

Development Agreement

Agreement providing for the undertaking of works relevant to water assets

Development Project: [insert project description]

File: [insert file number] Case: [insert case number]

South East Water ABN 89 066 902 547 (**SEW**)

and

[insert name] ABN [insert ABN] (**Developer**)

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Details

Date

Parties

Name **South East Water ABN 89 066 902 547**
Short form name **SEW**
Address **101 Wells Street, Frankston VIC 3199**

Name **[inert name] ABN [insert ABN]**
Short form name **Developer**
Address **[inert address]**

Background

- A [SEW](#) is a body corporate established by section 85 of the *Water Act 1989* (Vic) and is a water corporation under that Act.
- B [SEW](#) is responsible for the construction, operation and maintenance of [Water Infrastructure](#).
- C [SEW](#) and the [Developer](#) desire to facilitate and support the development of [Water Infrastructure](#) in the area in which SEW has an interest under the *Water Act 1989* (Vic).
- D The [Developer](#) desires to construct, or procure the construction of [Water Infrastructure](#).
- E [SEW](#) and the [Developer](#) desire to work together in a collaborative manner in order to facilitate the efficient and convenient development of [Water Infrastructure](#) to a standard and in a manner which reflects best practice.

Signing page

Executed by South East Water Corporation
in Victoria by its Attorney who holds the
position of RESPONSIBLE OFFICER under
Power of Attorney dated 03/08/2018:

Signature of Attorney

Name of Attorney

Executed by [company name] in accordance
with Section 127 of the *Corporations Act 2001*

Signature of Director

Name of Director

Signature of Director

Name of Director

Agreed terms

1. Relationship between the parties

- (a) The [Developer](#) and [SEW](#) will work together and mutually co-operate with a view to facilitating the undertaking of the [Developer's Water Infrastructure](#).
- (b) The sentiment of subclause 1(a) will be given effect to within the confines and subject to the provisions of this [Agreement](#).
- (c) The [Developer](#) is not, and must not purport to act as the agent of [SEW](#).
- (d) This [Agreement](#), and the arrangements resulting from this [Agreement](#), do not give rise to a partnership, joint venture, trust or relationship of employment or any other relationship between the [Developer](#) and [SEW](#) other than the contractual relationship established by this [Agreement](#).
- (e) [As consideration for the right to undertake the Developer's water infrastructure and connect that infrastructure to South East Water's infrastructure the Developer agrees to be bound by the terms of this Agreement including complying with the Developer's obligations under this Agreement as set out in clause 4 and elsewhere in this Agreement.](#)
- (f) As consideration for the [Developer](#) facilitating the undertaking of the [Developer's Water Infrastructure](#) [SEW](#) agrees to be bound by the terms of this Agreement including complying with all obligations upon [SEW](#) as set out in this Agreement.

2. Accredited Consultants and Accredited Contractors

2.1 Requirement to use Accredited Consultants and Accredited Contractors

The [Developer](#) must use [Accredited Consultants](#) and [Accredited Contractors](#) (holding [Accreditation](#) in the appropriate [Accredited Category](#)) to undertake the [Works](#) or [Services](#) or to undertake activities in relation to any part of the [Developer's Water Infrastructure](#).

2.2 Lapsed Accreditation

If the [Accreditation](#) of any [Accredited Consultants](#) or [Accredited Contractors](#) lapses, is suspended or cancelled, the [Developer](#) must:

- (a) not begin to use the [Accredited Consultant](#) or [Accredited Contractor](#) whose [Accreditation](#) has lapsed in relation to the undertaking of any [Works](#) or [Services](#) or any part of the [Developer's Water Infrastructure](#); and
- (b) at the direction of [SEW](#), cease using the [Accredited Consultant](#) or [Accredited Contractor](#) whose [Accreditation](#) has lapsed in relation to the undertaking of any [Works](#) or [Services](#) or any part of the [Developer's Water Infrastructure](#).

3. Representatives

3.1 Developer's Representative

- (a) The [Developer](#) must nominate a person to represent the [Developer](#) in all its dealings with [SEW](#). If there is any change in personnel [SEW](#) must be notified by the [Developer](#) in writing, within 5 [Business Days](#).
- (b) Matters within the knowledge of [Developer's Representative](#) shall be deemed to be within the knowledge of the [Developer](#).
- (c) Any notice, direction or other document given to or addressed to the [Developer's Representative](#) shall be deemed to be given to the [Developer](#).

3.2 SEW's Representative

- (a) [SEW](#) will nominate a contact person in the [Offer Letter](#) to co-ordinate activities on this development and to act as [SEW's Representative](#).
- (b) The appointment of any [SEW's Representative](#) shall not prevent [SEW](#) from exercising any function.

4. Developer's Obligations

4.1 General Obligations

A [Developer](#) must:

- (a) comply with [SEW's Administrative Process](#);
- (b) comply with [SEW's Requirements](#);
- (c) use only [Accredited Consultants](#) or [Accredited Contractors](#) (holding [Accreditation](#) in the appropriate [Accredited Category](#)) to undertake the [Works](#) or [Services](#) or to undertake activities in relation to any part of the [Developer's Water Infrastructure](#);
- (d) undertake its responsibilities in accordance with this Agreement

4.2 Undertaking the Works and or Services

The [Developer](#) must undertake, or procure the undertaking of the relevant [Works](#) or [Services](#):

- (a) in accordance with this [Agreement](#);
- (b) so that the [Works](#) or [Services](#) satisfy the requirements of this [Agreement](#);
- (c) with the due skill, diligence, prudence, foresight and care that would be reasonably expected from an experienced and competent contractor or consultant;
- (d) in compliance with:
 - (i) all [Legislative Requirements](#);
 - (ii) all [SEW's Requirements](#); and
 - (iii) the requirements of [Authorities](#).

- (e) The [Developer](#) must notify [SEW](#), in writing, which [Accredited Consultants](#) or [Accredited Contractors](#) it intends to use for the undertaking of the relevant [Works](#) or [Services](#).
- (f) If the [Developer](#) changes the [Accredited Consultants](#) or [Accredited Contractors](#) it intends to use or has engaged for the undertaking of the relevant [Works](#) or [Services](#) then it must promptly notify [SEW](#) in writing of the new [Accredited Consultants](#) or [Accredited Contractors](#).

5. Variation to the Works or Services

5.1 No Variation without consent

- (a) The [Developer](#) must not significantly vary the [Works](#) or [Services](#) without the consent of [SEW](#).
- (b) [SEW](#) may, in its [absolute discretion](#), consent or decline to consent to a request from the [Developer](#).

5.2 Variations requested by SEW

- (a) [SEW](#) may, request, in writing, that the [Developer](#) vary the [Works](#) or [Services](#).
- (b) Unless [SEW](#) requests otherwise, within 10 [Business Days](#) the [Developer](#) must:
 - (i) indicate whether it is able to comply with the request under paragraph 5.2(a); and
 - (ii) if it indicates it is able to comply with the request:
 - (A) provide a cost for the undertaking of the variation; and
 - (B) describe the impact that the variation will have on the performance of the [Works](#) or [Services](#).
- (c) Upon the provision of the information required to be provided by paragraph 5.2(b)(ii) [SEW](#) may:
 - (i) confirm the variation within 20 [Business Days](#);
 - (ii) advise that it does not desire to proceed with the variation; or
 - (iii) advise the [Developer](#) that it does not accept the cost provided but wishes to discuss the variation further with the [Developer](#).
- (d) The [Developer](#) must carry out the variation:
 - (i) after [SEW](#) confirms the variation in accordance with paragraph 5.2(c)(i); or
 - (ii) if [SEW](#) and the [Developer](#) agree in writing to the terms of the variation following the discussions referred to in paragraph 5.2(c)(c)(iii) .
- (e) If the [Developer](#) is required to carry out the variation pursuant to paragraph 5.2(c)(d) then the variation will be regarded as included in the [Works](#) or [Services](#) and the provisions of this [Agreement](#) shall apply to the variation.

5.3 Variations requested by the Developer

- (a) If the [Developer](#) desires to vary the [Works](#) or [Services](#) the [Developer](#) must lodge a request in writing with [SEW](#), with sufficient details for [SEW](#), in the opinion of [SEW](#), to review and assess the request.
- (b) In lodging the request the [Developer](#) warrants that the information required to be provided by paragraph 5.3(a) is complete and accurate and is not misleading.
- (c) The [Developer](#) bears all costs in relation to the variation.

6. Works Warranty Bond

6.1 Provision of the Works Warranty Bond

The [Developer](#) must provide to [SEW](#) the [Works Warranty Bond](#) prior to the issuing of an [Acceptance of Works Certificate](#) by [SEW](#).

