this document.

**Acceptance of Works Certificate** has the meaning given in clause 7.2 of Schedule 1.

**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 Accredited Status, whether on a probationary or final basis and if successful being included on a list of eligible suppliers approved to undertake one or more categories of land development related works or services.

**Accredited Consultant** means a consultant approved, whether on a probationary or final basis, in accordance with GWW’s Accreditation Process.

**Accredited Contractor** means a contractor approved, whether on a probationary or final basis, in accordance with GWW’s Accreditation Process.

**Accreditation Deed** means the deed between GWW and a Consultant or Contractor that provides accreditationin accordance with GWW’s Accreditation Process.

**Approved Products List** means the list of products approved by GWW to be used in the Development Works that can be downloaded from the Melbourne Retail Water Agency (MRWA) web portal at www.mrwa.com.au..

**Accredited Status** means the status of being an Accredited Consultant or an Accredited Contractor in accordance with GWW’s Accreditation Process.

**Approved Unconditional Undertaking** means the form of unconditional undertaking which can be used for the Works Warranty Bond and for bonding outstanding Development Works.

**ARCUS Supplier Information Management (ARCUS)** is a cloud-based system designed to support Accredited Contractor and Consultant processes.

**As-constructed Information** has the meaning given in the Land Development Manual.

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

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

**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 are met. The issue of the Certificate of Completion signifies the beginning of the two (2) year Works Warranty Period.

**Change of Control** means in relation to a body corporate or entity (**the body**) where:

1. an entity that Controls the body ceases to Control the body; or
2. an entity that does not Control the body comes to Control the body,
3. however no Change of Control occurs if:
4. the entity that ceases to Control the body under paragraph (a) was, immediately beforehand, a wholly-owned subsidiary of a body corporate that Controls the body; or
5. the entity that comes to Control the body under paragraph (b) is, immediately afterward, a wholly–owned subsidiary of a body corporate that previously Controlled and continues to Control the body.

**Claim** means, in relation to a person, any claim, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Commencement Date** means the date on which GWW executes this Development Deed.

**Consent to Statement of Compliance** means a notice issued by GWW to the appropriate Responsible Authority that it consents to the issuing of a Statement of Compliance under section 21 of the Subdivision Actwith respect to the Development.

**Construction Verification Form** has the meaning given in the Land Development Manual.

**Construction Requirements** means any construction requirements specified by GWW for the Development Works as described in Schedule 6.

**Consultant** means an Accredited Consultant engaged by the Developer to, amongst other things, prepare Design Documents for the Development Works and includes any replacement Accredited Consultant engaged by the Developer from time to time.

**Contractor** means an Accredited Contractor engaged by the Developer to, amongst other things, perform construction services for Development Works and includes any replacement Accredited Contractor engaged by the Developer from time to time.

**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 Development Deed that is the result of, or consequential to, the COVID-19 pandemic, including:

1. any resulting governmental action;
2. work stoppages;
3. mandatory business, service or workplace closures;
4. full or partial lockdowns of affected areas;
5. quarantines; or
6. 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:

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

**Day** means calendar day.

**Defect** includes any work or material which is not in accordance with this Development Deed due to the act, omission or negligence of the Developer, Consultant or Contractor, including any fault, error, omission, shrinkage or other defect, but does not include ordinary fair wear and tear.

**Defects Liability Period** has the meaning given in clause 8 of Schedule 1.

**Deliverables** means all materials developed or supplied by the Developer, the Consultant and/or the Contractor in carrying out the Development Works.

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

**Design Requirements** means any design requirements specified by GWW for the Development Works as described in Schedule 5.

**Development** means the land development project being undertaken by the Developer as described in Schedule 3.

**Development Deed** means this deed entered into by the parties, by execution of the formal instrument, regarding the Development Works.

**Development Works** means the works to be designed and constructed under this Development Deed for the supply of water, recycled water (where applicable) and sewerage assets and infrastructure to service each Lot, and includes any works undertaken in response to a notice issued by GWW under clauses 8 of Schedule 1 (Defects Liability Period) or 9 of Schedule 1 (Works Warranty Period).

**Development Works Application** means the application by the Developer to GWW to undertake the Development Works.

**Direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**End of Defects Liability Verification Form** is the form provided by the Consultant to GWW following the end of the Defects Liability Period providing verification from the Consultant and Contractor that the works meet the scope, requirements and relevant specifications in accordance with their quality system(s).

**ESC** means the Essential Services Commission, which is responsible for the economic regulation of Victoria’s energy, water, and transport essential services.

**Extension Period** means the period of 12 months beginning either on the day immediately following the last day of the Initial Period, or on the day immediately following a previous approved Extension Period.

**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 supplier, public utility (other than GWW) or common carrier and includes a COVID-19 Event.

**Government Agency** means:

1. a government or government department or other body;
2. a governmental, semi-governmental or judicial person; or
3. a person (whether autonomous or not) who is charged with the administration of a Law.

**GST Act** meansthe *A New Tax System (Goods & Services Tax) Act 1999.*

**GWW** means Greater Western Water (ABN 70 066 902 467), and includes any reference to CWW or City West Water within the Schedules to this Development Deed.

**GWW’s Information** means the Financial Contribution information set out in Schedule 4 to this Deed, planning information provided by GWW and Hydraulic Plans.

**Incremental Financing Costs** has the meaning given in the Land Development Manual.

**Initial Period** means 24 months.

**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** means all present and future rights conferred by statute, common law, equity or any corresponding Law in or in relation to any copyright (including, but not limited to copyright in computer programs, documentation, drawings, writings and art works), trade marks, designs, all rights in relation to inventions including but not limited to patents, modifications or improvements to the same, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

1. all rights in all applications to register these rights;
2. all renewals and extensions of these rights; and
3. all rights in the nature of these rights.

**Land Development Manual** means GWW's Land Development Manual, comprising policies and procedures relating to land development and water, recycled water and sewerage supply, available on GWW’s website and a copy of which is available from GWW upon request, and 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.

**Liability** means in relation to a person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent and including any liability for consequential or indirect loss, economic loss or loss of profits.

**Lot** means an area within a development that is separately titled or that is, or can be, individually metered for water or recycled water supply purposes.

