

HUNTER WATER CORPORATION

AND

Developer:

**DEVELOPER WORKS DEED
ROUTINE MINOR WORKS**

Development Location:



Insert Deed No



Purpose of the Developer Works Deed

Hunter Water has:

- (a) completed its assessment of your application for the provision of water and/or sewer to your development; and
- (b) issued you with a notice of requirements setting out the actions you must take before it will issue you with a compliance certificate.

The purpose of the Developer Works Deed (the **Deed**) is to set out the terms on which you agree to undertake the works included in the notice of requirements.

What you have to do next

Once you have read and understood the Deed (you may wish to obtain independent legal advice in order to do so) you will need to take the following actions if you are comfortable executing the Deed:

- (a) complete, sign and return an original of the Deed to Hunter Water at 36 Honeysuckle Drive, Newcastle 2300 NSW;
- (b) engage a Hunter Water accredited design consultant (see list of accredited design consultants at www.hunterwater.com.au) to design the works required by the notice of requirements and promptly notify Hunter Water of the identity of such person;
- (c) take out or have one or more of your subcontractors take out (as appropriate) the insurances required by clause 22 of the Deed, noting that the insurance policy required by:
 - (i) clause 22.1 may be taken out by your licenced plumber or accredited construction contractor; and
 - (ii) clause 22.2 is only required where you have employees.
- (d) engage a licenced plumber or, if directed by Hunter Water, a Hunter Water accredited construction contractor (see list of accredited construction contractors at www.hunterwater.com.au) to construct the works required by the notice of requirements in accordance with this Deed.

Critical Point to Note

It is critical that all relevant obligations you have to Hunter Water under this Deed are included in your contract with your accredited contractor.



DEED PARTICULARS

Item	Matter	Variable
1	Deed Date	<input type="text"/>
2	Developer	Name: <input type="text"/> ABN: <input type="text"/> Postal Address: <input type="text"/>
3	Commencement Date (clause 1.1)	<input type="text"/>
4	Forecast Completion Date (clause 1.1)	<input type="text"/>
5	Estimated Design and Construction Costs (clause 1.1)	<input type="text"/>
6	Hunter Water Representative (clause 1.1)	The Hunter Water Representative named in the Notice of Requirements <input type="text"/>
7	Notice of Requirements	[insert details (eg. date and reference of notice)] <input type="text"/>
8	Site (clause 1.1)	[insert details of site] <input type="text"/>
9	Developer Representative (clause 4.2)	Name: <input type="text"/>



Item	Matter	Variable
		<p data-bbox="635 235 694 257">Title:</p> <input data-bbox="746 241 1345 313" type="text"/> <p data-bbox="635 365 837 387">Address for Notice:</p> <input data-bbox="635 398 1406 492" type="text"/> <p data-bbox="635 539 710 562">Phone:</p> <input data-bbox="746 510 1350 604" type="text"/> <p data-bbox="635 669 702 692">Email:</p> <input data-bbox="754 640 1355 734" type="text"/>
10	Public Liability Insurance (clause 22.1)	\$20 million for each and every claim and unlimited in the aggregate



THIS DEED is made on the Deed Date

BETWEEN

HUNTER WATER CORPORATION (ABN 46 228 513 446) of 36 Honeysuckle Drive, Newcastle NSW 2300
(*Hunter Water*)

AND

THE DEVELOPER IDENTIFIED IN ITEM 2 (*Developer*)

