

DEED OF CONFIDENTIALITY

THIS DEED is made on the _____ day of _____ 20 [insert year]

between

CENTRAL GIPPSLAND REGION WATER CORPORATION trading as **Gippsland Water**
("Gippsland Water")

and

[insert Contractor]
[insert ACN]
of [insert address]
("Contractor")

RECITALS

- A. The Contractor has agreed to provide the Works as described in the Contract.
- B. Gippsland Water may provide Confidential Information to the Contractor for the purpose of the performance of the Works or the Contract.
- C. Gippsland Water will provide to and allow the Contractor to access and use the Confidential Information in consideration of the Contractor entering into this Deed.

AGREEMENT

1. INTERPRETATION

In this Deed it is agreed that, unless the context otherwise requires or the contrary intention appears:-

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) terms importing natural persons include partnerships and bodies corporate;
- (c) other grammatical forms of defined words or phrases have corresponding meanings;
- (d) (where a party comprises two or more persons provisions of this Deed that bind that party shall bind those persons jointly and severally;
- (e) a document includes any computer program, circuit, circuit layout, drawing, specification, material, record and any other means by which Confidential Information may be stored or reproduced;
- (f) any thing (including any right) includes a part of that thing;

- (g) a reference to “including”, “includes” or “include” must be read as if it is followed by “without limitation”;
- (h) consent means prior written consent;
- (i) an obligation of a party not to do a thing includes an obligation not to permit that thing to be done;
- (j) a reference to a person includes a reference to a body corporate or other legal entity, partnership or other unincorporated association; and
- (k) a reference to a party to this Deed includes its successors and permitted assigns.

2. DEFINITIONS

In this Deed:

- (a) **“Confidential Information”** means:
 - (i) all information, documents data stored by any means and any information made available to the Contractor by Gippsland Water for the purpose of the Contract or the performance of the Works;
 - (ii) Information communicated in any way including by written material, visual presentation, computer disk, oral communication or by access to Gippsland Waters website or computer systems;
 - (iii) the fact that Confidential Information has been provided to the Contractor or its Representatives; and
 - (iv) the terms of this Deed,

but excludes information which:

- (i) is in or becomes part of the public domain other than through a breach of any obligation of confidence owed by the Contractor to Gippsland Water;
 - (ii) the Contractor can prove, by contemporaneous written documentation, was already known to the Contractor at the time of disclosure by Gippsland Water, except as a result of a prior confidential disclosure by Gippsland Water or a breach of any obligation of confidence owed to Gippsland Water; or
 - (iii) is required by law or any court or other authority of competent jurisdiction to be disclosed, provided that to the extent it is legally permitted to do so prior to making any such disclosure, the Contractor notifies Gippsland Water of the requirement to disclose the Confidential Information;
- (b) **“Contract”** means [insert description and date of the Contract] between Gippsland Water and the Contractor;

- (c) **“Representative”** means any director, officer, employee, financier, contractor, Contractor or adviser of the Contractor; and
- (d) **“Works”** mean all the Works that the Contractor provides or must provide in accordance with the Contract between Gippsland Water and the Contractor.

3. OBLIGATION OF CONFIDENCE

3.1 The Contractor must and must procure that its Representatives:

- (a) take all action necessary to maintain the confidential nature of the Confidential Information;
- (b) do not disclose, without the consent of Gippsland Water, any of the Confidential Information to any person other than those Representatives who need the information to perform the Works;
- (c) do not use, copy or reproduce, without the consent of Gippsland Water, any of the Confidential Information for any purpose other than the performance of the Works or the Contract;
- (d) establish and maintain effective security measures to safeguard all Confidential Information from unauthorised access, use, copying, disclosure, damage or destruction; and
- (e) take reasonable steps to enforce the confidentiality obligations under this Deed.

3.2 The Contractor may disclose the Confidential Information to its Representatives who, prior to the disclosure of any Confidential Information;

- (a) have a specific need to access the Confidential Information for the purpose of performing the Works; and
- (b) have been informed by the Contractor that they owe a duty of confidence to Gippsland Water.

3.3 The Contractor must ensure that none of the persons to whom Confidential Information is disclosed in accordance with clause 3.2 of this Deed do or omit to do anything which, if done or omitted to be done by the Contractor, would constitute a breach of the Contractor’s obligations under this Deed.

3.4 If for any reason the Contractor no longer proceeds with the carrying out of the Works, the Contractor will continue to remain bound by the terms of this Deed.

4. RETURN AND OWNERSHIP OF CONFIDENTIAL INFORMATION

4.1 Upon the earlier of;

- (a) demand by Gippsland Water; and
- (b) the termination or ending of the Contract,

the Contractor agrees to;

- (i) deliver to Gippsland Water all documents and other material in any medium in its possession, power or control or its Representatives possession, power or control which contain or refer to any Confidential Information; and
- (ii) remove from electronic storage all Confidential Information, including such information combined with any other information.

4.2 Return or removal from electronic storage of the documents and other materials referred to in clause 4.1 does not release the Contractor or any of its Representatives from the obligations under this Deed or any other duty of confidence owed to Gippsland Water.

4.3 All Confidential Information remains the property of Gippsland Water. Gippsland Water reserves all rights in the Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of the Confidential Information are granted to the Contractor and no obligations are imposed on Gippsland Water other than those expressly stated in this Deed.

4.4 Gippsland Water does not make any express or implied warranty or representation concerning the Confidential Information, or the accuracy or completeness of the Confidential Information.

5. RELIEF

The Contractor acknowledges that Gippsland Water shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this Deed and without the need on the part of Gippsland Water to prove any special damage.

6. GOVERNING LAW

This Deed is governed by the laws of Victoria.

7. PRIOR DISCLOSURE

This Deed applies to all Confidential Information whether provided to the Contractor before, on or after the date of the Deed.

8. AMENDMENT

This Deed may only be amended in writing by the mutual written agreement of the parties.

Executed as a Deed Poll

EXECUTED by [Insert Contractor] (ACN)
[Insert ACN] by its duly authorised officers in)
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

.....
Signature of Director

.....
Signature of Director / Secretary
(delete as applicable)

.....
Name of Director
(Please print)

.....
Name of Director / Secretary
(Please print) (delete as applicable)

.....
Usual Address

.....
Usual Address