**NCC Guide** means GWW’s New Customer Contributions Guide, published on the GWW website.

**New Customer Contributions (NCCs)** means an upfront payment levied by GWW under section 268, 269 or 270 of the Water Act, when a customer builds or develops a property and connects to GWW’s water, sewerage, or recycled water network, in accordance with GWW’s NCC Guide published on the GWW website.

**Offer** has the meaning given in the Land Development Manual**.**

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

**OH&S Law** means the *Occupational Health and Safety Act 2004* (Vic), the *Occupational Health and Safety Regulations 2017* (Vic) and related standards, codes and guidelines.

**Personnel** means employees, agents or contractors of the Developer, Consultant and Contractor engaged to provide any part of the Development Works.

**Plan of Subdivision** means the plan of subdivision relating to the Development.

**Pre-Construction Verification Form** has the meaning given in the Land Development Manual.

**Price Determination** means the ESC's price determination for GWW applicable at the Commencement Date, as amended from time to time within the period of the determination.

**Registrar of Titles** means the person within Land Use Victoria responsible for managing land titles in Victoria.

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

**Responsible Authority** means a responsible authority under the *Planning and Environment Act 1987* (Vic).

**Schedule** means a schedule to this Development Deed.

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

**Variation** has the meaning given in clause 16 of Schedule 1.

**Water Act** means the *Water Act 1989* (Vic).

**Works Warranty Bond** means the works warranty bond provided by the Developer in accordance with clause 4.2 of Schedule 1.

**Works Warranty Period** has the meaning given in clause 9 of Schedule 1.

## Interpretation

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

### A reference to:

#### 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;

#### a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

#### a party to this Development 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

#### anything (including a right, obligation or concept) includes each part of it.

### A singular word includes the plural and vice versa.

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

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

### 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.

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

### 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.

### **Inconsistency with other documents**

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

### **Governing Law**

#### This Development Deed is governed by the Law in force in Victoria.

#### 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 Development Deed, and waives any right it might have to claim that those courts are an inconvenient forum.

### **Whole Understanding**

#### This Development 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 Development Deed and has no further effect.

#### Any right that a person may have under this Development Deed is in addition to, and does not replace or limit, any other right that the person may have.

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

### **Non Business Days**

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

#### if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

#### in any other case, the person must do it on or by the previous Business Day.

### **Reference to Consultant**

Where in this Development Deed there is any reference to the Consultant:

#### the term is a reference to each Consultant the Developer engages to perform the services of a Consultant in respect of the Development unless otherwise specfied; and

#### the Developer acknowledges and agrees that GWW may deal with the Consultant as an agent and representative of the Developer in respect of all aspects of the Development Works.

### **Reference to Contractor**

Where in this Development Deed there is any reference to the Contractor:

#### the term is a reference to each Contractor the Developer engages to perform the services of a Contractor in respect of the Development unless otherwise specified; and

#### the Developer acknowledges and agrees that GWW may deal with the Contractor as an agent and representative of the Developer in respect of all aspects of the Development Works.

## Relationship between the Parties

### **No Partnership**

Nothing in this Development Deed will operate or be deemed to create a partnership between any of the parties to this Development Deed.

### **Non-merger**

The rights of the parties do not merge at the date of termination or completion of the Development Works.

### **No trust**

Each party warrants and represents that it is not entering into the Development Deed as trustee of any trust or settlement other than as disclosed prior to the execution of the Development Deed.

### **Joint and Several Liability**

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

#### an obligation of those persons is joint and several;

#### a right of those persons is held by each of them severally; and

#### 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.

### **Waiver of rights**

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

#### 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;

#### a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

#### the exercise of a right does not prevent any further exercise of that right or of any other right.

### **Parties empowered to agree**

Each of the parties covenants that:

#### it has full legal capacity and power to:

##### own its property and to carry on its business; and

#####  enter into the Development Deed and to carry out the transactions that the Development Deed contemplates; and

#### it holds each authorisation that is necessary to:

##### enable it to properly execute the Development Deed and to carry out the transactions that the Development Deed contemplates;

##### ensure that the Development Deed is legal, valid, binding and admissible in evidence; and

#### enable it to properly carry on its business,

and it is complying with any conditions to which any of these authorisations is subject.

### **Developer to Examine Information**

The Developer agrees that in entering the Development 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 Development Deed.

### **Attorneys**

Each person who executes this Development 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.

## Notices

### **Method of Giving Notices**

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

#### handed to that party's representative;

#### delivered to that party's address;

#### sent by pre-paid mail to that party's postal address; or

#### sent by email to that party’s email address.

### **Time of Receipt**

A notice given to a party in accordance with subclause 1.4.1 must be treated as having been duly given and received:

#### if handed to the party's representative, immediately;

#### if delivered to a party's address, on the day of delivery;

#### if sent by pre-paid mail, on the third day after posting; or

#### if sent by email, only upon acknowledgement that the email has been received.

### **After Hours Communications**

If any notice is given after 5.00pm on any day, it is, for the purposes of this Development 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.

### **Addresses of Parties**

For the purposes of sub-clauses 1.4.1 and 1.4.2, the addresses (including an email address) of a party is the address stated in Schedule 2 unless notice of another address has been given to the other party.

## Electronic execution

Each party acknowledges and agrees:

### to this Deed being executed through the DocuSign electronic signing platform, digital signature or electronic signature;

### that on signing the Deed under clause 1.5.1 it will be bound by this Deed;

### that the method described in clause 1.5.1 is reliable and appropriate for the purposes of identifying the signing party and executing this document; and

### this Deed constitutes an original document in an electronic format and will have the same legal effect, validity and enforceability as a signature affixed by hand.

**EXECUTED** as a **DEED**

**GWW**

|  |
| --- |
| EXECUTED by **Greater Western Water ABN 70 066 902 467** by its authorised representative under an Instrument of Delegation current at the time of signing: |
|  |
| Authorised respresentative signature

|  |
| --- |
|  |
| Name of authorised representative |
|  |
| Position of authorised representative |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dated |
| In the presence of: |
| *Not required as digitally executed* |
| Signature of witness |
|  |
| Name |
| Date |

**DEVELOPER**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[insert Developer's name]**: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

**OR**

|  |  |  |
| --- | --- | --- |
| **SIGNED, SEALED** and **DELIVERED** for **[insert Developer's name]** under power of attorney in the presence of: |  |  |
|  |  | Signature of attorney |
|  |  |  |
| Signature of witness |  | Name |
|  |  |  |
| Name |  | Date of power of attorney |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

1. Development Deed Standard Conditions

# Operation of Document

## Commencement

The rights and obligations of the parties under the Development Deed begin on the Commencement Date.

