

HUNTER WATER CORPORATION

AND

Developer:

DEVELOPER WORKS DEED COMPLEX WORKS

Development Site:

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 actions 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 it:

- (a) complete, sign and return an original of the Deed to Hunter Water at 36 Honeysuckle Drive, Newcastle NSW 2300;
- (b) take out the required insurances and demonstrate to the reasonable satisfaction of Hunter Water that you have done so;
- (c) where you do not own the development site, demonstrate to the reasonable satisfaction of Hunter Water that you are legally entitled to enter into and perform your obligations under the Deed;
- (d) engage a Hunter Water accredited design consultant (see list at www.hunterwater.com.au), separately approved by Hunter Water in writing for this project, to design the works required by the notice of requirements;
- (e) engage a Hunter Water accredited construction contractor (see list at www.hunterwater.com.au), separately approved by Hunter Water in writing for this project, to construct the works required by the notice of requirements;
- (f) obtain a Design Permission (as defined in the Deed) from the Hunter Water Representative (as defined in the Deed) confirming that all design documents are in accordance with the Deed; and
- (g) as soon as you believe the works required by the notice of requirements have reached Completion (as defined in the Deed), give written notice to the Hunter Water Representative.

Critical Points to Note

- (a) It is critical that all relevant obligations you have to Hunter Water under the Deed are included in your contracts with your accredited design consultant and accredited construction contractor.
- (b) You must not:
 - (i) commence or procure the commencement of the manufacture or construction of any works required by the notice of requirements until the Hunter Water Representative has issued you with a Design Permission; or
 - (ii) connect any works to any Hunter Water infrastructure until the Hunter Water Representative determines that all relevant works have passed all relevant tests, are in order for connection and approves such connection in writing (which may be conditional)

TABLE OF CONTENTS

PART A – PRELIMINARY	11
1. DEFINITIONS & INTERPRETATION	11
1.1 Definitions	11
1.2 Interpretation	19
1.3 No Contra Proferentem	19
2. HUNTER WATER AS AN AUTHORITY	19
3. CONDITIONS PRECEDENT	20
3.1 Conditions Precedent	20
4. NATURE OF DEED	20
PART B – DOCUMENTATION AND SECURITY	20
6. SECURITY	20
6.1 Security	20
6.2 Form	20
6.3 Release of Security	21
6.4 Conversion and Use	21
6.5 Holding of and Interest on Security	21
6.6 Deed of Guarantee and Indemnity	21
7. DOCUMENTS	22
7.1 Ambiguities and Discrepancies	22
7.2 Dimensions and Levels of Quality	22
7.3 Hunter Water Supplied Documents	22
7.4 Records and Access to Records	22
7.5 Information Documents	23
PART C – RELATIONSHIPS	24
8. RELATIONSHIP INTENT	24
9. REPRESENTATIVES	24
9.1 Hunter Water Representative	24
9.2 Developer Representative	25
10. SUBCONTRACTING	25
10.1 Restrictions on Subcontracting	25
10.2 No restrictions	26
10.3 Developer's Liabilities and Obligations Unaffected	26
10.4 Warranties from Subcontractors	26

PART D – DESIGN REQUIREMENTS	27
11. GENERAL DESIGN REQUIREMENTS	27
11.1 General Design Warranties	27
12. DESIGN REVIEW AND VALIDITY	27
12.1 Design Obligations and Design Review	27
12.2 Design validity	29
12.3 Compliance with and changes to Laws, Environmental Requirements and Applicable Requirements.....	29
PART E – CONSTRUCTION REQUIREMENTS	29
13. PROGRESS AND PROGRAMMING OF THE WORKS.....	29
13.1 Commencement.....	29
13.2 Advance Notice by Developer	29
13.3 Progress Reports	30
13.4 Forecast Completion Date.....	30
13.5 Delay and Disruption	30
14. VARIATIONS.....	30
14.1 Variations to the WUC.....	30
15. SITE	31
15.1 Access to the Site by Hunter Water and Others	31
15.2 Control of Site	31
15.3 Extra Land.....	31
15.4 Site Conditions	32
15.5 Project Site Meetings	33
15.6 Availability of Documents on Site	34
16. LAWS, CODES AND STANDARDS.....	34
16.1 Compliance with Laws, Codes and Standards and Payments	34
16.2 Licences and Approval	35
17. WORKS, HEALTH AND SAFETY AND THE ENVIRONMENT	35
17.1 Safety and the Environment	35
17.2 Principal Contractor.....	37
18. EQUIPMENT AND WORK.....	37
18.1 Developer to Provide.....	37
18.2 Quality of Equipment and Work	37
18.3 Quality Assurance	38
18.4 Details of Manufacture and Supply.....	38

