Schedule 8 - Novation Deed (4/5 Party)

**[Insert Project Name]**

**[Insert Gww Reference Number]**

[Name of New Party] (New Party)

ABN/ACN/ARBN**]** [number]

[Name of Outgoing Party] (Outgoing Party)

ABN/ACN/ARBN**]** [number]

**Greater Western Water(Continuing Party)**
ABN 70 066 902 467

[Name of Continuing Parties] (Continuing Party)

ABN/ACN/ARBN**]** [number]

[Name of Continuing Parties] (Continuing Party)

ABN/ACN/ARBN**]** [number]

[Name of Continuing Parties] (Continuing Party)

ABN/ACN/ARBN**]** [number]

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Novation Deed

Date

Parties

**[Name of Party]**

ABN/ACN/ARBN**]** [number] (**Outgoing Party**)

**[Name of Party]**

ABN/ACN/ARBN**]** [number] (**New Party**)

**Greater Western Water**

ABN 70 066 902 467 (**Continuing Parties**)

**[Insert names of continuing parties]**

ABN/ACN/ARBN**]** [number] (**Continuing Parties**)

**[Insert names of continuing parties]**

ABN/ACN/ARBN**]** [number] (**Continuing Parties**)

**[Insert names of continuing parties]**

ABN/ACN/ARBN**]** [number] (**Continuing Parties**)

#

# Recitals

1. The Continuing Parties and the Outgoing Party are parties to the Principal Document.
2. The New Party is to replace the Outgoing Party under the Principal Document on the terms of this document.

# Operative Provisions

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this document.

Authorisation means:

1. an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
2. in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,
3. including any renewal or amendment.

**Effective Date** means the date of this document.

**Government Agency** means:

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

**Principal Document** means the development deed regarding [***insert address***] dated [***insert***].

**Stated Times** means 5.00 pm on the Effective Date.

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

### 1.2 Terms defined in the Principal Document

A term (other than a term defined in clause 1.1) that is defined in the Principal Document has the same meaning in this document.

### 1.3 Rules for interpreting this document

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

* + 1. A reference to:
			1. 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;
			2. 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;
			3. a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
			4. 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
			5. anything (including a right, obligation or concept) includes each part of it.
		2. A singular word includes the plural, and vice versa.
		3. A word which suggests one gender includes the other genders.
		4. If a word is defined, another part of speech for that word has a corresponding meaning.
		5. 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.
		6. A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
		7. The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
		8. The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
		9. The words **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.

### 1.4 Non-Business Days

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

* + 1. if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
		2. in any other case, the person must do it on or by the previous Business Day.

### 1.5 Multiple parties

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

* + 1. an obligation of those persons is joint and several;
		2. a right of those persons is held by each of them severally; and
		3. 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 relates to each of them separately.

## 2. Consideration

Each party acknowledges that it has received valuable consideration for entering into this document.

## 3. Novation

### 3.1 Novation

With effect from the Stated Time, the parties novate the Principal Document so that:

* + 1. the New Party replaces the Outgoing Party under the Principal Document;
		2. the New Party has all the rights and obligations of the Outgoing Party under the Principal Document rights and obligations that arise before the Stated Time; and
		3. the New Party and the Continuing Party are bound by and must comply with the Principal Document,

as if the New Party were a party to the Principal Document instead of the Outgoing Party.

### 3.2 No further rights and release from obligations

With effect from the Stated Time, the Continuing Parties and the Outgoing Party:

* + 1. have no further rights against each other under the Principal Document other than rights that arise before the Stated Time; and
		2. release each other from all obligations and liabilities under the Principal Document other than obligations and liabilities that arise before the Stated Time.

### 3.3 Continued responsibility for prior obligations

Each of the Continuing Parties and the Outgoing Party continue to be responsible for all their respective obligations and liabilities under the Principal Document that arise before the Stated Time.

## 4. Representations and Warranties

### 4.1 Representations and warranties of each party

Each partyrepresents and warrants that:

* + 1. (**status**) it is a company limited by shares under the Corporations Act;
		2. (**power**) it has full legal capacity and power to:
			1. own its property and to carry on its business; and
			2. enter into this document and to carry out the transactions that it contemplates;
		3. (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
		4. (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
			1. enable it to properly execute this document and to carry out the transactions that it contemplates;
			2. ensure that this document is legal, valid, binding and admissible in evidence; or
			3. enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of these Authorisations is subject;

* + 1. (**document effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
		2. (**no contravention**) neither its execution of this document, nor the carrying out by it of the transactions that this document contemplates, does or will:
			1. contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
			2. contravene any Authorisation;
			3. contravene any agreement binding on it or any of its property; or
			4. contravene its constitution or the powers or duties of its directors;
		3. (**commercial benefit**) the execution by it of this document, and the carrying out by it of the transactions that this document contemplates, is for its corporate benefit and in its commercial interests;
		4. (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
		5. (**no trust**) it is not entering into this document as trustee of any trust or settlement.