## Termination for failure to complete Development Works

### If the Developer fails to complete the Development Works within the Initial Period or approved Extension Periods, as relevant, GWW may, in its sole discretion:

#### terminate the Development Deed;

#### terminate the Development Deed and, subject to clause 1.2.3, step in to complete so much of the Development Works as are required to provide water (including recycled water) and sewerage services to customers other than the Developer; or

#### subject to payment by the Developer of any further or revised fees, charges, or contributions assessed by GWW in accordance with the Price Determination and the Water Act, agree to extend the operation of this Development Deed for the Extension Period on the same terms as are contained in this Development Deed.

### If GWW terminates the Development Deed under clauses 1.2.1(a) or 1.2.1(b), and the Developer subsequently wishes to proceed with the Development Works, the Developer must:

#### obtain the consent of GWW;

#### enter into a further development deed with GWW; and

#### pay to GWW any further or revised fees, charges and contributions assessed by GWW in accordance with the Price Determination and the Water Act.

### Where GWW exercises its rights under clause 1.2.1(b), the reasonable costs incurred by GWW in completing works, less any amounts that GWW has agreed to reimburse to the Developer, will be a debt due and payable by the Developer to GWW.

### Termination of this Development Deed is without prejudice to any rights or liabilities of the parties accruing to the date of termination.

## Amendment

This Development Deed can only be amended or replaced by another document signed by GWW and the Developer.

## Assignment

### The Developer must not assign, novate, transfer, dispose of, declare a trust over or otherwise create an interest in, its rights and obligations under this Development Deed without the prior written consent of GWW, other than as specifically provided in this Development Deed.

### The parties acknowledges that GWW has entered into the Development Deed in reliance on the expertise and capability of the Developer and may withhold its consent under clause 1.4.1 in its absolute discretion.

### In response to a request to assign, transfer or novate this agreement GWW may, in its discretion, require:

#### the existing Developer and any new developer to sign an appropriate agreement to give effect to the relevant transfer, assignment or novation; or

#### a new Development Deed with the new developer.

# The Developer

## Overall responsibility for Development Works

### The Developer must carry out and complete the Development Works in accordance with the Development Deed.

### The Developer must enter into contracts with Consultants and Contractors to engage these entities to carry out the design and construction works required for the Development Works. The Developer is responsible for ensuring all contracts between the Developer and the Consultant or the Contractor (as relevant) contain the necessary provisions to ensure the Developer complies with its obligations under this Developer Deed.

### In complying with its obligations under 2.1.1 and 2.1.2, the Developer must ensure that the Development Works are carried out and completed in accordance with the Design Requirements (at Schedule 5 to this Development Deed) and the Construction Requirements (at Schedule 6 to this Development Deed).

## Developer’s warranties

The Developer must ensure, and warrants to GWW, that:

### the Developer will carry out and complete the Development Works and will have the primary responsibility for all obligations arising under or in connection with the design and construction of the Development Works in accordance with the Development Deed.

### the Developer will ensure that the Consultant and the Contractor comply with their respective obligations under the Development Deed;

### in connection with the completion of the Development Works, it will only engage Accredited Consultants and Accredited Contractors, and will only continue to engage Consultants and Contractors while they maintain their Accreditation, unless GWW agrees otherwise in writing;

### the Consultant and the Contractor:

#### at all times will be suitably qualified and experienced, and will exercise due skill, care and diligence in the carrying out and completion of the Development Works;

#### will effect and maintain the insurances, and observe the general requirements regarding insurance, set out in clause 11; and

### the Developer will procure that the Consultant and Contractor engaged by it are familiar with all current Laws affecting the Development Works, or which may affect the Development Works, and that there is nothing in the Design Requirements or Construction Requirements which is inconsistent with, or at variance with, any current Laws;

### the Developer will procure that the Consultant and Contractor engaged by it examines and carefully checks any Design Requirements and Construction Requirements and ensures that such Design Requirements and Construction Requirements:

#### are consistent with and do, or will, conform with and meet all Laws; and

#### do not contain any material discrepancies, ambiguities or inconsistencies;

### the Consultant or another Accredited Consultant (who is accredited to undertake audit activity) is appointed to undertake a reasonable program of audits of the construction of the Development Works by the Contractor. Without limitation, these audits must cover OH&S, environmental and quality performance of the Contractor; and

### all materials for the Development Works:

#### will be provided at the Developer's cost; and

#### are either materials specified in the Approved Products List or if they are not so specified, have been approved by GWW.

## Warranties unaffected

The Developer acknowledges that the warranties in clause 2.2 will remain unaffected notwithstanding:

###  any receipt or review of, comment on, or acceptance of the Design Documents by GWW;

### the provision of any information and data concerning the Development by or on behalf of GWW; or

###  the granting by GWW of Accredited Status to the Consultant or the Contractor.

## No warranty by GWW

### The Developer acknowledges that all information made available to the Developer in the documents forming part of the Development Deed or prior to, or after the Development Works Application, will not constitute a warranty or representation of any kind by GWW, and the Developer acknowledges and agrees that such information will be checked and verified by it, the Consultant and the Contractor.

### The Developer will not be entitled to any moneys or extension of the Initial Period on account of any alleged statement, warranty or representation with respect to the information referred to in clause 2.4.1 which may not prove correct.

### The provisions in clauses 2.4.1 and 2.4.2 do not apply in respect of GWW’s Information.

### No warranty, express or implied, is given by GWW that the Design Requirements or Construction Requirements show all information which is or may be necessary or incidental to the Development Works.