18.5	Defective Equipment or Work.....	38
19.	CARE OF THE WORKS AND REINSTATEMENT OF DAMAGE.....	38
19.1	Care of the Works	38
19.2	Reinstatement.....	39
20.	PROTECTION OF PEOPLE AND PROPERTY	39
20.1	Generally.....	39
20.2	Urgent Protection and ad hoc repairs	40
	PART F – COMPLETION AND DEFECTS.....	40
21.	PRE-COMPLETION TESTS AND CERTIFICATES.....	40
21.1	Testing Equipment and Calculations	40
21.2	Pre-Completion Test Costs	40
21.3	General Test and/or Inspection Rights	41
21.4	Pre-Completion Tests.....	41
21.5	Connection.....	41
21.6	Completion.....	42
21.7	Effect of and Correction or Modification of Certificates	42
22.	OWNERSHIP, OPERATION AND MAINTENANCE OF WORKS.....	42
23.	DEFECTS LIABILITY	43
23.1	Rectification of Defects - Defects Liability Period.....	43
23.2	Records, Access and Times for Rectification Work	43
	PART G – GENERAL OBLIGATIONS.....	44
24.	DEVELOPER WARRANTIES.....	44
24.1	Warranties.....	44
24.2	Warranties Unaffected.....	46
24.3	No Duty of Care or Liability Imposed on Hunter Water	46
24.4	Acknowledgment of Reliance	47
25.	INTELLECTUAL PROPERTY RIGHTS	47
25.1	Developer’s Representations and Warranties.....	47
25.2	Indemnities.....	48
25.3	Intellectual Property Rights Granted to Hunter Water	48
25.4	Moral Rights	49
26.	DEVELOPER’S INDEMNITIES	49
26.1	Damage to Persons and Property	49
26.2	General Indemnity	49
26.3	No Exclusion	50

27.	LIMITATION OF LIABILITY	50
27.1	Liability Cap.....	50
27.2	Excluded Loss.....	50
27.3	Proportionate Liability Schemes	50
27.4	Hunter Water's right to be indemnified.....	51
28.	INSURANCES	51
28.1	Public Liability Insurance.....	51
28.2	Motor Vehicle Insurance.....	51
28.3	Insurance of Employees.....	51
28.4	Professional Indemnity Insurance.....	51
28.5	Periods of Insurance	52
28.6	Proof of Insurance.....	52
28.7	Failure to Produce Proof of Insurance	52
28.8	Notices of Potential Claims and Co-operation	52
28.9	General Obligations.....	52
29.	CONFIDENTIALITY.....	53
29.1	General Restriction.....	53
29.2	Exceptions	53
29.3	Media Releases	54
29.4	Right to Injunctive Relief.....	54
29.5	Public Access to Government Information.....	54
30.	DISPUTE RESOLUTION	55
30.1	Notice of Dispute.....	55
30.2	Executive Negotiation.....	55
30.3	Mediation	55
30.4	Summary Relief.....	55
30.5	Continuance of Performance.....	55
31.	DEFAULT AND TERMINATION.....	56
31.1	Default by the Developer	56
31.2	Requirements of a Notice by Hunter Water to Show Cause	56
31.3	Rights of Hunter Water	56
31.4	Insolvency of Developer	56
31.5	Rights of Hunter Water on Termination	57
31.6	Termination for Convenience	57
32.	PPS ACT	57
33.	GENERAL	58