6.2 Use of the Works Warranty Bond

[SEW](#) is entitled to call upon the [Works Warranty Bond](#) whenever there is a debt due and payable by the [Developer](#) to [SEW](#).

6.3 Developer not to seek an injunction

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:

- (a) any issuer of the [Works Warranty Bond](#) from paying [SEW](#) pursuant to the [Works Warranty Bond](#); or
- (b) [SEW](#) from:
 - (i) taking any steps to obtain payment under the [Works Warranty Bond](#); or
 - (ii) using the monies received under the [Works Warranty Bond](#).

6.4 Interest

[SEW](#) will own any interest earned on the [Works Warranty Bond](#).

6.5 Return of Works Warranty Bond

Upon the later of:

- (a) the expiration of the [Warranty Period](#); and
- (b) provided the [Developer](#) is not in breach of any of its obligations under this [Agreement](#),

the [Developer](#) may apply to [SEW](#) for the return of the [Works Warranty Bond](#) then held by [SEW](#) (if any) and within 20 [Business Days](#) of receipt of such a request [SEW](#) shall return the [Works Warranty Bond](#) to the [Developer](#).

7. Defects Liability Period and Warranty Period

7.1 Defects Liability Period

At any time during the [Defects Liability Period](#), [SEW](#) may:

- (a) notify the [Developer](#) by notice in writing of any [Defect](#) that [SEW](#) reasonably considers to be related to the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#);
- (b) require the [Developer](#), at the [Developer's](#) cost, to remedy the [Defect](#) within the period set out in the notice; and
- (c) at its discretion, undertake, or procure the undertaking of emergency works in respect of any such [Defect](#).

7.2 Warranty Period

At any time during the [Warranty Period](#), [SEW](#) may:

- (a) notify the [Developer](#) by notice in writing of any [Defect](#) that [SEW](#) reasonably considers to be related to the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#);
- (b) require the [Developer](#), at the [Developer's](#) cost, to remedy the [Defect](#) within the period set out in the notice which shall be determined by [SEW](#) having regard to the nature of the [Defect](#); and
- (c) at its discretion, undertake, or procure the undertaking of emergency works in respect of any such [Defect](#).

7.3 Compliance with notice

- (a) The [Developer](#) must comply with any notice given under paragraph 7.1(b) or paragraph 7.2(b) and must do so within the time nominated in that notice.
- (b) If the [Developer](#) does not comply with paragraph 7.3(a) [SEW](#) may remedy the [Defect](#).

7.4 Costs incurred by SEW

Any costs reasonably incurred by [SEW](#) in:

- (a) undertaking or procuring the undertaking of emergency works as contemplated by paragraph 7.1(c) or paragraph 7.2(c); or
 - (b) remedying the [Defect](#) as contemplated by paragraph 7.3(b),
- shall be a debt due and payable to [SEW](#) by the [Developer](#).

8. Loss, Damage or Injury

8.1 Property damage

If loss or damage occurs to [Assets](#), other than that loss or damage caused by [SEW](#) or the owner of the [Asset](#) by reason of or in connection with the performance of the relevant [Works](#) or [Services](#), a breach of this [Agreement](#) or any other action of the [Developer](#) or the [Developer's Personnel](#), the [Developer](#) must:

-
- (a) as soon as practicable, inform [SEW](#) of the fact of that loss or damage and the circumstances resulting in the loss or damage;
 - (b) at its cost, rectify such loss or damage; and
 - (c) at its cost, compensate the owner of the [Asset](#) for any loss or damage and the consequences of such loss or damage in relation to any legal liability it may have in relation to the loss or damage to the [Asset](#).

8.2 Injury

If a [Serious Incident](#) which causes a personal injury to any person occurs by reason of or in connection with the performance of the relevant [Works](#) or [Services](#), a breach of this [Agreement](#) or any other action of the [Developer](#) or the [Developer's Personnel](#), the [Developer](#) must:

- (a) as soon as practicable, inform [SEW](#) of the fact of that injury and the circumstances resulting in the injury; and
- (b) at its cost, compensate the person suffering the injury for any legal liability it may have in relation to the [Serious Incident](#).

9. Developer's Warranties

9.1 The warranties

The [Developer](#) warrants, represents and agrees that:

- (a) it has the legal right and power to enter into this [Agreement](#);
- (b) all of its internal requirements necessary to enter into this [Agreement](#) and to perform its obligations under this [Agreement](#) have been satisfied;
- (c) it has entered into this [Agreement](#) in its own right and not as agent for any other entity;
- (d) it has, and will maintain, the capacity to comply with its obligations under this [Agreement](#);
- (e) it will comply with the provisions of this [Agreement](#).

9.2 Continuing and repeated warranties

The warranties and representations set out in subclause 9.1 of this [Agreement](#) are repeated on each day from the [Commencement Date](#) until the termination or expiration of this [Agreement](#).

10. Indemnity

10.1 Provision of Indemnity

The [Developer](#) indemnifies and must keep indemnified [SEW](#) in relation to any breach of this [Agreement](#) or any warranty provided for in this [Agreement](#). Any amount payable under this indemnity shall be a debt due and payable by [Developer](#) to [SEW](#).

10.2 Reduction of Liability

The liability of the [Developer](#) pursuant to subclause 10.1 shall be reduced to the extent that any relevant loss, damage, cost, expense or liability was caused by [SEW](#).

10.3 Payment

- (a) [SEW](#) may, in good faith, estimate the liability of the [Developer](#) pursuant to subclause 10.1 that arises in relation to rectification of a [Defect](#) and upon that estimate being provided to the [Developer](#) the estimate shall be a debt due and payable by the [Developer](#) to [SEW](#).
- (b) The debt arising pursuant to paragraph 10.3(a):
 - (i) is payable upon the estimate being provided to the [Developer](#);
 - (ii) is provisional only; and
 - (iii) may be adjusted as a result of the [Developer](#) taking proceedings to establish the final quantum of the liability in relation to rectification of the [Defect](#).

11. SEW's Requirements

11.1 Compliance with SEW's Requirements

The [Developer](#) must comply with [SEW's Requirements](#).

11.2 Amendment of SEW's Requirements

- (a) SEW may amend any of [SEW's Requirements](#) from time to time.
- (b) If the [Developer](#) considers that the amendment to [SEW's Requirements](#) constitutes a variation to the [Works](#) or [Services](#) it may notify [SEW](#) within 10 [Business Days](#) and [SEW](#) shall, if it agrees that the amendment constitutes a variation to the [Works](#) or [Services](#), provide a request in writing to the [Developer](#) to vary the [Works](#) or [Services](#) in accordance with clause 5.2(a).
- (c) If the [Developer](#) does not provide a notice in accordance with clause 11.2(b) then the amendment to [SEW's Requirements](#) shall form part of the [Developer's](#) obligations under this [Agreement](#).

12. OHS

12.1 OHS Obligations

The [Developer](#) must, in relation to the [Works](#) or [Services](#), comply with, and procure compliance with the [OHS Law](#).

12.2 Control of work site

- (a) The [Developer](#) acknowledges and agrees that the [Developer](#), its [Accredited Consultant](#) or [Accredited Contractor](#) shall be the only parties who may exercise management and control over the area in which the [Works](#) or [Services](#) are being undertaken.

- (b) [SEW](#) acknowledges that the [Developer](#) may appoint its [Accredited Consultant](#) or [Accredited Contractor](#) as the 'principal contractor' for the purposes of the [OHS Law](#).

12.3 Access to work site

[SEW](#) shall be entitled to access to the area in which the [Works](#) or [Services](#) are being undertaken provided that it shall comply with the reasonable directions of the [Developer's Personnel](#) in relation to safety on such area.

13. Environment

The [Developer](#) must, in relation to the [Works](#) or [Services](#) comply with, and procure compliance with the [Environment Laws](#).

14. Incidents

14.1 Keeping of Records

- (a) The [Developer](#) must keep all documents and records relating to [Incidents](#) and must keep those records and documents for a period of 7 years after the [Incident](#).
- (b) The [Developer](#) must allow [SEW](#), or a nominee of [SEW](#), to conduct an audit of any of the documents and records to which paragraph 14.1(a) applies if requested to do so by [SEW](#).

14.2 Reporting of Serious Incidents

- (a) The [Developer](#) must, as soon as practicable after a [Serious Incident](#), advise [SEW](#) of:
- (i) the occurrence of the [Serious Incident](#);
 - (ii) the cause of the [Serious Incident](#); and
 - (iii) the consequences of the [Serious Incident](#).