### 4.2 Repetition of representations and warranties

The representations and warranties in this clause are taken to be repeated on the Effective Date, on the basis of the facts and circumstances as at that date.

### 4.3 Reliance on representations and warranties

Each party acknowledges that each other party has executed this document and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause.

## 5. Notices

### 5.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

* + 1. in writing, signed by or on behalf of the person giving it;
		2. addressed to the person to whom it is to be given; and
		3. either:
			1. delivered or sent by pre–paid mail (by airmail, if the addressee is overseas) to that person's address; or
			2. sent by email to that person's email address and the machine from which it is sent produces a report that states that it was sent in full.

### 5.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

* + 1. if it is delivered or sent by email:
			1. by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
			2. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
		2. if it is sent by mail – on actual receipt.

### 5.3 Address for notices

A person's mail address and email address are those set out below, or as the person notifies the sender:

**Outgoing Party**

Address: address]
Name of Party: name]

Email: email
Attention: name

**New Party**

Address: address]
Name of Party: name]

Email: email
Attention: name

**Continuing Parties**

Address: 36 Macedon St, Sunbury VIC 3429
Name of Party: Greater Western Water

Email: designs@gww.com.au

Attention: Development Applications

**Continuing Parties**

Address: address]
Name of Party: name]

Email: email
Attention: name

**Continuing Parties**

Address: address]
Name of Party: name]

Email: email
Attention: name

**Continuing Parties**

Address: address]
Name of Party: name]

Email: email
Attention: name

## 6. General

### 6.1 Governing law

* + 1. This document is governed by the laws of the State of Victoria.
		2. Each party submits to the jurisdiction of the courts of that State/Territory, and of any court that may hear appeals from any of those courts, for any proceedings in connection with this document.
		3. Each party irrevocably waives:
			1. any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
			2. any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

### 6.2 Liability for expenses

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

### 6.3 Giving effect to this document

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

### 6.4 Waiver of rights

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

* + 1. no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
		2. a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
		3. the exercise of a right does not prevent any further exercise of that right or of any other right.

### 6.5 Operation of this document

* + 1. Subject to paragraph (b), this document 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 document and has no further effect.
		2. Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
		3. Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

### 6.6 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

### 6.7 Amendment

This document can only be amended or replaced by another document signed by the parties.

### 6.8 Counterparts

This document may be executed in counterparts.

### 6.9 Attorneys

Each person who executes this document 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.

### 6.10 Electronic execution

Each party acknowledges and agrees:

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

(b) that on signing the Deed under clause 6.10 (a) it will be bound by this Agreement;

(c) that the method described in clause 6.10 (a) is reliable and appropriate for the purposes of identifying the signing party and executing this document; and

(d) 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**

**WATER COMPANY**

|  |
| --- |
| **EXECUTED** by **Greater Western Water Corporation ABN 70 066 902 467** byits authorised representative under an Instrument of Delegation current at the time of signing. |
|  |
| Signature  |
| In the presence of: |
|  |
| Signature of witness |
|  |
| Name |

**DEVELOPER**

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

**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 |

**CONSULTANT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[insert Consultant’s name]**: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |

**OR**

|  |  |  |
| --- | --- | --- |
| **SIGNED, SEALED** and **DELIVERED** for **[insert Consultant’s name]** under power of attorney in the presence of: |  |  |
|  |  | Signature of attorney |
|  |  |  |
| Signature of witness |  | Name |
|  |  |  |
| Name |  | Date of power of attorney |

**Need to allow for a duly authorised person to sign.**

**WATER CONTRACTOR**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[insert Water Contractor's name]**: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |

**OR**

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

**SEWER CONTRACTOR**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[insert Sewer Contractor's name]**: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |

**OR**

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

**(OUTGOING) CONTRACTOR / CONSULTANT / DEVELOPER**

|  |
| --- |
| **EXECUTED** by **[insert name]**: |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |

**OR**

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