BACKGROUND & PURPOSE OF THIS DOCUMENT

- A. Section 49(1) of the Hunter Water Act states that if an approval has been given with respect to any land within Hunter Water's area of operations, the developer of that land may apply to Hunter Water for a certificate to the effect that the development complies with section 50 of the Hunter Water Act.
- B. Section 50(1) of the Hunter Water Act states that if an application is made to Hunter Water under section 49(1) of the Hunter Water Act, Hunter Water may issue a notice requiring the applicant to enter into an agreement providing for the:
 - a. construction of the works specified in the notice from Hunter Water; and
 - b. transfer of the relevant works at no cost to Hunter Water.
- C. Section 50(2) of the Hunter Water Act states that when Hunter Water is satisfied that the requirements of a notice referred to in section 50(1) have been complied with, it must grant the developer a compliance certificate.
- D. The Developer has submitted an application to Hunter Water in relation to the provision of water and/or sewer to the Site in accordance with section 50 of the Hunter Water Act (the **s49 Application**).
- E. Hunter Water has concluded its assessment of the s49 Application and issued the Notice of Requirements to the Developer confirming the actions it must take before Hunter Water will issue it with a compliance certificate.
- F. This Deed sets out the terms on which the Developer agrees to undertake these activities.



OPERATIVE PROVISIONS

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed:

Accredited Construction Contractor means a contractor:

- (a) listed on Hunter Water's list of accredited construction contractors for developer works (see list at www.hunterwater.com.au);
- (b) who has the skills and capabilities needed to complete the Works in accordance with this Deed; and
- (c) whose engagement must be promptly notified to the Hunter Water Representative in writing by the Developer.

Accredited Design Consultant means a designer:

- (a) listed on Hunter Water's list of accredited design consultants for developer works (see list at www.hunterwater.com.au);
- (b) who has the skills and capabilities needed to complete the design and certification responsibilities allocated to it in accordance with this Deed; and
- (c) whose engagement must be promptly notified to the Hunter Water Representative in writing by the Developer.

Accredited Supplier means a supplier who is listed on Hunter Water's list of accredited suppliers of the relevant equipment or services, including Accredited Construction Contractors, Accredited Design Consultants and suppliers of equipment from the approved products list.

Applicable Requirements means the Shutdown Requirements, WSAA Code, requirements provided by the Manual: Delivery of Developer Assets, and all relevant Australian Standards.

Approval means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, but does not include the exercise by Hunter Water of its rights under this Deed.

Authority means any court or tribunal or agency, authority, department, government instrumentality, minister, or ministry or public or statutory personnel of the Commonwealth or NSW, and any local government.

Best Practice means the practices observed by highly skilled contractors in the design, construction and testing of works similar to the Works.

Certificate of Completion means a certificate issued pursuant to clause 15.3 and in the form set out in the Manual: Delivery of Developer Assets.

Completion means the stage when:

- (a) the Works:
 - (i) have been connected to the Existing Operations in accordance with clause 15.2;



- (ii) are in a condition which is compliant with this Deed and all relevant Laws and the requirements of all relevant Authorities and other relevant persons have been satisfied;
- (b) all information required under this Deed to be supplied to Hunter Water have been supplied; and
- (c) the Developer has provided to the Hunter Water Representative:
 - (i) a final set of 'work as constructed' drawings of the Works (on CD-ROM or DVD in AutoCAD) which comply with Hunter Water Standard Technical Specification 903 – Work as Constructed Information;
 - (ii) an executed Design Compliance Certificate from the Accredited Design Consultant (in the form set out in the Manual: Delivery of Developer Assets); and
 - (iii) an executed Certificate of Completion from the Accredited Design Consultant (in the form set out in the Manual: Delivery of Developer Assets).

Construction Inspection means the inspection or inspections the Accredited Design Consultant is required to undertake pursuant to the Manual: Delivery of Developer Assets.

Consultant means any person engaged by the Developer to perform services in respect of the Works.

Date of Completion means the date notified to the Developer in a Certificate of Completion.

Deed Date means the date set out in Item 1.

Defect includes any defect in design, materials or workmanship or omission of any Works, as well as physical damage to the Works resulting from such defect or omission.

Defects Liability Period means the period commencing on the Date of Completion and expiring 12 months thereafter, unless extended in accordance with clause 17.

Design Compliance Certificate has the meaning given to that term in clause 6.2.

Design Documents means the drawings, specifications, designs, calculations, samples, models and the like provided or to be provided to Hunter Water by or on behalf of the Developer under this Deed and which:

- (a) are required to design, specify or construct the Works; or
- (b) this Deed requires the Developer to create or provide.