14.3 Investigation of Serious Incidents

- (a) The [Developer](#) must:
- (i) as soon as practicable after a [Serious Incident](#), investigate the [Serious Incident](#) with a view to:
 - (A) fully understanding the cause of the [Serious Incident](#); and
 - (B) taking steps to prevent the circumstances which gave rise to the [Serious Incident](#) from occurring in the future;
 - (ii) complete the investigation in accordance with this subclause 14.3 within 20 [Business Days](#) of the [Serious Incident](#).
- (b) The [Developer](#) must:
- (i) advise [SEW](#) of the arrangements for and the timing of the investigation;
 - (ii) allow [SEW](#), if it desires to do so, to contribute to or participate in the investigation;

- (iii) record the investigation in writing in a manner which results in an auditable record of the investigation and the matters referred to in paragraph 14.3(a)(i);
- (iv) provide [SEW](#) with a copy of the written record referred to in paragraph 14.3(b)(iii) within 5 [Business Days](#) of the investigation being concluded.

14.4 Response to Serious Incidents

The [Developer](#) must implement reasonable steps to prevent the circumstances which gave rise to the [Serious Incident](#) from occurring in the future.

15. Insurances

15.1 Obligation to insure

The [Developer](#) must maintain or procure that its [Accredited Consultant](#) or [Accredited Contractor](#) maintain:

- (a) the insurances specified in Schedule 5; and
- (b) all insurances required by a [Legislative Requirement](#).

15.2 Developer's Personnel

In addition to any insurances procured by an [Accredited Consultant](#) or [Accredited Contractor](#) under clause 15.1, the [Developer](#)'s must procure that the [Developer's Personnel](#) maintain all insurances required by a [Legislative Requirement](#).

15.3 Status of insurer

The insurances required pursuant to subclause 15.1 must be taken out with an insurer which has a rating from Standard & Poor's (or if Standard & Poor's no longer provides such ratings, an equivalent entity to Standard & Poor's acceptable to [SEW](#)) of not less than A - and which is permitted by the *Insurance Act 1973* (Cth) to undertake insurance in Australia.

15.4 Evidence of insurance

The [Developer](#) must, within 5 [Business Days](#) of the [Commencement Date](#) and, within 5 [Business Days](#) of each request from [SEW](#), provide to [SEW](#) evidence satisfactory to [SEW](#) of compliance with this clause 15.

15.5 No undermining

The [Developer](#) must not, and must ensure that those who it can influence do not do any act or permit or suffer any circumstances by which a policy of insurance required to be taken out under this clause 15 may at any time become void or voidable.

15.6 Cancellation

The [Developer](#) must notify [SEW](#) in writing whenever the insurer gives the [Developer](#) a notice of cancellation or any other notice in respect of a policy.

15.7 Indemnity

The [Developer](#) indemnifies [SEW](#) in relation to any loss, cost, expense or liability incurred or suffered by [SEW](#) by reason of or in connection with any failure by the [Developer](#) to comply with the obligations under this clause 15.

15.8 Claims

The [Developer](#) must:

- (a) notify [SEW](#) in writing of any claims against the insurances effected by the [Developer](#) within 5 days after it becomes aware of the claims; and
- (b) provide such further information to [SEW](#) in relation to the claim as [SEW](#) may reasonably require.

15.9 Deferral of commencement

The [Developer](#) must not commence to undertake the [Works](#) or [Services](#) or construct the [Developer's Water Infrastructure](#) until the [Developer](#) has complied with this clause 15.

16. Works Information

16.1 Provision of the Works Information

The [Developer](#) must provide the [Works Information](#) to [SEW](#) as soon as practicable after the completion of the [Works](#) or [Services](#).

16.2 Form of the Works Information

The [Works Information](#) must be in a form approved by [SEW](#).

16.3 Accuracy of the Works Information

The [Developer](#) warrants that the [Works Information](#) will be accurate and complete and will not be misleading.

17. SEW Information

17.1 Relevance of SEW Information

The [Developer](#):

- (a) acknowledges that it may come into possession of [SEW Information](#);
- (b) must in good faith seek to independently verify all [SEW Information](#); and
- (c) warrants that it will not rely upon any [SEW Information](#) where it is possible to independently verify the [SEW Information](#).

17.2 No warranty

[SEW](#) does not give any warranty or make any representation as to the accuracy or completeness of any [SEW Information](#).

17.3 No Claim

The [Developer](#) has [no claim](#) against [SEW](#) in relation to or in connection with any [SEW Information](#).

17.4 Use of SEW Information

- (a) The [Developer](#) must not:
 - (i) use any [SEW Information](#) for any purpose other than the undertaking of the [Works](#) or [Services](#) (as is relevant to the [Developer](#));
 - (ii) must not pass any [SEW Information](#) to any third party other than for the purpose of undertaking of the [Works](#) or [Services](#).
- (b) If the [Developer](#) passes any [SEW Information](#) to any third party as permitted by paragraph 17.4(a)(ii) the [Developer](#) must advise the recipient of that information of the matters set out in subclause 17.1 and subclause 17.2.

18. Developer Land and Third Party Land

18.1 Third Party Land

- (a) Where the [Developer](#) desires to access [Third Party Land](#) in order to undertake the [Works](#) or [Services](#) or to construct the [Developer's Water Infrastructure](#) then the [Developer](#) must, at the lodgement of the Pre Construction Verification give to [SEW](#) a letter of consent, from the owner of the Third Party Land.
- (b) Where the [Developer](#) desires to access [Third Party Land](#) in order to undertake the [Works](#) or [Services](#) or construct the [Developer's Water Infrastructure](#) but it is unable to procure consent from the owner of the [Third Party Land](#) in accordance with paragraph 18.1(a), then the [Developer](#) may request [SEW's](#) assistance.
- (c) Where [SEW](#) considers that it is reasonable to do so it shall provide assistance in accordance with a request by the [Developer](#) under paragraph 18.1(b). Any third party costs reasonably incurred by [SEW](#) in providing such assistance will be at the cost of the [Developer](#).

18.2 SEW Access to land

The [Developer](#) must, at the [Developer's](#) cost and as required by [SEW](#), use its best endeavours to procure consent from the owner of [Third Party Land](#), or if the [Developer](#) is the owner of relevant land then it must provide consent, for [SEW](#) to access the [Third Party Land](#) or land during the performance of the [Works](#) or [Services](#).

18.3 Easements and freehold land

- (a) The [Developer](#) must, at the [Developer's](#) cost and as required by [SEW](#), do either or both of the following:
 - (i) grant or procure the grant of an easement or easements in favour of [SEW](#), in terms acceptable to [SEW](#), over such land as is, or is to be, occupied by the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#), the easement being for the purpose of [SEW](#), its officers, contractors and persons authorised by it, entering the land to inspect, construct, maintain, repair, decommission or remove any [Works](#) or [Services](#) or [Developer's Water Infrastructure](#); or

- (ii) transfer, or procure the transfer, to [SEW](#) of freehold title to such land as is, or is to be, occupied by the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#).
- (b) The [Developer](#) must, at the [Developer's](#) cost, procure the granting of any easement over land beyond the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#) which is or will be occupied by [SEW's Assets](#) supplying water, recycled water or sewerage services to the [Works](#) or [Services](#) or the [Developer's Water Infrastructure](#), that is necessary for the purpose of [SEW](#), its officers, contractors and persons authorised by it, entering the land to inspect, construct, maintain, repair, decommission or remove those assets.
- (c) Any easement or transferred land referred to in paragraph 18.3(a) or paragraph 18.3(b) 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.
- (d) Provided that the [Developer](#) has used its best endeavours to obtain an easement referred to in paragraph 18.3(a) or paragraph 18.3(b) over any [Third Party Land](#) then it shall not be in breach of its obligations under clause 18.3.
- (e) Where the [Developer](#) has, in accordance with paragraph 18.3(d), been unable to obtain an easement over any [Third Party Land](#) and [SEW](#) obtains such an easement any third party costs reasonably incurred by [SEW](#) in obtaining such an easement will be at the cost of the [Developer](#)

19. Title in Assets

On and from the date upon which [SEW](#) issues a [Certificate of Completion](#) all right, title and interest in the [Works](#) or [Services](#) and the [Developer's Water Infrastructure](#) vests in [SEW](#), by virtue of this clause, without any further instrument of transfer or assignment.