33.1	Costs.....	58
33.2	Governing Law and Jurisdiction.....	58
33.3	Enforceability and prohibition	59
33.4	No Waiver	59
33.5	Joint and Several Obligations and Liabilities	59
33.6	Notices	59
33.7	Further Assurances	60
33.8	Inconsistency	60
33.9	Entire Agreement	60
33.10	Counterparts	60
33.11	No Merger	60
33.12	Approvals and Consent	60
33.13	Non Reliance.....	60
33.14	Survival	61



DEED PARTICULARS

Item	Matter	Variable
1	Deed Date	<input type="text"/>
2	Developer	Name: <input type="text"/> ABN: <input type="text"/> Address: <input type="text"/>
3	Commencement Date (clause 1.1)	<input type="text"/>
4	Forecast Completion Date (clause 1.1)	[insert date or dates where there are Separable Portions (see Item 8 and clause 5)] <input type="text"/>
5	Estimated Design and Construction Costs (clause 1.1)	[\$] <input type="text"/>
6	Design Life / Lives (clause 1.1)	<input type="text"/>
7	Hunter Water Representative (clause 1.1)	The Hunter Water Representative provided by the Notice of Requirements
8	Information Documents (clause 1.1)	<input type="text"/>
9	Separable Portions (clauses 1.1 and 5)	[None / insert details of Separable Portions] <input type="text"/>
10	Site (clause 1.1)	[insert details of site] <input type="text"/>
11	Security (clauses 6.1 and 6.6)	An unconditional undertaking in accordance with clause 6.2 and for an amount equal to 2.5% of the anticipated value of the Works notified by the Developer pursuant to clause 12.1(d)(ii)



Item	Matter	Variable
12	Guarantor (clause 1.1)	<p>[N/A / insert details of person providing Deed of Guarantee and Indemnity]</p> <div></div>
13	Developer Representative (clause 9.2)	<p>Name: <div></div></p> <p>Title: <div></div></p> <p>Address for Notice:</p> <div></div> <p>Phone: <div></div></p> <p>Email: <div></div></p>
14	Defect Rectification Threshold (clause 20.2)	<div>N/A</div>
15	Hunter Water Approvals (clause 16.2(a))	<div>N/A</div>
16	Public Liability Insurance (clause 28.1)	\$20 million for each and every claim and unlimited in the aggregate
17	Motor Vehicle Insurance (clause 28.2)	<p>With respect to:</p> <p>(a) third party property damage - \$20 million for any one claim and unlimited in the aggregate; and</p> <p>(b) compulsory third party insurance covering death or injury - as required by Law</p>
18	Professional Indemnity Insurance (clause 28.4)	\$10 million per claim and in the annual aggregate, with provision for one automatic reinstatement
19	Notice of Requirements (clause 1.1)	<p>The notice of requirements issued to the Developer by Hunter Water dated</p> <div></div>



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 PERSON IDENTIFIED IN ITEM 2 (*Developer*)

RECITALS

- 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:
 - a. grant the applicant a compliance certificate in relation to the proposed development; or
 - b. serve a notice requiring the applicant to enter into an agreement providing for one or more of the following:
 - i. payment of an amount to Hunter Water for amplification of Hunter Water's works and the headworks as a consequence of the proposed development;
 - ii. construction of the works specified in the notice from Hunter Water; and/or
 - iii. transfer of the relevant works to Hunter Water,and, if Hunter Water considers necessary, require the developer to provide reasonable security.
- 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, Hunter Water must grant the developer a compliance certificate with respect to the proposed development.
- 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 confirming the actions the Developer needs to take before Hunter Water will issue it with a compliance certificate in respect of the Site for the purposes of section 50 of the Hunter Water Act.
- F. This Deed sets out the terms on which the Developer agrees to procure the design, construction, completion and testing of the Works and transfer ownership of them to Hunter Water.