Developer's Design Obligations means everything necessary to design and specify the Works.

Environment includes ecosystems and their constituent parts, including communities and physical resources.

Environmental Requirements means the requirements of Hunter Water's environmental management plan(s) for the Works and/or Site and/or relevant management plans issued under Environmental Laws.

Equipment means plant, materials, goods, parts and other items to be incorporated into the Works.

Estimated Design and Construction Costs means the Developer's estimate of the costs of the Works, as identified in Item 5 of the Deed particulars.

Existing Operations means all infrastructure owned, operated or under the control of Hunter Water.



Forecast Completion Date means the date identified as such in Item 4.

Hunter Water Act means the *Hunter Water Act* 1991 (NSW).

Hunter Water Project Requirements means the Hunter Water requirements for the Works as stated in or reasonably ascertainable from the Notice of Requirements and the documents referred to in it.

Hunter Water Representative means the person named in Item 6, as may be changed by Hunter Water.

Item means an item of the Particulars.

Law means

- (a) Commonwealth, New South Wales or local government legislation, including regulations, by-laws and other subordinate legislation;
- (b) Principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

Liability means any direct, indirect, present, future, fixed, unascertained, actual or contingent liability and, to the extent not prohibited by Law, any fine or penalty.

Manual: Delivery of Developer Assets means the manual of that name available at www.hunterwater.com.au.

Notice of Requirements means the notice referred to in Item 7.

Particulars means the deed particulars set out on page 2 of this Deed.

Personnel means a party's employees, agents, contractors and consultants, excluding the Developer in the case of Hunter Water.

Shutdown Requirements means any requirements notified by or on behalf of Hunter Water to the Developer with respect to shutdowns or interruptions to any Existing Operations.

Site means the site identified in Item 8.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site and its surroundings.

WHS Laws means Laws relating to health and safety at work.

Works means all things the Developer must do to complete and test the works in accordance with this Deed.

WSAA Code means the Water Services Association of Australia (WSAA) Sewerage (WSAA02) and Water Supply (WSAA03) design codes.

1.2 Interpretation

In this Deed:

- (a) reference to a person means an individual, the estate of an individual, a corporation, an authority, an association or joint venture, a partnership, a trust and other entities recognised by Law;



- (b) reference to a statute includes all regulations made under and amendments to it and any statute passed in substitution or incorporating any of its provisions;
- (c) any reference to a party includes its executors, administrators or permitted successors or assigns; and
- (d) reference to a document is to that document as varied, novated, ratified or replaced.

1.3 **No bias**

No term of this Deed will be construed against a party on the basis that this Deed or the relevant term was put forward or drafted by or on behalf of that party.

1.4 **Documents comprising this deed**

This Deed is comprised of this document, the Deed Particulars and any document referred to in either of them.

1.5 **Nature of Deed**

The Developer must:

- (a) complete the Works at its cost in accordance with this Deed and using Best Practice; and
- (b) do and observe all other things inferred from this Deed which are to be done and observed by it.

2. **HUNTER WATER AS AN AUTHORITY**

The Developer acknowledges and agrees that:

- (a) this Deed does not affect Hunter Water's statutory functions or powers; and
- (b) anything Hunter Water does or fails to do pursuant to those functions and powers will not be an act or omission of Hunter Water under or in connection with this Deed.

3. **DOCUMENTS**

3.1 **Ambiguities and Discrepancies**

If the Developer discovers any ambiguity or discrepancy in or between any of the documents comprising this Deed, it must promptly advise the Hunter Water Representative in writing, who must give a direction as to the interpretation to be followed and the Developer must comply.

3.2 **Records and Access to Records**

- (a) The Developer must make and keep, and ensure that all subcontractors make and keep, accurate and detailed records of the Works, including all documentation required by this Deed (together, **Records**).
- (b) The Records must not be destroyed before the date that is 7 years after the Deed Date.
- (c) At any time up until the Developer is no longer required to maintain the Records, Hunter Water may:
 - (i) require the Developer to produce some or all Records so Hunter Water and its nominees can inspect and copy them; and/or
 - (ii) audit the Developer's compliance with this Deed on an open book basis,and the Developer must comply with such notice and ensure that its subcontractors do likewise.