# Developer’s Obligations For Development Works

## Pre-Development Works

The Developer must ensure that:

### before the Contractor proposes to commence construction of the Development Works the Consultant has undertaken those activities necessary to provide to GWW a Pre-Construction Verification Form;

### if at any time after the required Pre-Construction Verification Form is provided to GWW under clause 3.1.1, the Consultant and the Contractor comply with any request made by GWW to provide such other information as GWW reasonably requires regarding the design or construction (as applicable) of the proposed Development Works, including any information to assist GWW in undertaking audits of the construction of the Development Works, within such period as specified by GWW;

### the Contractor gives GWW at least five Business Days' written notice:

#### if the Contractor does not propose to commence construction of the Development Works on the date set out either in the relevant Pre-Construction Verification Form, or any previous notice given of the date it proposes to commence construction of the Development Works; and

#### of any later date upon which the Contractor proposes to commence construction of the Development Works;

### the Consultant, if the design of the Development Works changes, provides GWW with a complete set of the most recent version of the Design Documents for the Development Works as soon as reasonably practicable;

### the Consultant has in place, prior to commencing the design of the Development Works and at all times during the completion of the Development Works:

#### a quality management system;

#### an environmental management system, processes or procedures; and

#### an OH&S management system, procedures,

#### which meet the standards under GWW’s Accreditation Process; and

### the Consultant complies with the system or procedures prepared under clause 3.1.5 in performing consultancy services for the Development Works.

## Construction Verification Form

The Developer acknowledges and agrees that GWW is under no obligation to issue an Acceptance of Works Certificate or a Consent to Statement of Compliance, until the Consultant provides to GWW a Construction Verification Form.

## Development Works

The Developer must:

### before commencing the Development Works, satisfy all applicable requirements of the *Planning and Environment Act 1987* (Vic);

### before commencing the Development Works, at the Developer's cost, obtain all necessary permits, consents and other authorisations required by Law for the Development Works to proceed;

### without limiting clauses 3.3.1 and 3.3.2, at all times meet the requirements of all relevant Laws relating to the commencement and completion of the Development Works;

### at any time upon receipt of a written request from GWW, provide GWW with written evidence that the requirements of clauses 3.3.1 to 3.3.3 have been met; and

### at any time where requested by GWW, coordinate the location and design of the proposed Development Works with any of GWW's or any other authority’s existing or proposed works, operations or services.

### ensure that the Contractor:

#### gives GWW at least 2 Days' notice in accordance with GWW's lodging requirements of any occasion upon which the Contractor proposes to work on the Development Works:

##### outside the hours of 7.30am to 4.00pm, Monday to Saturday; or

##### on a Sunday or public holiday;

#### promptly advises GWW if the Contractor vacates the site, and gives GWW at least 2 Days’ notice in accordance with GWW's lodging requirements of the day on which the Contractor will resume the Development Works;

#### as far as practicable, ensures that any excavation made as part of the Development Works is wholly contained within an easement, or land transferred, or proposed to be granted or transferred, to GWW under clause 6 and that, if any part of an excavation is not within an easement or transferred land referred to in clause 6, ensures that:

##### the Contractor promptly backfills such part of the excavation as is not contained within that easement or transferred land; or

##### the area of any easement or transferred land referred to in clause 6 is increased to include that part of the excavation;

#### has in place, prior to the commencement of the Development Works and at all times during the completion of the Development Works:

##### a quality management system;

##### an environmental management system or procedures; and

##### an OHS management system or procedures,

##### which meet the minimum standards under GWW’s Accreditation Process; and

#### complies with the systems or procedures prepared under clause 3.3.6(d) in carrying out construction of the Development Works.

## GWW’s Request for information

### If requested in writing by GWW, the Developer must provide GWW with information in relation to the progress, status and completion of the Development Works.

### GWW must not issue a request under this clause 3.4.2 more than once per month.

## Replacement of Consultant or Contractor

### If at any time during the Development Works, the Consultant or the Contractor:

#### has its accreditation by GWW suspended or terminated;

#### resigns;

#### is terminated; or

#### is otherwise replaced by the Developer,

the Developer must engage a replacement Accredited Consultant or Accredited Contractor (as applicable) and notify GWW of the replacement within five Business Days of the original Accredited Consultant or Accredited Contractor (as applicable) resigning, being terminated or otherwise replaced, unless otherwise agreed by GWW in writing.

# Development Works Costs And Charges

## Developer’s Obligations

### The Developer must:

#### meet the full cost of designing, constructing, project-managing, supervising, auditing, surveying and asset recording all of the Development Works (except for any amounts which GWW expressly agrees to pay the Developer, as set out in Schedule 4); and

#### pay to GWW, or arrange for the payment of, such fees, charges and contributions relating to the Development as are calculated by GWW in accordance with the Price Determination and the Water Act as set out in Schedule 4 (Financial Contributions). If payment is not specified in Schedule 4, payment must be made in accordance with the timeframe specified in GWW’s Land Development Manual (as amended from time to time).

### Unless otherwise provided for in Schedule 4, the fees, charges and contributions referred to in clause [4.1.1(b)](#_bookmark10) must be determined and paid by the Developer to GWW within 14 Days after the Commencement Date.

## Works Warranty Bond

### The Works Warranty Bond is for the purpose of ensuring that the Development Works are completed by the Developer in accordance with the requirements of the Development Deed, including the Works Warranty Period in accordance with clause 9.

### The Developer must give GWW a Works Warranty Bond for an amount equal to the greater of:

#### $1,000; or

#### 5% of the value of the Development Works, as determined by GWW,

before GWW may be required to issue an Acceptance of Works Certificate.

### The Works Warranty Bond must be in the form of either:

#### an Approved Unconditional Undertaking; or

#### any other form approved by GWW in its absolute discretion.

### If :

#### any Works Warranty Bond provided in compliance with clause 4.2.3 is in the form of an insurance bond, the Developer must procure the issue of a replacement Works Warranty Bond if the credit rating of the issuer falls below Standard & Poor’s (Australia) Pty Ltd credit rating of A+ or if there is a change in ownership of the issuer.

#### a replacement Works Warranty Bond is not provided to GWW in accordance with clause 4.2.4(a), GWW may make a demand under each Works Warranty Bond held by it for the full face value of that Works Warranty Bond at that time and hold and apply the proceeds on such terms as GWW determines are consistent with its rights in respect of that Works Warranty Bond. GWW must release the Works Warranty Bond or proceeds held by it when it receives the replacement Works Warranty Bond or as otherwise required by this Development Deed.