OPERATIVE PROVISIONS

PART A – PRELIMINARY

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

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 and the then current versions of the Hunter Water Design Codes, 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 which must be obtained or satisfied (as the case may be):

- (a) to perform the WUC;
- (b) in connection with the Site and any Extra Land prior to the Date of Completion; or
- (c) otherwise to comply with any Law,

but does not include:

- (d) any direction given by Hunter Water or the Hunter Water Representative pursuant to this Deed; or



- (e) the exercise by Hunter Water of its rights under this Deed.

Author means any person who is the author of any Copyright Works which are assigned or licenced to Hunter Water under this Deed.

Authority means any:

- (a) court or tribunal of competent jurisdiction; or
- (b) agency, authority, board, department, government instrumentality, government minister, ministry, official or public or statutory personnel of the Commonwealth of Australia or New South Wales, and any local government or government bodies.

Best Practice means the practices, methods, specifications, standards of safety, design, construction, commissioning, testing and performance and acts which are engaged in or observed by highly skilled consultants and contractors in the design and construction industries with respect to the design, construction, commissioning and testing of works similar to the Works.

Change Event means a change to an Applicable Requirement or Existing Operations.

Commencement Date means the date identified as such in Item 3.

Completion means that stage in the execution of the WUC when:

- (a) Hunter Water determines that the Works (including the installation of all Equipment) have passed all Pre-Completion Tests and tests directed pursuant to clause 21.3 and are complete except for minor Defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose and without voiding any warranties;
 - (ii) which the Hunter Water Representative determines the Developer has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Works;
- (b) the Works have been connected to the Existing Operations in accordance with clause 21.5;
- (c) the Works are able to be operated safely under normal operating conditions;
- (d) the Site, any Extra Land and their surrounding areas have been rehabilitated to their original condition (as near as practicable, having regard to the Works) in accordance with the requirements of all relevant Authorities and other relevant persons;
- (e) the Works are in a condition which allows compliance with all relevant Laws and the requirements of all relevant Authorities and all other relevant persons have been satisfied;
- (f) all documents and information required under this Deed to be supplied to the Hunter Water Representative as a prerequisite for Completion, have been supplied;



- (g) all certificates, licences, consents, permits, registrations and other Approvals to be obtained by the Developer under this Deed have been obtained;
- (h) the Developer has provided to the Hunter Water Representative a final set of electronic 'work as constructed' drawings of the Works (on CD-ROM or DVD in AutoCAD or such other format the Hunter Water Representative may approve) which:
 - (i) show the levels, lines, positions, arrangements and dimensions of the Works as constructed;
 - (ii) comply with Hunter Water Standard Technical Specification 903 – Work as Constructed Information; and
 - (iii) are approved by the Hunter Water Representative in writing;
- (i) the Developer has provided to the Hunter Water Representative executed certificates from the:
 - (i) Accredited Design Consultant (in the form set out in Part 1 of Schedule 2); and
 - (ii) Accredited Construction Contractor (in the form set out in Part 2 of Schedule 2);
- (j) the Developer has provided Hunter Water with security in accordance with clause 6 and Item 11; and
- (k) all other prerequisites for the achievement of Completion expressly stated in this Deed have been satisfied in accordance with this Deed.

Completion Certificate means a certificate identified as such and issued by Hunter Water.

Concept Design Completion means the stage when the Developer reasonably believes that the Design Documents include detail sufficient for the Developer to prepare or procure the preparation of detailed Design Documents that accord with this Deed.

Confidential Information means any information revealed by or on behalf of Hunter Water to the Developer or its Personnel concerning Hunter Water's past, present or future:

- (a) structure, business activities, strategies, plans and assets;
- (b) trade secrets, know how, processes and techniques; or
- (c) financial affairs,

as well as any other information that:

- (d) is by its nature confidential;
- (e) is marked or designated as confidential or proprietary at the time of its disclosure; or
- (f) the Developer knows or ought to know is confidential.



Constructional Plant means sheds, temporary buildings, plant, equipment, machinery, tools, vehicles, scaffolding and other things used in the execution of the WUC, but not forming part of the Works.

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

Contribution Deed for Developer Delivered Infrastructure means any deed or agreement between Hunter Water and the Developer pursuant to which Hunter Water agrees to contribute to the cost of completing the WUC.