3.3 Information Documents

The Developer warrants that it enters into this Deed based on its own investigations, interpretations, information and determinations and agrees that Hunter Water does not warrant or assume any duty of care for the accuracy, adequacy or completeness of any document or information it provides to the Developer.

4. REPRESENTATIVES

4.1 Hunter Water Representative

- (a) The Hunter Water Representative acts as the agent of Hunter Water and solely in its interests.
- (b) Hunter Water may change the Hunter Water Representative by written notice to the Developer.
- (c) The Developer must comply with any direction given by the Hunter Water Representative.

4.2 Developer Representative

- (a) The Developer must ensure that at all times this Deed is managed by a competent person and, as at the Deed Date, that person is the person named in Item 9 (the **Developer Representative**).
- (b) The Developer may only change the Developer Representative with Hunter Water's written approval.
- (c) A direction of the Hunter Water Representative is deemed to have been given to the Developer if it is given to the Developer Representative.

5. SUBCONTRACTING

The Developer may subcontract the whole or any part of the Works, but only where the relevant:

- (a) supplier is an Accredited Supplier;
- (b) design consultant is an Accredited Design Consultant;
- (c) non-design consultant is a licenced plumber or, where prescribed in the Notice of Requirements or if directed at any time by the Hunter Water Representative, an Accredited Construction Contractor; and
- (d) the relevant subcontract contains provisions:
 - (i) to the effect that the relevant subcontractor or supplier must:
 - (A) not assign or subcontract Works or supplies without Hunter Water's written consent; and
 - (B) maintain the insurance policy required by clause 22;
 - (ii) which will enable the Developer to comply with this Deed; and
 - (iii) which state that, if the relevant subcontract is terminated, the subcontractor must, if so directed by Hunter Water, provide to Hunter Water all relevant designs, documents and materials.



6. DESIGN

6.1 Design Requirements

The Developer must commence performing the Developer's Design Obligations promptly after the Deed Date and warrants to Hunter Water and repeats on each day of the term of this Deed that it will do so such that the Design Documents:

- (a) comply with this Deed;
- (b) are fit for their intended purposes;
- (c) comply with all Laws, Environmental Requirements, Hunter Water Project Requirements and Applicable Requirements; and
- (d) do not infringe any intellectual property rights.

6.2 Design Obligations and Design Review

The Developer must not commence or procure the commencement of the manufacture or construction of any Works until the Accredited Design Consultant has given the Developer written notice in the form set out in the Manual: Delivery of Developer Assets (***Design Compliance Certificate***) confirming that the Design Documents are in accordance with this Deed.

6.3 Design validity

Any Design Compliance Certificate is valid for 12 months from the date of its issue.

7. PROGRESS AND PROGRAMMING OF THE WORKS

The Developer must:

- (a) commence construction of the Works promptly after the completion of all Design Documents;
- (b) complete the Works by the Forecast Completion Date and promptly notify the Hunter Water Representative of anything which may delay the Works and give details of the possible delay; and
- (c) in the period between the date on which construction of the Works is commenced and the Date of Completion, ensure that the Accredited Design Consultant completes the Construction Inspection.

8. VARIATIONS

- (a) The Hunter Water Representative may direct the Developer to do any one or more of the following at any time prior to the Date of Completion:
 - (i) increase, decrease or omit any part of the Works;
 - (ii) change the character or quality of any Equipment or work;
 - (iii) change the levels, lines, positions or dimensions of any part of the Works; and/or
 - (iv) demolish or remove Equipment or work no longer required by Hunter Water,



and the Developer must comply with such directions at Hunter Water's cost, provided that:

- (v) the parties (acting reasonably) have agreed the value of the variation prior to the Developer giving effect to it; or
- (vi) failing agreement of the type contemplated in clause 8(a)(v) within 14 days after the date after the relevant direction, Hunter Water determines (acting reasonably) the value of the variation and notifies the Developer of that valuation in writing.