20. Intellectual Property

20.1 Developer's obligations

The [Developer](#):

- (a) warrants that it has made all reasonable enquiries and to the best of its knowledge the [Works](#) or [Services](#) (as is relevant to the [Developer](#)) and the [Works Information](#) will not infringe the [Intellectual Property Rights](#) of any third party;
- (b) grants to [SEW](#) an irrevocable, perpetual, royalty free, unconditional licence to use the [Works](#) or [Services](#) (as is relevant to the [Developer](#)) and the [Works Information](#) in whatever manner [SEW](#) finds convenient in respect of conducting its business and discharging its obligations.
and
- (c) warrants that it is able to grant the licence provided for in paragraph 20.1(b).

20.2 SEW's intellectual property

- (a) The [Developer](#) acknowledges that the provision to it of any of [SEW's Information](#) does not give to the [Developer](#) any [Intellectual Property Rights](#) in that information (other than in respect of the licence granted in paragraph 20.2(b)).
- (b) [SEW](#) grants to the [Developer](#) a royalty free licence to use [SEW's Information](#) for the purpose of undertaking the [Works](#) or [Services](#).
- (c) The Developer may sub-licence the licence provided under clause 20.2(b) to an [Accredited Consultant](#) or [Accredited Contractor](#) for the purpose of undertaking the [Works](#) or [Services](#).

21. Confidentiality

21.1 Use of Confidential Information

- (a) Each party (**Recipient**):
 - (i) may use the [Confidential Information](#) of the disclosing party (**Disclosing Party**) only for the purposes of this [Agreement](#) and, in the case of [SEW](#), the operation or maintenance by [SEW](#) of [SEW's Asset](#);
 - (ii) must keep confidential all [Confidential Information](#) of a Disclosing Party except for a disclosure to persons who:
 - (A) are aware and agree that the [Confidential Information](#) must be kept confidential; or
 - (B) where the Disclosing Party is [SEW](#), have signed any confidentiality deed required by [SEW](#) from time to time,
 and either:
 - (C) has a need to know (and only to the extent that each has a need to know); or
 - (D) has been approved by [SEW](#) from time to time.
- (b) The Developer must ensure that the [Developer's Personnel](#) keep confidential all [Confidential Information](#), other than in circumstances where disclosure is permitted by this [Agreement](#).
- (c) The Developer must ensure that the [Developer's Personnel](#) only use [Confidential Information](#) solely for the purpose of undertaking of the [Works](#) or [Services](#).

21.2 Breach of Confidence

- (a) A party must immediately notify the other party of any suspected or actual unauthorised use, copying or disclosure of [Confidential Information](#).
- (b) A party must provide assistance reasonably requested by the other party in relation to any proceedings taken against any person for unauthorised use, copying or disclosure of [Confidential Information](#).
- (c) The parties acknowledges that damages will not be an adequate remedy in relation to any breach of this clause 21 and that a party may be entitled to take injunctive proceedings in relation to, or to prevent any such breach.

21.3 Limit of obligations

The obligations in this clause 21 to not apply:

- (a) to information already in the public domain (other than as a result of a breach of this clause 21);
- (b) any disclosure required by the listing rules of the Australian Stock Exchange; or
- (c) any disclosure required by law.

21.4 Survival

The obligations in this clause 21 survive the termination or expiration of this [Agreement](#).

22. Taking Over

22.1 SEW's right to take over

- (a) Subject to clause 22.1(a), if [SEW](#) becomes entitled to terminate this [Agreement](#) or has served a notice under clause 23.1(c) then [SEW](#) may, by notice in writing, serve notice of intention to take over all or part of the [Works](#) or [Services](#) unless the [Developer](#) rectifies the events that entitle [SEW](#) to terminate this [Agreement](#) or serve the notice under clause 23.1(c) within 10 [Business Days](#) from receipt of the notice.
- (b) If the [Developer](#) does not rectify the events that entitle [SEW](#) to terminate this [Agreement](#) or has served a notice under clause 23.1(c) then SEW may take over all or part of the [Works](#) or [Services](#) for any such period it requires.
- (c) If [SEW](#) becomes entitled to terminate this [Agreement](#) or has served a notice under clause 23.1(c) arising out of an emergency or material risk of personal injury then [SEW](#) may, by notice in writing, take over all or part of the [Works](#) or [Services](#).

22.2 Consequence of taking over

If [SEW](#) takes over all or part of the [Works](#) or [Services](#) then:

- (a) the [Developer](#) must continue with the [Works](#) or [Services](#) not taken over by [SEW](#) in accordance with this [Agreement](#);
- (b) the [Developer](#) must resume the [Works](#) or [Services](#) previously taken over by [SEW](#) in accordance with this [Agreement](#) if [SEW](#) serves a notice on the [Developer](#) requiring it to do so;
- (c) the [Developer](#) must not remove any plant or equipment in the vicinity of the [Works](#) or [Services](#) and which is relevant to the carrying out of the [Works](#) or [Services](#) without the consent of [SEW](#);
- (d) [SEW](#) may, without charge, use the plant and equipment the subject of paragraph 22.2(b) in order to complete the [Works](#) or [Services](#) which have been taken over by [SEW](#);
- (e) [SEW](#) may in its [absolute discretion](#) notify the [Developer](#) requiring novation of [Accredited Consultants](#) or [Accredited Contractors](#) providing the [Works](#) or [Services](#) and, upon receipt of a notice from [SEW](#) under this clause 22.2(e), the [Developer](#) must procure that the [Accredited Consultants](#) or [Accredited Contractors](#) are novated from the [Developer](#) to [SEW](#);

- (f) the [Developer](#) must cooperate with [SEW](#) and assist [SEW](#) in procuring the completion of the [Works](#) or [Services](#) which have been taken over by [SEW](#);
- (g) the [Developer](#) must procure the cooperation of all contractors and consultants engaged by the [Developer](#) in relation to the carrying out of the [Works](#) or [Services](#) such that those contractors and consultants, subject to the direction of [SEW](#), continue to carry out the activities which they were contracted to the [Developer](#) to carry out; and
- (h) the [Developer](#) must bear the cost of the cooperation and procuring the cooperation described in this subclause 22.2.

22.3 Financial adjustment

The [Developer](#) indemnifies [SEW](#) in relation to any loss, cost, expense or liability incurred or suffered by [SEW](#) in exercising its rights under this clause 22 and in connection with or arising out of the completion of the [Works](#) or [Services](#) taken over by [SEW](#).

22.4 Preservation of right to terminate

- (a) Notwithstanding that [SEW](#) may have deferred terminating the [Agreement](#) and has taken over all or part of the [Works](#) or [Services](#), [SEW](#) may at any time after such deferral and taking over, terminate this [Agreement](#).
- (b) The entitlement of [SEW](#) under subclause 22.3 will not be prejudiced by any subsequent termination of this [Agreement](#).

23. Termination

23.1 SEW's right to terminate

If:

- (a) there is a [Change in Control](#) without the consent of [SEW](#);
- (b) the [Developer](#) is subject to an [Insolvency Event](#);
- (c) the [Developer](#) is in breach of this [Agreement](#) or any warranty given by the [Developer](#) under this [Agreement](#) which is capable of rectification and the [Developer](#) has not rectified the breach within 10 [Business Days](#) of a notice from [SEW](#) requiring rectification of the breach;
- (d) the [Developer](#) is in breach of this [Agreement](#) or any warranty given by the [Developer](#) under this [Agreement](#) which is not capable of rectification; or
- (e) any of the conditions in paragraph 4.4 of Schedule 6 arise,

then [SEW](#) may by notice in writing, in its [absolute discretion](#), terminate this [Agreement](#).

23.2 Consequence of termination

- (a) Upon termination of this [Agreement](#) by [SEW](#) the rights of [SEW](#) shall be as if the [Developer](#) had repudiated this [Agreement](#) and [SEW](#) accepted that repudiation.
- (b) Following the termination of this [Agreement](#) the [Continuing Provisions](#) shall continue to apply and be given effect to.

24. Change in Control

24.1 Consent required

If there is to be a [Change in Control](#) the [Developer](#) must seek the consent of [SEW](#). Such consent shall be reasonably given.

24.2 Absence of consent

- (a) If there is a [Change in Control](#) without the consent of [SEW](#) then [SEW](#) may, in its [absolute discretion](#) terminate the [Agreement](#) under clause 24
- (b) A failure to terminate this [Agreement](#) immediately following a [Change in Control](#) without the consent of [SEW](#) shall not prevent [SEW](#) from later terminating this [Agreement](#) in its [absolute discretion](#).

25. Dispute Resolution

25.1 Dispute process

- (a) The parties must follow this clause 25 in relation to any dispute or difference that arises between the parties which is in any way connected with this [Agreement](#) or the undertaking of the [Works](#) or [Services](#) (as is relevant to the [Developer](#)) (**dispute**).
- (b) The parties may not commence litigation in relation to any [dispute](#) (other than for urgent relief) unless and until it becomes entitled to do so under this clause 25.
- (c) The parties must continue to comply with this [Agreement](#) notwithstanding the existence of a [dispute](#).