Copyright Works are any copyright works forming part of the Design Documents or any other documentation, which the Developer is required to provide to Hunter Water under this Deed.

Date of Completion means the date notified to the Developer by the Hunter Water Representative in a Completion Certificate as the date on which the Works reached Completion.

Deed Date means the date set out in Item 1.

Defect includes any:

- (a) defect or deficiency in design, materials or workmanship;
- (b) omission of any WUC;
- (c) non-compliance of the WUC, or any part thereof, with this Deed; and
- (d) physical damage to the Works resulting from such defect, deficiency, omission or non-compliance.

Defect Rectification Threshold means the threshold identified in Item 14.

Defects Liability Period means the period that commences on the Date of Completion and expires 24 months thereafter, unless extended in accordance with clause 23.

Design Documents means the drawings (including 'work as constructed' drawings), specifications, manuals, designs and other information, calculations, samples, models, patterns and the like provided or to be provided by or on behalf of the Developer or any of its Personnel under this Deed (in all forms, including electronic) and which:

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

Design Life means the design life or lives set out in Item 6.

Design Permission has the meaning given to that term in clause 12.1(h)(ii).

Detailed Design Completion means the stage when the Developer reasonably believes that the Design Documents include detail sufficient for the Developer to execute the WUC in accordance with this Deed.

Developer's Background IP means Intellectual Property Rights owned by or licensed to the Developer which existed prior to the Deed Date or are developed or acquired by the Developer independently of this Deed and used in the performance of the WUC or otherwise made available to Hunter Water under or in connection with this Deed, but does not include Project IP.



Developer's Design Obligations means all tasks necessary to design and specify the Works, including the preparation of the Design Documents.

Emergency means any situation, event, occurrence or multiple occurrences that:

- (a) constitutes or may constitute a hazard to or jeopardises the health or safety of any person;
- (b) causes or may cause material damage to the WUC, Site, Extra Land, the Environment or any other land or property;
- (c) may or actually interferes with the operation of any part of the Existing Operations; or
- (d) compromises any legal, safety or quality requirements (including under any Law or this Deed).

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) all natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas that contribute to their biological diversity and integrity, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, the things mentioned in paragraphs (a), (b) or (c).

Environmental Law means any Law relating to the Environment.

Environmental Requirements include the requirements of Hunter Water's environmental management plan(s) for the WUC and/or Site (a copy of which the Developer acknowledges it has received and understood), the requirements of Environmental Laws and the requirements of environmental authorities, licences, Approvals, permits, decisions, documents, requirements, conditions, notices and/or management plans for the WUC and/or Site issued under or prepared pursuant to Environmental Laws.

Equipment means any equipment, plant, materials, machinery, goods, parts and other items incorporated or to be incorporated into the Works.'

Estimated Design and Construction Costs means the Developer's estimate of the cost 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.

Extra Land means the land and buildings referred to in clause 15.3(a)(i).

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

Guarantor means the person identified as such in Item 12.

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

Hunter Water Design Codes means the design codes published by Hunter Water from time-to-time.



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 and any Hunter Water approved servicing strategy and/or Contribution Deed for Developer Delivered Infrastructure.

Hunter Water Representative means the person identified as such in Item 6 or such other person notified to the Developer in writing by Hunter Water.

Information Document means any information, data, document or material which:

- (a) is referred to in Item 8;
- (b) was issued or made available by, or on behalf of, Hunter Water to the Developer in connection with the Site or Works (including through the Hunter Water website); or
- (c) is referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is expressly stated to form part of this Deed,

whether issued or made available on, before or after the Deed Date, other than information, data, document or material Hunter Water is obliged to warrant the accuracy of by Law.