- (b) The Developer must not vary the Works except as directed in writing by the Hunter Water Representative.

9. SITE

9.1 Access to the Site

Hunter Water and its Personnel may at any time have access to any part of the Site.

9.2 Site Conditions

To the fullest extent permitted by Law, Hunter Water makes no representation in respect of and has no Liability for Site Conditions or the existence, location, condition or availability of any utility service.

10. LAWS, CODES AND STANDARDS

10.1 Compliance with Laws, Codes and Standards

- (a) The Developer must comply with and satisfy all Laws, Environmental Requirements and Applicable Requirements applicable to this Deed and the Works.
- (b) If a Law, Environmental Requirement or Applicable Requirement is at variance with this Deed or the Hunter Water Project Requirements, the Developer must promptly notify the Hunter Water Representative in writing and comply with his or her determination to resolve it.

10.2 Licences and Approval

The Developer must procure, maintain and pay for all Approvals necessary to complete the Works and provide copies of all such Approvals to the Hunter Water Representative prior to any Works being placed into service.

11. WORK, HEALTH AND SAFETY AND THE ENVIRONMENT

11.1 Safety and the Environment

- (a) The Developer must ensure that all Works are carried out in accordance with all relevant WHS Laws and Environmental Requirements.
- (b) If the Hunter Water Representative considers there is a risk to the health and safety of people or damage to property or the Environment arising from Works, it may direct the Developer to change its methods or cease work and the Developer must comply and will have no claim against Hunter Water.



11.2 Principal Contractor

- (a) The Developer acknowledges and agrees that, as between the Developer and Hunter Water and for the purposes of clause 293 of the *Work Health and Safety Regulation 2011* (NSW) (the **WHS Regulation**):
 - (i) the Developer is the “principal contractor” for the Works; and
 - (ii) if the engagement referred to in clause 11.2(a)(i) is not valid, it will fulfil the obligations of a principal contractor under the WHS Regulation as if it was the principal contractor in respect of the Works.
- (b) Notwithstanding clause 11.2(a), the Developer may appoint an Accredited Construction Contractor or licensed plumber engaged by the Developer to complete the Works as “principal contractor” for the Works without Hunter Water’s consent.

12. EQUIPMENT AND WORK

12.1 Quality of Equipment and Work

- (a) The Developer must use the Equipment and standards of workmanship required by this Deed.
- (b) A description in this Deed of any Equipment by a brand name, model number or other means does not:
 - (i) limit or exclude any of the Developer’s obligations or liabilities under this Deed; or
 - (ii) limit or prejudice any warranty provided by the Developer in this Deed.

12.2 Defective Equipment or Work

- (a) If Hunter Water discovers Equipment or Work which is not in accordance with this Deed, it may direct the Developer (including times for commencement and completion) to:
 - (i) remove the relevant Equipment or work from the Site;
 - (ii) redesign, reconstruct, replace or correct the relevant Equipment or work; or
 - (iii) not deliver the relevant Equipment to the Site.
- (b) If the Developer fails to comply with a direction under clause 12.2(a), Hunter Water may give effect to the notice and the cost of doing so will be a debt due and payable by the Developer to Hunter Water.

13. CARE OF THE WORKS AND REINSTATEMENT OF DAMAGE

13.1 Care of the Works

The Developer is responsible for:

- (a) the care of the Site, Works and Equipment until midnight on the Date of Completion; and
- (b) any loss of or damage to the Works, Site or Equipment caused or contributed to by the Developer, its Personnel or any other person for whom it is responsible, during the Defects Liability Period.



13.2 Reinstatement

If loss or damage occurs to the Works, Site or Equipment during the period for which the Developer is responsible for their care, it must, at its cost, promptly rectify such loss or damage.