25.2 Notice of Dispute

Any party wishing to progress the [dispute](#) must deliver by hand or certified mail to the other party, a written notice of dispute, which adequately identifies and provides details of the dispute (**notice of dispute**).

25.3 Meetings

If a party issues a [notice of dispute](#) under subclause 25.2, the following process applies:

- (a) within 10 [Business Days](#) of the giving of a [notice of dispute](#), the [Developer's Representative](#) and [SEW's Representative](#) must confer in a good faith attempt to resolve the dispute; and
- (b) if the [dispute](#) is not resolved within 10 [Business Days](#) of the giving of the [notice of dispute](#), the [Developer](#), represented by a senior person having authority to agree a resolution of the [dispute](#) (not being the [Developer's Representative](#) and being senior to the [Developer's Representative](#)) and [SEW](#) represented by a senior person having authority to agree a resolution of the [dispute](#), (not being [SEW's Representative](#) and being senior to [SEW's Representative](#)) must confer in a good faith attempt to resolve the dispute and must do so within 20 [Business Days](#) of the giving of a [notice of dispute](#).

25.4 Parties Obligations

The parties must use their reasonable efforts to resolve the [dispute](#) through the process described in this clause 25, including arranging and attending meetings to discuss the [dispute](#).

25.5 Mediation

If the dispute is not resolved within 20 [Business Days](#) of the giving of the [notice of dispute](#), either party may refer the [dispute](#) to mediation.

25.6 Litigation

If:

- (a) the dispute is not resolved within 60 [Business Days](#) of the giving of the [notice of dispute](#) (or such longer period as may be agreed by the parties); and
- (b) the parties have attended a mediation in accordance with clause 25.5,

then either party may refer the [dispute](#) to litigation.

25.7 Survival

This clause 25 survives the termination or expiration of this [Agreement](#).

26. Audit

26.1 Retention of documents and records

The [Developer](#) must keep all documents and records relating to the performance of the obligations under this [Agreement](#) and must do so for a period of 7 years after the expiration or termination of this [Agreement](#).

26.2 Entitlement to undertake audit

Upon reasonable notice from [SEW](#) the [Developer](#) must allow [SEW](#), or a nominee of [SEW](#), to inspect the documents and records to which subclause 26.1 applies relating to the operation and maintenance of [SEW's Assets](#) (including any part of the [Works](#) forming part of [SEW's Assets](#)) and to conduct an audit of those documents and records.

27. Notices

27.1 Application of clause

In this clause 27 reference to notice means a notice, consent, approval or other communication.

27.2 Requirements for Notices

Any notice given under or in relation to this [Agreement](#) must:

- (a) be in writing;
- (b) be signed by or on behalf of the party giving the notice;

- (c) be delivered to the [Developer's Representative](#) and the [Group Manager Development](#) at [SEW](#);
- (d) comply with the requirements of this [Agreement](#);
- (e) be delivered as provided for in this [Agreement](#); and
- (f) state on the face of the notice:
 - (i) that it is a notice pursuant to this [Agreement](#);
 - (ii) which clause or clauses of this [Agreement](#) the notice relates to; and
 - (iii) what issue or issues the notice relates to.

27.3 Non compliance with requirements

If a notice does not comply with this clause 27.1, it cannot be relied upon and will not be taken to be a valid notice under this [Agreement](#).

27.4 Mode of Service

A notice may be served by:

- (a) hand;
- (b) post; or
- (c) email.

27.5 Address for Service

- (a) The address for service are set out in Item 4 and Item 5 of Schedule 1.
- (b) The address for service may be varied by a party upon the giving of notice in writing of that variation.
- (c) a notice must be given to the address for service or by hand.

27.6 Time of Service

A notice will be taken to have been delivered as follows:

- (a) where the notice is permitted to be delivered by hand and is delivered by hand, when it has been delivered to the address of the addressee provided for in this [Agreement](#) in which case it shall be deemed to have been given upon delivery;
- (b) where the notice is permitted to be sent by post and is sent by post, when it has been sent by pre-paid ordinary post to the address provided for in this [Agreement](#), in which case it shall be deemed to have been given on the third [Business Day](#) after posting; or

27.7 Validity of Notice

A notice is valid even if the intended recipient does not receive it or it is returned unclaimed to the sender provided it is sent in accordance with this [Agreement](#).

28. Miscellaneous

28.1 Governing Law

This [Agreement](#) is governed by the laws of Victoria.

28.2 Jurisdiction

Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts that may hear appeals from such courts and waives any right it might have to claim that those courts are an inconvenient forum.

28.3 Entire Agreement

This [Agreement](#):

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) supersedes all prior understandings or agreements between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in connection with that subject matter.

28.4 Alteration

This [Agreement](#) may only be altered or varied in writing signed by the parties.

28.5 Consents and conditions

- (a) Where [SEW](#) is called upon, or is able to give any approval or consent or exercise any discretion pursuant to this [Agreement](#) [SEW](#) may, in its [absolute discretion](#):
 - (i) give the approval or consent or exercise any discretion;
 - (ii) not give the approval or consent or exercise any discretion; or
 - (iii) give the approval or consent or exercise any discretion subject to conditions.
- (b) Where [SEW](#) gives any approval or consent or exercises any discretion subject to conditions:
 - (i) the approval or consent or exercise of the discretion shall not be taken to be given or the discretion exercised until the conditions are fulfilled;
 - (ii) the person enjoying the benefit of the approval or consent or exercise of the discretion must comply with or fulfil the conditions;
 - (iii) if, at any time, the person enjoying the benefit of the approval or consent or exercise of the discretion fails to comply with or fulfil the conditions or is otherwise in breach of the conditions, approval or consent or exercise of the discretion will be void from the beginning and matters as between [SEW](#) and the [Developer](#) will be as if the approval or consent had not been given or the discretion had not been exercised (save that [SEW](#) will continue to enjoy the benefit of any compliance with the conditions).

28.6 Discretion

If [SEW](#) is entitled to act in its *absolute discretion* then:

- (a) [SEW](#) is entitled to act as it considers appropriate and is not obliged to consider the interests of the [Developer](#);

- (b) [SEW](#) may impose any conditions it considers appropriate in relation to the exercise of the discretion (and clause 28.5 shall apply to any such conditions);
- (c) any obligation to act in good faith does not apply in respect of the exercise of the discretion;
- (d) the exercise of the discretion shall not be reviewable;
- (e) [SEW](#) shall not be constrained from acting by any principle of common law or equity;
- (f) there shall be no time constraint on when [SEW](#) may exercise that discretion (unless such a constraint arises through the particular provision of this [Agreement](#) giving rise to the discretion); and
- (g) the [Developer](#) shall have [no claim](#) against [SEW](#) in relation to the exercise of the discretion or the timing of the exercise of the discretion.

28.7 Claims

Where, in this [Agreement](#) there is reference to the [Developer](#) having ‘*no claim*’ against [SEW](#) then:

- (a) the [Developer](#) must not bring any [Claim](#) against [SEW](#) in relation to or in connection with the circumstances giving rise to the [Claim](#);
- (b) the [Developer](#) releases [SEW](#) from any [Claim](#) which the [Developer](#) has, or but for this provision may have had, against [SEW](#) in relation to or connection with the circumstances giving rise to the [Claim](#) whether that [Claim](#) arises through negligence, breach of contract or any other obligation or any other means; and
- (c) the [Developer](#) indemnifies [SEW](#) and will keep [SEW](#) indemnified in relation to any [liability](#) arising in connection with the circumstances giving rise to any such [Claim](#);

28.8 Indemnities

Where any indemnity is given under this [Agreement](#):

- (a) the indemnity is in respect of any loss damage or expense, including (without limitation);
 - (i) liability to third parties;
 - (ii) legal costs (on a solicitor own client basis) in respect of enforcing the indemnity or defending any claim brought by a third party in respect of a matter which is the subject of the indemnity; and
- (b) the indemnity is given in respect of any such loss damage or expense arising from or in any way connected with the event or circumstance in respect of which the indemnity is given.
- (c) the indemnity is a continuing obligation, separate and independent from the other obligations of the [Developer](#); and
- (d) the indemnity survives the termination of this [Agreement](#).

28.9 Debt due by Developer

Where there is a debt due and payable to [SEW](#) by the [Developer](#):

- (a) the amount must be paid within 10 [Business Days](#) of a request for payment;

- (b) interest shall accrue at the rate of 5% above the penalty interest rate (as defined in the *Penalty Interest Rates Act 1983* (Vic)) on any amount outstanding beyond the due date with such interest compounding monthly.