### GWW may have immediate recourse, without notice, to the Works Warranty Bond and may convert into money any part of or the whole of the Works Warranty Bond:

#### where GWW (acting reasonably) believes that GWW has become entitled to exercise a right under the Development Deed in respect of the Works Warranty Bond;

#### for a purpose referred to in any of clauses 7.1.2, 8.5.5 and 9.3; or

#### where the Developer is indebted to GWW under this Development Deed.

### GWW will not be liable for any loss to the Developer occasioned by recourse to the Works Warranty Bond.

### The Developer agrees that it will not at any time take steps to seek an injunction against or otherwise restrain, or attempt to seek an injunction against or otherwise restrain:

#### any issuer of the Works Warranty Bond contemplated in this clause 4.2 from paying GWW pursuant to the Works Warranty Bond; or

#### GWW from:

##### taking any steps to obtain payment under the Works Warranty Bond; or

##### using the moneys received under the Works Warranty Bond.

### GWW will own any interest earned on the Works Warranty Bond.

### Upon the expiration of 2 years after GWW issues a Certificate of Completion, the Developer may apply to GWW for a return of the balance of the Works Warranty Bond then held by GWW (if any). GWW must return the balance of the Works Warranty Bond held by it (if any) promptly after receipt by it of the application.

# Affected Landowners

At least 7 Days before the Developer proposes to commence construction of any Development Works, the Developer must give to GWW a deed, prepared at the cost of the Developer and properly executed by the owner of any land outside the boundaries of the Development (**landowner**), upon which Development Works are required to be constructed, under which the landowner:

consents to the construction of the relevant Development Works on the landowner's land; and

agrees that it will:

### grant an easement in favour of GWW, to allow it to have access to maintain, repair, replace or remove the relevant Development Works on the landowner's land, promptly upon the request of GWW, once the Development Works are complete;

### execute any documents necessary for such an easement to be registered; and

### allow any employee of, or person authorised by, GWW to have access to the land in order to inspect the relevant Development Works, at any time during their construction.

# Easements And Other Land

The Developer must, at the Developer's cost and as required by GWW, do either or both of the following:

### grant or procure the grant of an easement or easements in favour of GWW over such land within the boundaries of the Development as is, or is to be, occupied by the Development Works, the easement being for the purpose of GWW, its officers, contractors and persons authorised by it, entering the land to inspect, construct, maintain, repair, decommission or remove any works relating to water supply, recycled water supply or sewerage; or

### transfer, or procure the transfer, to GWW of freehold title to such land within the boundaries of the Development as is, or is to be, occupied by the Development Works.

The Developer must, at the Developer's cost, procure the granting of any easement over land beyond the boundaries of the Development which is or will be occupied by GWW’s assets supplying water, recycled water or sewerage services to the Development, that is necessary for the purpose of GWW, its officers, contractors and persons authorised by it, entering the land to inspect, construct, maintain, repair, decommission or remove those assets.

Any easement or transferred land referred to in clauses 6.1 or 6.2 must be of sufficient dimensions to accommodate any excavations and any soil resulting from such excavations, as may from time to time be necessary to construct, maintain, repair, decommission or remove the relevant works.

Without limiting its remaining rights under the Development Deed, GWW will not be required to issue a Consent to Statement of Compliance until the requirements of this clause 6 have been met.

# Completion Of Works

## Audit

### Whenever an audit undertaken by or on behalf of GWW in connection with the Development Deed identifies a matter to which the Developer, Contractor or Consultant (as relevant) is reasonably required to attend, the Developer must ensure that the relevant entity:

#### attends to that matter in the manner, and within the time, reasonably required by GWW; and

#### on request from GWW, produces evidence satisfactory to GWW that the matter has been attended to.

### If GWW, in its sole discretion, determines that an intensive audit is required of the survey, design or construction of the Development Works, the Developer must pay the relevant intensive audit fee calculated by GWW in accordance with the Price Determination, within 14 Days after receiving an invoice for that fee.

## Acceptance of Works Certificate

### When:

#### the Consultant has provided to GWW a Construction Verification Form, As-constructed Verification Form, and all required supporting documentation; and

#### GWW is satisfied that the Development Works have been completed in accordance with the requirements of the Development Deed; and

#### the Developer has lodged with GWW an appropriate Works Warranty Bond,

GWW must within three days issue to the Developer an Acceptance of Works Certificate.

### The Acceptance Works Certificate is prima facie evidence that the Development Works have been completed in accordance with the requirements of this Development Deed.

### The Defects Liability Period in clause 8 commences on the date upon which GWW issues an Acceptance of Works Certificate.

### The parties acknowledge and agree that, in the period between the date of issuing of an Acceptance of Works Certificate and the date of issuing of a Certificate of Completion:

#### all right, title and interest in the Development Works remains with the Developer; and

#### customer connections authorised in writing by GWW may be made to water, recycled water and sewer assets comprising part of the Development Works.

## Consent to Statement of Compliance

### GWW will issue a Consent to Statement of Compliance when it is satisfied that such of the following requirements as are relevant to the Development Works have been met:

#### the Consultant has provided to GWW a Construction Verification Form;

#### an Acceptance of Works Certificate has been issued by GWW with respect to the Development Works;

#### all water mains, recycled water mains and sewers outside the boundaries of the Development upon which the Development depends, have been constructed and completed;

#### if the assets referred to in clause 7.3.1(c)have not been constructed and completed, the Developer has made appropriate alternative temporary arrangements, approved by GWW;

#### a copy of the relevant certified Plan of Subdivision, showing all easements referred to in clause 6, has been given to GWW;

#### every instrument necessary to create an easement referred to in clause 6 in favour of GWW has been lodged at the Registrar of Titles;

#### every transfer necessary to transfer land referred to in clause [6](#_bookmark12) has been lodged at the Registrar of Titles;

#### all fees, charges, contributions and other moneys payable by the Developer to GWW under this Development Deed have been paid; and

#### any other document or information required to be given to GWW under this Development Deed has been so given.

## Certificate of Completion

GWW will issue a Certificate of Completion when it is satisfied in its discretion that:

#### the Development Works; and

#### all other services and roads to be constructed at the site of the Development,

are complete, and:

#### any Defect notified to a party under clause [8.2](#_bookmark22) has been remedied.

## Effect of Certificate of Completion

### On and from the date upon which GWW issues a Certificate of Completion:

#### all right, title and interest in the Development Works vests in GWW, by virtue of this clause, without any further instrument of transfer or assignment;

#### subject to clauses 8, 9 and 10, GWW must operate, maintain, repair and replace the Development Works at its cost; and

#### subject to clauses 8, 9 and 10, the Developer is discharged from its obligations under this Development Deed.

# Defects Liability Period

The Defects Liability Period commences on the date upon which GWW issues an Acceptance of Works Certificate and continues for the period specified in Schedule 6 (Construction Requirements), or where no period is specified, 3 months.