14. PROTECTION OF PEOPLE AND PROPERTY

14.1 Generally

- (a) The Developer acknowledges and agrees that:
 - (i) Hunter Water and all users of Existing Operations must be able to continue using them during the completion of the Works as if the Works were not being undertaken; and
 - (ii) in using any Existing Operations, it will not do anything which may place itself or Hunter Water in breach of any Law.
- (b) If the Developer fails to comply with an obligation under clause 14.1(a):
 - (i) Hunter Water may do so and all associated costs will be a debt due and payable from the Developer to Hunter Water; and
 - (ii) the Developer indemnifies Hunter Water and its Personnel from and against all Liabilities they incur arising out of such breach.

14.2 Urgent Action

If the Developer becomes aware of an issue that threatens the health and safety of people or is likely to cause damage to property or the Environment:

- (a) it must immediately notify the Hunter Water Representative; and
- (b) if urgent action is necessary to prevent or mitigate its effects, Hunter Water may take such action and the cost of doing so will be a debt due and payable from the Developer to Hunter Water.

15. INSPECTION AND CONNECTION

15.1 General Test and/or Inspection Rights

At any time before the expiry of the last Defects Liability Period, Hunter Water may direct the Developer to:

- (a) carry out any test and/or inspection not described in this Deed; and/or
- (b) uncover any part of the Works or make openings in any part of the Works,

and the Developer must, at its cost, promptly comply and reinstate any affected part of the Works.

15.2 Connection

The Developer acknowledges and agrees that:

- (a) it will notify the Hunter Water Representative in writing no less than 10 days prior to the date on which the Developer intends to connect Works to Existing Operations; and
- (b) it will comply with any Hunter Water directions in connection with the connection of the Works.



15.3 Completion

- (a) The Developer must arrange for the Accredited Design Consultant to issue to the Developer and the Hunter Water representative either:
 - (i) A Certificate of Completion; or
 - (ii) A notice that identifies any Defects and/or other reasons for not issuing a Certificate of Completion, the Developer must promptly correct such issues and clauses 15.3(a) will reapply.

15.4 Effect of and Correction or Modification of Certificates

The issuing of a Certificate of Completion is not an admission by Hunter Water that the requirements of this Deed have been met and does not prejudice any rights or remedies of Hunter Water.

16. OWNERSHIP, OPERATION AND MAINTENANCE OF WORKS

On and from midnight on the Date of Completion:

- (a) ownership of the Works transfers to Hunter Water, free of any security interest and at no cost; and
- (b) subject to the Developer's Defect rectification obligations under this Deed, all obligations and costs associated with operating and maintaining the Works will be borne by Hunter Water.

17. DEFECTS LIABILITY

- (a) Promptly after the Date of Completion, the Developer must at its own cost, rectify or procure the rectification of any Defects in the Works existing at that time.
- (b) Hunter Water may direct the Developer to promptly rectify, at the Developer's cost, any Defect in the Works which becomes apparent during the period up until the date that is 20 days after the expiry of the Defects Liability Period. Such directions may state the date by which the work must be completed.
- (c) Where a Defect is rectified during the initial Defects Liability Period, a separate Defects Liability Period will apply in respect of it and for the same duration as the initial Defects Liability Period.
- (d) If rectification work is not completed by the required date, Hunter Water may have it completed and the associated cost will be a debt due and payable from the Developer to Hunter Water.

18. DEVELOPER WARRANTIES

The Developer warrants to Hunter Water and repeats on each day of the term of this Deed that:

- (a) it has carefully examined all documents which comprise this Deed;
- (b) it will at all times comply with this Deed and exercise a standard of care, skill and diligence commensurate with Best Practice and ensure that its subcontractors do likewise;
- (c) the Works, when completed, will comply with this Deed;
- (d) it is legally entitled to, and has power to, enter into and perform its obligations under this Deed;
- (e) where the Developer is the trustee of a trust:
 - (i) it is the sole trustee of the relevant trust (the **Trust**) and no action has been taken to remove it;



- (ii) it has the power under the trust deed of the Trust (the **Trust Deed**) to perform this Deed;
- (iii) this Deed is executed and all transactions relating to it are or will be performed as part of the proper administration of the Trust and are or will be for the benefit of its beneficiaries;
- (iv) the Trust Deed will not be varied or revoked without Hunter Water's prior written consent; and
- (v) the Developer will not:
 - (A) retire as trustee of the Trust or appoint any new or additional trustees;
 - (B) default in its duties as trustee of the Trust; or
 - (C) exercise any power to appoint a new beneficiary or class of beneficiary.