28.10 Developer's breach

No indulgence or delay by [SEW](#) shall prejudice [SEW](#) in the exercise of its rights in relation to any breach of this [Agreement](#) by the [Developer](#) or be taken to be a waiver or an election by [SEW](#).

28.11 Change in Accredited Consultant and Accredited Contractor Accreditation

If the [Accreditation](#) of any of the [Accredited Consultants](#) or [Accredited Contractors](#) being used by the [Developer](#) in relation to this [Agreement](#) lapses, is terminated, revoked or in any ways ceases then:

- (a) the [Developer](#) must replace that party with an appropriate [Accredited Consultant](#) or [Accredited Contractor](#); and
- (b) the [Developer](#) must notify [SEW](#), in writing, of the replacement of the party which has had its [Accreditation](#) cease, with an [Accredited Consultant](#) or [Accredited Contractor](#) prior to the resumption of the [Works](#) or [Services](#) of receiving a direction from [SEW](#) under clause 2.2(b).

28.12 Cumulative rights

Any specific right or remedy provided in this [Agreement](#) will not be exclusive but will be cumulative of all other rights and remedies provided by law, agreement or otherwise.

28.13 Survival

The [Continuing Provisions](#) are independent and survive the termination or expiration of this [Agreement](#).

28.14 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

28.15 Severance

A term or part of a term of this [Agreement](#) that is illegal or unenforceable may be severed from this [Agreement](#) and the remaining terms or parts of the term of this [Agreement](#) continue in force.

28.16 Counterparts

This [Agreement](#) may be executed in counterparts. All executed counterparts constitute one document.

28.17 Costs

Each party must pay its own costs of negotiating, preparing and executing this [Agreement](#).

28.18 Trust

Except to the extent set out in Schedule 6 the [Developer](#) warrants and represents that it is not entering into this [Agreement](#) as trustee of any trust or settlement.

28.19 Inconsistency with other documents

If this [Agreement](#) is inconsistent with any other document or agreement between the parties, this [Agreement](#) prevails to the extent of the inconsistency.

28.20 Amendment

This [Agreement](#) can only be amended or replaced by another document signed by the [Developer](#) and [SEW](#).

28.21 Assignment

The [Developer](#) must notify [SEW](#) if it assigns its rights under this [Agreement](#).

28.22 Certificates

- (a) When the [Developer](#) considers that it has completed the [Works](#) or [Services](#) under the [Agreement](#) it shall request in writing that [SEW](#) issue an [Acceptance of Works Certificate](#) and shall provide access or information reasonably requested by [SEW](#) to review the [Works](#) or [Services](#).
- (b) When [SEW](#) considers, in its [absolute discretion](#), that the [Works](#) or [Services](#) have met the criteria for the [Acceptance of Works Certificate](#) [SEW](#) shall not later than 15 [Business Days](#) issue an [Acceptance of Works Certificate](#).
- (c) When the [Developer](#) considers that it has satisfied the criteria for the [Certificate of Completion](#), the [Developer](#) may request that [SEW](#) issue a [Certificate of Completion](#) provided that such request is made between three and six months after the issue of an [Acceptance of Works Certificate](#).
- (d) When [SEW](#) considers, in its [absolute discretion](#), that the criteria for the [Certificate of Completion](#) have been satisfied [SEW](#) shall not later than 15 [Business Days](#) issue the [Certificate of Completion](#).

Schedule 1 – Variable Information

#	Clause	Item	Information	
	Schedule 2 1.1	Commencement Date	Date	
	Schedule 2 1.1	Developer	Title	
			ABN/ACN	
	Schedule 2 1.1	Developer's Representative	Name	
	27.5	Developer's Representative Address	Address	
			Telephone	
			Email	
	27.5	SEW's Address	Address	101 Wells Street, Frankston VIC 3199
			Telephone	9552 3000
			Email	landdev@sew.com.au
	Schedule 2 1.1	Nominated Accredited Consultant	Title	Refer to Manage Developer Works system
			ABN/ACN	Refer to Manage Developer Works system
	Schedule 2 1.1	Nominated Accredited Contractor - sewer	Title	Refer to Manage Developer Works system
			ABN/ACN	Refer to Manage Developer Works system
	Schedule 2 1.1	Nominated Accredited Contractor - water	Title	Refer to Manage Developer Works system
			ABN/ACN	Refer to Manage Developer Works system

Schedule 2– Interpretation

1. Interpretation

1.1 Defined terms

In this Agreement:

Acceptance of Works Certificate means a certificate of that name (or similar name) issued by [SEW](#) to the [Developer](#) accepting the [Works](#) or [Services](#) have been completed in accordance with this [Agreement](#) and the criteria in [SEW's Administrative Process](#) for issuing the [Acceptance of Works Certificate](#);

Accreditation means the holding of an accreditation from [SEW](#) pursuant to arrangements between [SEW](#) and the relevant person or company and pursuant to which the relevant person or company is permitted to undertake work or provide services relevant to [Water Infrastructure](#);

Accredited Category means a category of [Accreditation](#) relevant to the [Works](#) or [Services](#) to be undertaken by the relevant person, organisation or company and which, having regard to the arrangements between the [Accredited Personnel](#) and [SEW](#), permits the undertaking of the relevant [Works](#) or [Services](#) by the [Accredited Personnel](#);

Accredited Consultant means a consultant (being a person or company) holding [Accreditation](#) in the appropriate [Accredited Category](#);

Accredited Contractor means a contractor (being a person or company) holding [Accreditation](#) in the appropriate [Accredited Category](#);

Agreement means this document and all Schedules to this document;

Assets means [SEW's Assets](#) or [Third Party Assets](#);

Authorities means any person or body having jurisdiction over or in relation to the [Works](#) or [Services](#) or the activity of the [Developer](#) in the execution of the [Works](#) or [Services](#);

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

Certificate of Completion (C of C) means a certificate of that name (or similar name) issued by [SEW](#), when it is satisfied, acting in good faith, that the [Works](#) or [Services](#) are complete and that any [Defects](#) have been remedied;

Change in Control means a change in the [Control](#) of the [Developer](#) other than a [Permitted Change in Control](#);

Claim means any claim, demand, remedy, injury, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise;

Commencement Date means the date described as such and set out in Item 1 of Schedule 1;

Confidential Information means all information held or the property of a party (including [SEW Information](#)) which is, under general principles of law, confidential whether in documentary, visual, oral, machine-readable or other form other than information in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality);

Continuing Provisions means the following provisions:

- (a) a provision of this [Agreement](#) which is described in the [Agreement](#) as continuing to be in effect following the termination or expiration of the [Agreement](#);
- (b) any provisions relating to:
 - (i) the giving of a warranty by the [Developer](#);
 - (ii) the granting of an indemnity by the [Developer](#);
 - (iii) the granting of a release by the [Developer](#);
 - (iv) the use of [Confidential Information](#);
 - (v) [Intellectual Property Rights](#); or
- (c) any provision which, having regard to the nature of the provision or the subject matter of the provision, it is appropriate for the provision to continue to be in effect following the termination or expiration of the [Agreement](#);

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the [Developer](#), whether through ownership of voting securities, by contract or otherwise;

Defect means any work, material, act or omission which has not been undertaken by the [Developer](#) in accordance with this [Agreement](#);

Defects Liability Period is the period commencing on the date of the issue of the [Acceptance of Works Certificate](#) and concluding on the date of the issue of the Certificate of Completion;

Developer means the entity described as such in the [Parties Section](#) of this [Agreement](#) and in Item 2 of Schedule 1;

Developer's Personnel means officers, employees, agents, Developer's contractor, officers, employees and other persons engaged by the [Developer](#) in connection with the undertaking of the [Works](#) or [Services](#) (as is relevant to the [Developer](#));

Developer's Representative means the person representing the [Developer](#) as described in paragraph 3.1(a) and is, as at the [Commencement Date](#), the person described as such at Item 3 of Schedule 1;

Developer's Water Infrastructure means [Water Infrastructure](#) to be constructed by the Developer for the [Development](#) which will be vested in SEW upon issuing of a CoC.