At any time during the Defects Liability Period, GWW may:

### notify the Developer singly, or jointly with the Contractor, in writing of any Defect that GWW reasonably considers to be related to the construction of the Development Works, and require the Developer to procure the relevant Contractor to remedy the Defect within the period set out in the notice;

### notify the Developer singly, or jointly with the Consultant, in writing of any Defect that GWW reasonably considers to be related to the design or supervision of the Development Works, and require the Developer to procure the relevant Consultant to remedy the Defect within the period set out in the notice; or

### at its discretion, undertake emergency works in respect of any Defect that GWW reasonably considers to be related to the construction, design or supervision of the Development Works and recover the reasonable costs incurred in remedying the Defect from one or both of the Works Warranty Bond and the Developer.

The Developer must either itself comply, or procure the Contractor or Consultant (as applicable) to comply, with any notice given under clause 8.2.1 or 8.2.2.

If the Developer, or relevant Contractor or Consultant, does not comply with a requirement within the period set out in a notice given under clause 8.2.1 or 8.2.2, GWW may remedy the Defect and recover the reasonable costs incurred in remedying the Defect from one or both of the Works Warranty Bond and the Developer.

If, at the end of 6 months (or any greater period prescribed by GWW) after the end of the Defects Liability Period:

### the Developer has not procured the Consultant to give GWW an End of Defects Liability Verification Form;

### GWW has not issued a Certificate of Completion; or

### in GWW's reasonable opinion, any Defect notified under clause [8.2](#_bookmark22) has not been remedied,

GWW may, in its sole discretion and without giving further notice to another party:

### remedy any outstanding Defect referred to in clause 8.5.3; and

### recover the reasonable costs incurred by GWW in remedying any such Defect, from one or both of the Works Warranty Bond and the Developer.

The Developer must pay the amount of any costs referred to in this clause 8 within 14 Days after receiving an invoice for those costs.

# Works Warranty Period

## Subsequent faults - design

If at any time within 2 years after issuing a Certificate of Completion, GWW discovers any fault in the Development Works which GWW reasonably considers is attributable to a deficiency in the design of the Development Works, GWW may:

### notify the Developer and the relevant Consultant in writing of the fault; and

### require the Developer itself to remedy, or procure the Consultant to remedy, the fault within 14 Days after the date of the notice or any greater period specified in the notice.

## Subsequent faults – construction

If at any time within 2 years after issuing a Certificate of Completion, GWW discovers any fault in the Development Works which GWW reasonably considers is attributable to a deficiency in the construction of the Development Works, GWW may:

### notify the Developer and the relevant Contractor in writing of the fault; and

### require the Developer itself to remedy, or procure the Contractor to remedy, the fault within 14 Days after the date of the notice or any greater period specified in the notice.

## GWW may remedy

### Subject to clause 9.3.2, if the Developer, the Consultant or Contractor fails, at the relevant entity’s cost, to remedy any fault within the period referred to in clause 9.1 or 9.2, GWW may:

#### remedy the fault; and

#### recover the reasonable costs incurred by GWW in remedying the fault from one or more of the Works Warranty Bond or the Developer.

### GWW may, at its discretion, undertake emergency works to remedy any fault that GWW reasonably considers to be attributable to a deficiency in the design or construction of the Development Works and recover the reasonable costs incurred by GWW in remedying the fault from one or more of the Works Warranty Bond or the Developer.

## Costs

The Developer must pay the amount of any costs referred to in this clause 9, within 14 Days after receiving an invoice for those costs.

# Indemnity And Release

## Release

The Developer releases GWW to the full extent permitted by Law from all Claims, losses (including economic losses), Liabilities, costs and expenses resulting from any accident, destruction, damage, loss, death or injury arising out of or in any way connected with the carrying out of the Development Works except to the extent that the Claims arise out of GWW’s unlawful act or omission.

## Developer's indemnity

### The Developer indemnifies GWW and must keep GWW indemnified against any Claim, 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 design and construction of the Development Works, any breach by the Developer of its obligations in relation to the Development Works, or any act or omission of the Developer, the Contractor, the Consultant or persons under their control arising out of this Development 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.

### The Developer agrees, and the Developer must ensure that the Consultant agrees, to indemnify GWW against all costs, liability, losses and claims incurred by GWW as a result of a breach of their obligations in relation to dealing with the confidential information of tenderers under clause 6.7 of Schedule 4 to this Development Deed.

### To the extent permitted by Law, the Developer 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)).

## Indemnities generally

### Each indemnity in the Development Deed survives the expiry or termination of the Development Deed.

### GWW may recover a payment under an indemnity in the Development Deed before it makes any payment in respect of which the indemnity is given.

# Insurance

## Public liability insurance

### The Developer must ensure that before any Development Works are commenced by the Developer, the Consultant or the Contractor, the Developer is insured under a public liability policy of insurance written on an occurrence basis (insuring GWW for any vicarious liability for the acts or ommissions of the Developer, the Contractor, the Consultant or any persons for whom they are responsible) which covers the Developer’s liability to GWW or any third party for loss of or damage to property and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance) and is for an amount in respect of each occurrence not less than $20 million.

### The Developer can satisfy the requirement in clause 11.1.1 by relying on the public liability policy of the Contractor, provided that the policy satisfies the requirements of this clause 11.1.

### The policy of insurance referred to in paragraph 11.1.1 must be maintained until the expiration of 2 years after the Certificate of Completion is issued.