19. INTELLECTUAL PROPERTY RIGHTS

- (a) The Developer indemnifies Hunter Water and its Personnel from and against any Liability they suffer or incur as a result of the Design Documents or Works infringing any Intellectual Property Rights of a third party.
- (b) The Developer assigns to Hunter Water all intellectual property rights in all Design Documents on and from the date of their creation.

20. DEVELOPER'S INDEMNITIES

The Developer indemnifies Hunter Water and its Personnel from and against:

- (a) loss of or damage to any property and any Liability resulting from such loss or damage;
- (b) any Liability to or claims brought against them in respect of personal injury or death; and
- (c) any Liability they suffer or incur.

arising out of, or in any way in connection with, the Developer's breach of this Deed or any Law or any negligent act or omission

21. LIMITATION OF LIABILITY

- (a) To the fullest extent permitted by Law, Hunter Water's maximum aggregate liability to the Developer under or arising out of this Deed or any Law is \$1.
- (b) To the fullest extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed.

22. INSURANCES

22.1 Public Liability Insurance

- (a) Within 30 days of the Deed Date, the Developer must:
 - (i) take out a public liability insurance policy in its name for an amount not less than that specified in Item 10, covering claims in respect of:
 - (A) damage to, loss or destruction of, or loss of use of, real or personal property;
 - (B) injury to, or disease or death of, persons; and
 - (C) financial loss,



arising out of or in connection with the Works; or

- (ii) procure that the licenced plumber or Accredited Construction Contractor engaged by the Developer to complete the Works takes out a policy that complies with clause 22.1(a)(i) but also names the Developer as named insured.

- (b) The Developer must ensure that all Consultants, suppliers and subcontractors are similarly insured.

22.2 Insurance of Employees

- (a) On or before the Deed Date, the Developer must effect and maintain workers compensation insurance that covers liability to the Developer's workers under the laws of their place of employment or place of injury arising out of injury sustained in connection with the Works.

- (b) The Developer must ensure that all Consultants and subcontractors are similarly insured.

22.3 Periods of Insurance

The Developer must ensure that all policies required under this clause 22 are maintained until the expiry of the last Defects Liability Period.

22.4 Proof of Insurance

- (a) Whenever requested by Hunter Water, the Developer must produce evidence to the satisfaction of Hunter Water that all relevant insurances have been effected and maintained in accordance with this clause 22.
- (b) If, after being so requested, the Developer fails to comply with clause 22.4(a), Hunter Water may effect the policy and all associated costs will be due and payable from the Developer to Hunter Water.
- (c) Notwithstanding clause 22.4(a) above, the Developer must supply the Hunter Water Representative evidence that the relevant insurances have been effected within 10 business days of the date the relevant insurance policy is effected, or the Deed Date, whichever occurs last.

22.5 General Obligations

- (a) The Developer must:
 - (i) not do or permit or not do anything which prejudices any of the insurances it is required to maintain by this clause 22;
 - (ii) immediately fix anything which prejudices any of the insurances it is required to maintain by this clause 22;
 - (iii) reinstate any insurance policy it is required to maintain by this clause 22 should it lapse;
 - (iv) give detailed information to its insurer(s) of all matters the non-disclosure of which might prejudice the level of cover available under any policy required by this clause 22;
 - (v) comply at all times with the terms of each policy it is required to maintain by this clause 22; and



- (vi) use its best endeavours to recover under a policy it is required to maintain under this clause 22 and indemnify Hunter Water and its Personnel up to the relevant level of insurance it is required to hold under this clause 22 should it fail to do so,

and ensure that all relevant Consultants and subcontractors do likewise.

- (b) The Developer must ensure that all policies it is required to take out under this clause 22 are taken out with reputable insurers.