Environment Laws means the *Environment Effects Act 1978* (Vic), the *Environment Protection Act 1970* (Vic), the *National Environment Protection Council (Victoria) Act 1995* (Vic), the *Planning and Environment Act 1987* (Vic), the *Planning and Environment Regulations 2005* (Vic), as amended from time to time and any directions, statements, protocols, guidelines or other similar material issued or published under the Act or the Regulations;

Group Manager Development means the person holding that title, or an equivalent title, at [SEW](#) from time to time;

Incident means any event or circumstance which:

- (a) gives rise to a:
 - (i) risk (other than a negligible or fanciful risk) of damage to [Assets](#);
 - (ii) material risk to injury of persons (other than a trivial injury);
- (b) constitutes a breach (other than a trivial breach) of this [Agreement](#); or
- (c) results in minor damage to an [Asset](#) where that damage is immediately repaired or made good by the [Developer](#);

Insolvency Event means any of the following events:

- (a) for a corporation:
 - (i) an order is made:
 - (A) that the corporation be wound up; or
 - (B) appointing a liquidator or provisional liquidator in respect of the corporation, or one of them is appointed, whether or not under an order;
 - (ii) a resolution is passed to appoint an administrator or an administrator is appointed to the corporation;
 - (iii) a receiver or a receiver and manager is appointed to the corporation;
 - (iv) the corporation enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (v) the corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so or is otherwise wound up or dissolved;
 - (vi) the corporation is, or states that it is, insolvent;
 - (vii) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand;
 - (viii) the corporation is, or makes a statement from which the other party may reasonably conclude that the corporation is, the subject of an event described in section 459C(2)(a) to (f) inclusive or section 585 of the *Corporations Act 2001* (Cth);
 - (ix) the corporation takes any step to obtain protection, or is granted protection, from its creditors under any applicable law;
 - (x) a mortgagee takes possession of any one of the assets or undertakings of the corporation; or
 - (xi) anything analogous or having a substantially similar effect to any of the events specified above happens under any law;
- (b) means for a natural person:

- (i) if the person commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth);
- (ii) dying or losing capacity to manage his own affairs; or
- (iii) anything analogous or having a substantially similar effect to any of the events specified above happens under any law;

Intellectual Property Rights means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;

Land Development Policies and Pricing Manual means the document by that name published by [SEW](#) and available at www.southeastwater.com.au;

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Victoria;
- (b) without limiting the generality of this definition, the [OHS Law](#) and the [Environmental Laws](#);
- (c) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the [Works](#) or [Services](#); and
- (d) fees and charges payable in connection with the foregoing;

Notifiable Incident means an incident which must be notified to the relevant [Authority](#) pursuant to any [Legislative Requirement](#);

Offer Letter means the letter from [SEW](#) to the [Developer](#) and included at Schedule 7;

OHS Law means the *Occupational Health and Safety Act 2004* (Vic), the *Occupational Health and Safety Regulations 2007* (Vic), any policies published by [WorkCover](#) available online at www.worksafe.vic.gov.au, as amended from time to time and any directions, statements, protocols, guidelines or other similar material issued or published under the Act or the Regulations;

Permitted Change in Control means the transfer of Control in the [Developer](#) to a 'related body' as that term is defined in the *Corporations Act 2001* (Cth).

Pre-construction Verification as referenced in the Land Development Policies and Pricing Manual is the form lodged and signed by the consultant and contractor prior to the construction supplying details involving the construction of the Development Works;

Services means the design, documentation or supervision or project management of any [Works](#) or the provision of advice in relation to such design, documentation or supervision;

Serious Incident:

- (a) includes a [Notifiable Incident](#); and
- (b) otherwise means:
 - (i) an event or circumstance which results in damage to an [Asset](#) (other than damage described in the definition of [Incident](#));

- (ii) a breach of this [Agreement](#) (other than a breach described in the definition of [Incident](#)); or
- (iii) personal injury requiring treatment by a medical practitioner;

SEW means South East Water;

SEW Information means any information provided to the [Developer](#) or the [Developer's Personnel](#) by or on behalf of [SEW](#) or sourced from material held by [SEW](#);

SEW's Administrative Process means the processes described as such at or set out at Schedule 4;

SEW's Assets means any property, plant equipment or other asset owned by or under the control of [SEW](#);

SEW's Representative means the person or persons representing [SEW](#) or exercising some or all of the functions of [SEW](#) under the [Agreement](#) and being the person or persons as described in paragraph 3.2(a) and is, as at the [Commencement Date](#), the person or persons described as the contact person contained in the [Offer Letter](#) ;

SEW's Requirements means compliance with the requirements set out at Schedule 4;

Third Party Assets means assets by a party other than [SEW](#) and includes [Third Party Land](#);

Third Party Land means land which is not owned or under the control of [SEW](#) or the [Developer](#) and which the [Developer](#) desires to access in order to undertake the [Works](#) or [Services](#) or construct the [Developer's Water Infrastructure](#);

Warranty Period is the period of **24 months commencing upon** the date of the issue of the [Certificate of Completion](#);

Water Infrastructure means any infrastructure which is, or will become, [SEW's Asset](#) and which relates to the discharge of [SEW's](#) obligations in relation to the construction, operation and maintenance of infrastructure relevant to water supply, and/or sewerage;

WorkCover means the Victorian WorkCover Authority, being the body established by section 18 of the *Accident Compensation Act 1985* (Vic);

Works means any works in relation to or in connection with the construction of the [Developer's Water Infrastructure](#);

Works Information means all information, documents and records in relation to [Works](#) or [Services](#) undertaken by or on behalf of the [Developer](#) required by [SEW](#) to operate or maintain [SEW's Asset](#) (including any part of the [Works](#) that form part of [SEW's Asset](#));

Works Warranty Bond means, the bond as described in the [Offer Letter](#);

1.2 Rules of Interpretation

In this [Agreement](#):

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has, when capitalised, a corresponding meaning;

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- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
 - (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (f) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (h) a reference to a statute, ordinance, code or other law includes regulations and other enforceable instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (i) the meaning of general words is not limited by specific examples that follow them;
 - (j) the meaning of general words is not limited merely because more specific words precede them;
 - (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
 - (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
 - (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it or benefits from the relevant provision; and
 - (n) if a day on or by which an obligation must be performed or an event must occur is not a [Business Day](#), the obligation must be performed or the event must occur on or by the next [Business Day](#).

Schedule 3– Approved form of Guarantee

APPROVED UNCONDITIONAL UNDERTAKING

South East Water Corporation,
ABN 89 066 902 547
PO Box 2268
SEAFORD VIC 3198

At the request of

.....ABN..... ('the Owner') and in consideration of SOUTH EAST WATER ABN 89 066 902 547 ('the Principal') of 101 Wells Street, Frankston VIC 3199 accepting this undertaking in respect of South East Water Corporation's "Developer Agreement", reference number, for the proposed subdivision at in the Municipality of

.....ABN..... ('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of \$(Amount in figures)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing by the Principal's duly authorised officer for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Owner and notwithstanding any notice given by the Owner not to pay the same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$ less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

This agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the laws of the state of Victoria, Australia.

DATED at this day of 20__

BANK
STAMP/OFFICIAL

BANK DOCUMENT
PAPER

.....
Bank Authorised Officer

.....
Witness

.....
Title

.....
Title

On expiry or when no longer required, please return this document to :

The Manager, (Title in Full)

..... (Address in Full)

Schedule 4 – SEW's Requirements

1. Change in Control

If a [Change in Control](#) occurs the [Developer](#) must notify [SEW](#) within 5 business days.

A [Change in Control](#) occurs under the Agreement when the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the [Developer](#), whether through ownership of voting securities, by contract or otherwise, changes.

2. Compliance with Codes, Manuals and Specifications

In undertaking the [Works](#) or [Services](#), the [Developer](#) must or, where it has engaged [Accredited Consultants](#) or [Accredited Contractors](#), must procure that the [Accredited Consultants](#) or [Accredited Contractors](#) comply with the following:

- (a) Water Services Association of Australia Codes (WSAA);
- (b) Melbourne Retail Water Agency Standards (MRWA)
- (c) Water Industry Technical Standards (WITS);
- (d) the Model Workplace Relations Management Plan under the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry* provided by the Department of Treasury and Finance.

3. SEW's Administrative Process

3.1 SEW's Administrative Process

[SEW's Administrative Process](#) is contained within the [Land Development Policies and Pricing Manual](#).