## Consultant and Contractor’s Insurance

Prior to the commencement of any Development Works the Developer must ensure that:

### the Consultant holds professional indemnity insurance and public liability insurance policies that comply with the requirements of the Consultant’s Accreditation Deed;

### the Contractor holds a products and public liability insurance policy that complies with the requirements of the Contractor’s Accreditation Deed;

### the Consultant and Contractor hold insurance for employees against statutory liability for death of or injury to persons employed by the Consultant or Contractor and, where Commonwealth claims are permissible outside of the relevant statutory scheme, the Consultant or Contractor holds insurance against such common law liability for an amount as is good practice for that jurisdiction.

## Insurance of employees

### Before the Commencement Date, the Developer must insure against statutory liability for death of or injury to persons employed by the Developer and, where common law claims are permissible outside of the relevant statutory scheme, the Developer 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.

### 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 Developer's employees.

## Evidence of insurance

### The Developer must ensure that, on or before the Commmencement Date, GWW receives:

#### a copy of a certificate of currency for each insurance policy that the Developer is required to effect under this clause 11;

#### a copy of the Developer's WorkSafe certificate of currency (if applicable); and

#### if requested, a copy of necessary insurances to be held by the Consultant and Contractor.

### The Developer must notify GWW of any change to details set out in the certificates of currency previously provided to GWW within two Business Days of the change.

### Whenever otherwise requested in writing by GWW, the Developer must provide satisfactory evidence (in the form of copies of certificates of currency) of the insurance policies held by the Developer, Contractor or Consultant.

### Insurance must not limit liabilities or obligations at general law, under other provisions of this Development Deed or any consultancy or construction agreement or contract.

## Terms of insurance

### The Developer must ensure that the policies of insurance which are required under this clause 11 provide that:

#### failure by the Developer, the Consultant or the Contractor, as the case may be, to observe and fulfil the terms of the policy will not prejudice the insurance with regard to GWW; and

#### the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against GWW.

### The Developer must not (and must procure that the Contractor and the Consultant must not) do any act or permit any circumstances that reduces the insurances or makes them void or voidable. The effecting and keeping in force of any insurance will not in any way limit the obligations or responsibilities of the Developer, Contractor or the Consultant under this Development Deed or at Law.

## Notices from insurer of Claims

The Developer must notify GWW in writing :

### whenever the insurer gives the Developer, Consultant or the Contractor (as applicable) a notice of cancellation or any other notice in respect of a policy; and

### of any Claims against the insurances effected by the Developer, Consultant or the Contractor within 5 Days after becoming aware of the Claims and provide such further information to GWW in relation to the Claim as GWW may reasonably require.

# Confidentiality

## Confidentiality obligation

### Each party must keep confidential and must not allow, make or cause any public announcement or other disclosure of or in relation to any information relating to the conduct and assessment of, and decision making in relation to, any tender conducted by the Developer, Consultant and/or Contractor for works relating to the Development Works that are required to be undertaken by GWW and that the Developer has agreed to undertake on behalf of GWW.

### Further obligations in relation to dealing with confidential information of tenderers are set out in clause 6.7 of Schedule 4 to this Development Deed.

## Exceptions

A party's obligation under clause 12.1 not to make any disclosure does not apply to disclosures to the extent they are:

### required by Law;

### required by the listing rules of Australian Stock Exchange Limited;

### required to enable the party to perform its obligations or making or defending any claim under this Development Deed; or

### required to be disclosed under this Development Deed,

provided that, before any such disclosure, the disclosing party notifies the other party in writing of the information it proposes to disclose and gives details of the reasons for such disclosure.

# Intellectual Property

## Intellectual Property in Deliverables

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

### To the extent that GWW may at any time acquire any right, title or interest in any Intellectual Property in the Deliverables, GWW, by this Development Deed, will assign to the relevant entity all such right, title and interest.

## Licence

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

### To the extent that any Intellectual Property in the Deliverables is owned by the Consultant or the Contractor, the Developer must procure the Consultant or Contractor, as the case may be, to grant GWW a non–exclusive, perpetual, irrevocable, non–transferable, royalty free and worldwide licence of the Intellectual Property in those Deliverables for whatever purpose required by GWW.

## No infringement

The Developer 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.

# Reimbursement Works

## Reimbursement Works

If the Development Works include Reimbursement Works, the Developer must follow the procedures and guidelines for reimbursement in Schedule 4, and in the Land Development Manual.

## Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under the Development Deed must exclude any amount in respect of GST included in a cost to the extent to which an entitlement arises or would arise to claim an input tax credit and any amount in respect of GST included in the revenue lost.

## Recipient created tax invoices

### The final reimbursement amount will be determined by GWW at the project completion stage.

### If GST is payable on a supply to GWW, for which a reimbursement amount is consideration, GWW, in accordance with section 29-70(3) of the GST Act and GSTR 2000/10, will issue a Recipient Created Tax Invoice (RCTI) in respect of this supply.

### GWW will issue the original or a copy of the RCTI to the Developer within 28 Days of the determination of the value of the reimbursement and will retain the original or a copy of the RCTI.

### The Developer must provide its Australian Business Number to GWW and this will be disclosed on the RCTI.

### GWW will issue the original or a copy of a recipient created adjustment note to the Developer within 28 Days of the adjustment that occurs in respect of the reimbursement for which a RCTI was issued and will retain the original or a copy of the recipient created adjustment note.

### GWW will reasonably comply with its obligations under Australian Taxation laws.

### The Developer must not issue Tax Invoices in respect of the reimbursements for which a RCTI was, or will be, issued.

### The Developer acknowledges that it is registered for GST in accordance with the GST Act and that it will notify GWW if it ceases to be registered.

### GWW acknowledges that it is registered for GST in accordance with the GST Act and that it will notify the Developer if it ceases to be registered or if it ceases to satisfy any of the requirements of GSTR 2000/10.

# Goods And Services Tax

## Definitions and interpretation

In the Development Deed, all definitions and interpretations will have the meaning given to them by the GST Law as defined in section 195-1 of the GST Act.

## GST pass on

### Unless otherwise stated, the amounts shown in this Development Deed are exclusive of GST.

### If GST is payable on any supply made under or in connection with the Development Deed:

#### to the extent, if any, the consideration otherwise provided for that supply is expressed as an amount of money, the consideration is increased by the amount of the GST relating to the amount of money otherwise payable; and

#### the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or in the consideration has already been paid or provided, within 7 Days of receiving a written demand from the supplier.