23. PUBLIC ACCESS TO GOVERNMENT INFORMATION

- (a) The Developer acknowledges and agrees that Hunter Water is subject to the *Government Information (Public Access) Act 2009* (NSW) (the **GIPA Act**).
- (b) In accordance with section 121 of the GIPA Act, the Developer must, upon receipt of a written request from Hunter Water, provide Hunter Water or its nominee with immediate access to the following information contained in records held by the Developer:
 - (i) information that relates directly to the carrying out of the Works; and
 - (ii) information received by the Developer from Hunter Water to enable it to carry out the Works.
- (c) The Developer must provide Hunter Water with copies of any information referred to in clause 23(b) and requested by Hunter Water at the Developer's expense.
- (d) Any failure by the Developer to comply with any request pursuant to clause 23(b) or 23(c) will be a material breach of this Deed and entitle Hunter Water to immediately terminate this Deed.

24. DEFAULT AND TERMINATION

If:

- (a) the Developer commits a substantial breach of this Deed; or
- (b) Hunter Water believes the Developer (or a member where it is comprised of more than one person) has suffered or is likely to suffer an event which suggests that it is unable to pay its debts as and when they fall due,

then Hunter Water may terminate this Deed.

25. GENERAL

25.1 Costs

Each party will bear:

- (a) its own costs associated with the preparation and execution of this Deed; and
- (b) unless stated otherwise in this Deed, the costs associated with its performance of this Deed.

25.2 Joint and Several Obligations and Liabilities

If the Developer is made up of two or more persons:

- (a) its obligations and liabilities under this Deed bind them jointly and severally; and



- (b) it must not alter its composition or status without Hunter Water's prior written consent.

25.3 Notices

- (a) A notice or other communication under this Deed is only effective if it is in writing, signed, addressed to the party to whom it is to be given and left at their address or sent to them by mail or email. If it is:
 - (i) left at the addressee's address, it is taken to have been received when it is accepted by the addressee or left in its immediate presence;
 - (ii) sent by mail, it is taken to have been received:
 - (A) within Australia – four days after it is posted; or
 - (B) to or from a place outside Australia – 10 days after it is posted; or
 - (iii) sent by email, section 13A of the *Electronic Transactions Act 2000* (NSW) will apply to determine when it is received.
- (b) The parties' addresses are as set out in the Particulars, or as otherwise notified in writing.

25.4 Survival

Clauses 19, 20, 21, 22 and 23 and this clause 25 survive any termination or expiry of this Deed.

25.5 Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales and the parties agree that any legal proceedings brought in relation to it will be brought in the courts of that State.

25.6 Counterparts

This Deed may be executed by the parties on separate, identical versions known as 'counterparts'. If so, all counterparts taken together will constitute one agreement.

25.7 Entire Agreement

This Deed contains the entire agreement between the parties in respect of its subject matter.



EXECUTED as a Deed in **Newcastle**

[Note: Where the Developer is a company, use the following execution block. If you are a Sole Director or the Director/Secretary of the Company please sign above where it states Director / Secretary Signature]

SIGNED, SEALED AND DELIVERED as a deed by) the Developer in accordance with section 127 of the) <i>Corporations Act 2001 (Cth):</i>)	
<input type="text"/>	<input type="text"/>
Director Signature	Director / Secretary Signature
<input type="text"/>	<input type="text"/>
Print Name	Print Name

[Note: Where the Developer is not a company, use the following execution block – which will need to be repeated if the Developer is comprised of more than one person.]

SIGNED, SEALED AND DELIVERED as a deed by) the Developer in the presence of:)))	
<input type="text"/>	<input type="text"/>
Signature of Developer	Signature of Witness
<input type="text"/>	<input type="text"/>
Print Name	Print Name

[Note: Hunter Water to Execute.]

SIGNED, SEALED AND DELIVERED as a deed for) and on behalf of Hunter Water Corporation (ABN) 46 228 513 446) by its authorised representative in) the presence of:))	
<input type="text"/>	<input type="text"/>
Signature of Authorised Representative	Signature of Witness
<input type="text"/>	<input type="text"/>
Print Name	Print Name