3.2 Documents called for by SEW's Administrative Process

- (a) The [Developer](#) must or, where it has engaged [Accredited Consultants](#) or [Accredited Contractors](#), must procure that the [Accredited Consultants](#) or [Accredited Contractors](#) comply with [SEW's Administrative Process](#).
- (b) The [Developer](#) must or, where it has engaged [Accredited Consultants](#) or [Accredited Contractors](#), must procure that the [Accredited Consultants](#) or [Accredited Contractors](#) complete all the documents which [SEW's Administrative Process](#) calls for the [Developer](#) to complete and must do so within the time provided for in [SEW's Administrative Process](#).
- (c) The [Developer](#) warrants that:
 - (i) it or its [Accredited Consultants](#) or [Accredited Contractors](#) will take care in completing any documents required to be completed by this Schedule 4;

- (ii) the documents which it or its [Accredited Consultants](#) or [Accredited Contractors](#) completes which are required under this Schedule 4 will be accurate and complete and will not be misleading; and
- (iii) neither it nor its [Accredited Consultants](#) or [Accredited Contractors](#) will complete such documents unless it has sufficient knowledge of the circumstances the subject of the documents to enable it to complete those documents in accordance with this Schedule 4.

3.3 Content of SEW's Administrative Process

- (a) In complying with [SEW's Administrative Process](#), the [Developer](#) or its [Accredited Consultants](#) or [Accredited Contractors](#) are required to lodge a Works Agreement Application via SEW's PropertyConnect system (available via [SEW's](#) website www.southeastwater.com.au).
- (b) In complying with [SEW's Administrative Process](#), the [Developer](#) or its [Accredited Consultants](#) or [Accredited Contractors](#) will be required to complete all required forms and necessary processes within SEW's PropertyConnect system (available via [SEW's](#) website www.southeastwater.com.au):
- (c) [SEW's Administrative Process](#) may contain or describe:
 - (i) obligations to be discharged by the [Developer](#);
 - (ii) actions to be undertaken by the [Developer](#);
 - (iii) preconditions to certain events occurring or steps being taken; and
 - (iv) consequences of certain events occurring or steps being taken (including consequences in the nature of releases, warranties or indemnities).
- (d) The obligations, actions, preconditions and consequences referred to in paragraph 3.3 and the other content of [SEW's Administrative Process](#) will be given effect to between the parties as if they were included in and restated in this [Agreement](#).

4. Other Requirements

4.1 Deficiencies

- (a) At any time before a [Certificate of Completion](#) is issued under the Agreement and the [Developer](#) becomes aware of any deficiency or non-compliance in relevant [Works](#) or [Services](#) that arises out of emergency works or risk of personal injury, the [Developer](#) shall advise [SEW](#) of that deficiency or non-compliance as soon as practicable.
- (b) If [SEW](#) becomes aware of any deficiency or non-compliance in relevant [Works](#) or [Services](#) to which clause Schedule 44.1(a) of this schedule applies then [SEW](#) may:
 - (i) make good the deficiency or non-compliance where it considers that the emergency works or risk to personal injury requires urgent rectification in, which case the cost of such making good shall be a debt due and payable by the [Developer](#) to [SEW](#); or

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- (ii) direct the [Developer](#) to make good the deficiency or non-compliance within the time and in the manner noted in the direction, in which case the [Developer](#) must comply with that direction.

4.2 Accredited Consultants and Accredited Contractors

The [Developer](#) must use [Accredited Consultants](#) and [Accredited Contractors](#) (holding [Accreditation](#) in the appropriate [Accredited Category](#)) to undertake the [Works](#) or [Services](#) or to undertake activities in relation to any part of the [Developer's Water Infrastructure](#).

4.3 Offer Letter

The [Offer Letter](#) forms a part of this [Agreement](#) and the [Developer](#) must comply with it in its entirety.

Schedule 5 – Required Insurances

Public liability insurance

The public liability insurance must:

- (a) be in the joint names of [SEW](#) and the [Developer](#);
 - (b) covers [SEW](#) and the [Developer](#) and all subcontractors employed from time to time by the [Developer](#) in relation to [Works](#) or [Services](#) for their respective rights and interests;
 - (c) covers [SEW](#) and the [Developer](#) for their liabilities to third parties, including the [Developer's](#) liability to [SEW](#) or any third party;
 - (d) cover loss of damage to property 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);
 - (e) provide that failure by the [Developer](#) to observe and fulfil the terms of the policy will not prejudice the insurance with regard to [SEW](#);
 - (f) provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against [SEW](#);
 - (g) be for an amount in respect of any one occurrence not less than \$20 million; and
 - (h) be maintained until the expiration of 2 years after the [Certificate of Completion](#) is issued
-

Schedule 6– Trust

1. Application

- (a) This Schedule 6 applies if the [Developer](#) is executing the [Agreement](#), and becoming a party to the [Agreement](#), as a trustee of a trust.
- (b) If this Schedule 6 applies, it is deemed to form part of the [Agreement](#).
- (c) The balance of this Schedule 6 applies to the Trustee in respect of the Trust to which it has been appointed pursuant to the Trust Deed (as these terms are defined in the Trust Deed)

2. Definitions and Interpretation

2.1 Definitions

Terms defined in the [Agreement](#) have the same meaning in this Schedule 6.

2.2 Interpretation

- (a) Unless otherwise specified in the [Agreement](#), a reference in the [Agreement](#) to a transaction, asset, act or liability of any nature of the Trustee includes its transactions, assets, acts or liabilities as trustee of the Trust.
- (b) The Trustee acknowledges that it enters into the [Agreement](#) in its capacity as trustee of the Trust and that the [Agreement](#) is binding on it personally and in its capacity as trustee of the Trust.
- (c) A reference to a related body corporate of the Trustee includes a related body corporate of the Trust.

3. Capacity

The Trustee is entering into the [Agreement](#) as trustee of the Trust.

4. Trustee Provisions

4.1 Trustee representations and warranties

The Trustee (both in its own right and as trustee of the Trust) represents and warrants to [SEW](#) that:

- (a) **(status of the Trust)** the Trust is validly constituted and has not terminated, nor has any action been taken to wind up, terminate or resettle the trust, nor has the date or any event occurred for the vesting of the assets of the Trust (Trust Fund);

- (b) **(status as trustee)** it is the sole trustee of the Trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee of the Trust;
- (c) **(trust power)** it has power under the Trust Deed to enter into the [Agreement](#) and to perform its obligations under the [Agreement](#);
- (d) **(trust authority)** all action has been taken that is necessary or desirable under the Trust Deed or at law to authorise its entry into the [Agreement](#) and to perform its obligations under the [Agreement](#);
- (e) **(benefit of beneficiaries)** it is entering into the [Agreement](#) as part of the proper administration of the Trust, for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) **(right of indemnity)**:
 - (i) (i) it has the right to be indemnified out of the Trust Fund in relation to any liability arising under or in connection with the proper performance of its rights and obligations under the [Agreement](#);
 - (ii) (ii) the Trust Fund is sufficient to satisfy that right in full; and
 - (iii) (iii) it has not released or disposed of its equitable lien over the Trust Fund;
- (g) **(terms of the Trust)** it has disclosed to [SEW](#) full particulars of the Trust and of any other trust or fiduciary relationship affecting the Trust Fund and has given [SEW](#) a complete and up-to-date copy of the Trust Deed; and
- (h) **(no breach)** it is not in breach of any material obligations imposed on it in its capacity as trustee of the Trust, whether under the Trust Deed or otherwise.

4.2 Repetition

The warranties in clause 4.1 of this Schedule 6 are taken to be made:

- (a) on the date the [Agreement](#) is signed; and
- (b) on the last Business Day of each month after the date of the [Agreement](#).

4.3 Provision of Information

The Trustee must give [SEW](#) promptly on request (and in any event within 10 days of receipt of the request) either;

- (a) any information relating to the financial condition (including the financial accounts) business, assets and affairs of the Trust, including a copy of the Trust, that [SEW](#) reasonably requests; or
- (b) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust, including a copy of the Trust, and the trustee of the Trust.

4.4 Trustee Events of Default

Each of these events or circumstances gives [SEW](#) the right to terminate for cause pursuant to clause 23 of the [Agreement](#):

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- (a) **(breach of warranty)** a warranty under clause 4.1 made or taken to be made by the Trustee is incorrect or misleading when made or taken to be made and, if capable of remedy, is not remedied within 10 Business Days of being made or taken to be made;
 - (b) **(amendment of the Trust Deed)** the Trust Deed is amended in any material respect without the prior written consent of [SEW](#);
 - (c) **(failure to provide information)** any of the information required to be provided under clause 4.3 is not provided within the time specified in that clause or if the information provided is incorrect, incomplete or misleading in any material respect;
 - (d) **(distributions)** any distributions of the capital of the Trust are made out of the Trust without [SEW](#)'s prior written consent; and
 - (e) **(dealing with units)** if the Trust is a unit trust, any unit is issued, transferred, redeemed, encumbered or otherwise dealt with, without notification being given to [SEW](#).

Schedule 7– Offer Letter

Refer to the next page.