## Tax invoices / Adjustment notes

The right of the supplier to recover any amount in respect of GST under the Development Deed on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient, except where the recipient is required to issue the Tax Invoice or Adjustment Note.

# Variations

## Directing variations

### The Developer must not, and must ensure the Consultant or Contractor do not, vary the Development Works except as directed or consented to in writing by GWW.

### The Developer acknowledges that varying the Development Works other than as directed or consented to in writing by GWW may comprise an offence under section 145A of the Water Act.

### GWW may, acting reasonably, give the Developer written notice of a proposed Variation to the Development Works and the Developer must comply with any such Direction.

### The Developer will be entitled to:

#### any reasonable cost, loss, expense or damage; and/or

#### a reasonable extension of the Initial Period,

by reason of the Variation directed by GWW under clause 16.1.3 as agreed by GWW acting reasonably.

## Variations for convenience of Developer

### If the Developer wishes to request GWW to direct a Variation, it must lodge a request in writing with GWW.

### If the Developer requests GWW to direct a Variation for the convenience of the Developer, GWW may do so in its discretion. Any Direction must be written and may be conditional.

### Unless a Direction provides otherwise, the Developer will not be entitled to:

#### any cost, loss, expense or damage; or

#### extension of the Initial Period,

#### by reason of the Variation.

### GWW may determine to direct or refuse to direct a Variation requested by the Developer in GWW's absolute discretion.

# Dispute Resolution

## Application

### Any dispute in relation to this agreement or the Development Works (other than an offence relating to works undertaken without GWW’s consent under section 145A of the Water Act, or a payment under Part 13, Division 6 of the Water Act), must be managed in accordance with the procedure in this clause 17.

### A dispute relating to a payment under Part 13, Division 6 of the Water Act will be dealt with in accordance with the process set out in that part of the Water Act.

## Senior executives

### In the event of any dispute or difference arising between GWW and the Developer, either during the period of this Development Deed or after the termination, abandonment or breach of this Development Deed, as to any matter or thing connected with Development Works or arising under this Development Deed, GWW or the Developer may give to the other party notice of the dispute or difference.

###  Such notice must:

#### not be unreasonably given;

#### indicate that it is a notice under subclause 17.2.1; and

#### 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.

### Within 7 Days of the receipt of any notice of dispute under subclause 17.2.1 by either party, a senior executive of each party must meet to discuss ways of resolving the dispute or difference.

### 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.

## Mediation

If the senior executives of the relevant parties fail to settle the dispute within 42 Days of the notice referred to in clause 17.2.1 (or such additional period as the parties agree in writing) then the parties must within 14 Days refer the dispute to mediation by such expert as is agreed between the parties or if the parties cannot agree they must make application to the President of the Law Institute of Victoria to appoint a mediator who is deemed to be acting as a mediator and not an arbitrator. All costs of the mediation will be shared equally by the parties to the dispute.

## Litigation

If the dispute has not been resolved pursuant to clause 17.3 within 42 Days of referring the dispute to the relevant expert for mediation (or such additional period the parties agree in writing), one of the parties to the dispute may take any action necessary to have the dispute determined by litigation.

## Dispute will not affect performance

The existence of a dispute will not relieve any party from its obligation to perform the Development Works in accordance with this Development Deed.

## Injunction

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

# Force Majeure

## Notice and suspension of obligations

If a party is affected, or likely to be affected, by a Force Majeure Event:

### that party must immediately give the other parties prompt notice of that fact including:

#### full particulars of the Force Majeure Event;

#### an estimate of its likely duration;

#### the obligations affected by it and the extent of its effect on those obligations; and

#### the steps taken and proposed to be taken to rectify it; and

### the obligations under this Development Deed of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

## Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

## Alternative supply

During any period in which a party (other than GWW) is not performing obligations because of a claimed Force Majeure Event, GWW may (but need not) obtain all its requirements from any other source or make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

## COVID-19

### Neither party may bring a claim for breach of this Development Deed by the other party or incur any liability to the other party for any injury, loss or damage incurred by that other party, to the extent that a COVID-19 Event occurs and the party is prevented from performing its obligations, or performance of its obligations is substantially disrupted or hindered, by that COVID-19 Event.

### As soon as practicable after a COVID-19 Event occurs, the parties must consult with each other in good faith and use all reasonable endeavours to:

#### agree on appropriate terms to mitigate the effect of the COVID-19 Event; and

#### facilitate the continued performance of this Development Deed.

# Termination

## Termination by GWW for cause

### Without limiting clause 1.2.1 GWW may terminate this Development Deed, with immediate effect by written notice to that party, if:

### the Developer:

#### commits a breach of any clause in this Development Deed;

#### acts in a fraudulent manner;

#### permits a Change of Control of the Developer to occur without the prior written consent of GWW;

#### engages or continues to engage the Consultant or Contractor if they do not have, or cease to maintain, their Accreditation without the written approval of GWW (which may be given or withheld in GWW’s absolute discretion);

#### ceases to carry on business or is the subject of an Insolvency Event; or

#### subject to clause [1.2.1(c)](#_bookmark3), fails to complete the Development Works within the Initial Period or any approved Extension Period; or

### a Force Majeure Event affecting the Development Works continues for more than 42 Days.

## Effect of termination

### If this Development Deed is terminated under clause 19.1 or otherwise:

#### The Developer must not (and must procure that the Consultant and the Contractor do not) carry out any further Development Works under this Development Deed;

#### Subject to clause 19.2.1(c), termination, however caused, is without prejudice to any rights or liabilities of the parties accruing to the date of termination;

#### the Developer is not entitled in contract, tort or otherwise to any payment or compensation for losses incurred as a result of termination; and

#### the costs incurred by GWW in completing the Development Works under clause 1.2.1(b), will be a debt due and payable by the Developer to GWW.

# General

## Liability for expenses

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

## Giving effect to this Development 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 Development Deed.

## Consents

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

### agree or consent, or not agree or consent, in its absolute discretion; and

###  agree or consent subject to conditions,

unless this Development Deed expressly contemplates otherwise.