Intellectual Property Rights means any and all intellectual property rights and other proprietary rights in relation to inventions, innovations, ideas, patents, applications for patents, copyright, registered and unregistered designs and trademarks, utility models, designs, rights in relation to circuit layouts, mask rights, rights in relation to technologies in development, trade secrets, know-how and confidential information and all other intellectual property defined in article 2 of the Convention establishing the World Intellectual Property Organization of July 1967, including any right to register those rights, whether created before or after the Deed Date and whether existing in Australia or any other country and in all cases for the duration of those rights (but excludes Moral Rights and similar personal rights in works).

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:

- (a) any liability of any kind; and
 - (b) without limiting paragraph (a) and to the extent not prohibited by Law, any fine or penalty,
- whether direct, indirect, present, future, fixed, unascertained, actual or contingent.

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



Moral Rights has the meaning given by Part IX of the *Copyright Act* 1968 (Cth), and any similar right existing under foreign law.

Notice of Requirements means the notice identified as such in Item 19.

Particulars means the deed particulars set out on page 1 of this Deed.

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

PPS Act means the *Personal Properties Security Act* 2009 (Cth).

Pre-Completion Tests means those tests required by the:

- (a) Accredited Design Consultant; and
- (b) then current versions of all relevant design codes, including the Hunter Water Design Codes, WSAA Code and all relevant Australian Standards.

Project IP means all Intellectual Property Rights arising or created by the Developer or any Subcontractor or any agent or employee of any of them in performing the WUC and the Developer's other obligations under this Deed, including Intellectual Property Rights subsisting in or in relation to the Design Documents and the Works (including any plant, equipment or other items forming part of the Works), but does not include the Developer's Background IP.

Rating Criteria means a financial rating of A- or better from Standard and Poor's, Moody's, A M Best or Fitch or an equivalent rating from another recognised financial rating agency.

Resolution Institute Rules for Mediation means the mediation rules published by Resolution Institute from time-to-time on its website (<https://www.resolution.institute/>).

Security Interest means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, contractual right of set off or other security arrangement in favour of any person, and includes any "security interest" as defined in the PPS Act.

Separable Portion means a portion of the Works described as such in Item 9 or directed by the Hunter Water Representative pursuant to clause 5.

Shutdown Requirements means any requirement notified by or on behalf of Hunter Water to the Developer with respect to shutdowns and interruptions to any Existing Operations to facilitate connection of the Works to Existing Operations.

Site means the site identified in Item 10.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site and any Extra Land or their surroundings including:

- (a) artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;



- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of Hunter Water or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any contamination, hazardous substance or other spoil or waste;
- (f) topography of the Site and Extra Land, ground surface conditions and geology;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of such things; and
- (k) any latent conditions.

Statutory Fee means any fee, charge or levy payable:

- (a) under any Law that applies to the WUC or Site or any part thereof; or
- (b) for any certificate, licence, consent, permit, registration, Approval or requirement of any Authority or organisation having jurisdiction in connection with the WUC or any part thereof.

Subcontractor means a subcontractor approved by Hunter Water in accordance with clause 10.

Tax means any tax, excise, customs duty, tariff or primeage or other impost imposed by any statute, government or taxing authority in Australia or elsewhere, excluding any Statutory Fee.

Temporary Works means works used in the execution of the WUC but not forming part of the Works.

Utility Service means any service, facility or item of infrastructure, including water, electricity, gas, fuel, telephone, sewerage, industrial waste, disposal and electronic communications service.

WHS Legislation means legislation relating to health and safety at work including the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulations 2011* (NSW).

Works means the physical works the Developer must design and construct in accordance with this Deed which are to be handed over to Hunter Water.

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

WUC (for 'work under the contract') means all work, services and other things the Developer is or may be required to do under this Deed to design, construct, complete and test, and includes any variations, rectification work, Constructional Plant and Temporary Works.



1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity recognised by Law;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing one gender include every gender;
- (d) any reference to any of the parties by their defined terms includes the party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (e) clause headings are for reference purposes only;
- (f) reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time-to-time;
- (g) reference to a statute includes all regulations made under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions;
- (h) reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) "including" and "includes" are not words of limitation.

1.3 No Contra Proferentem

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.

2. HUNTER WATER AS AN AUTHORITY

The Developer acknowledges and agrees that:

- (a) this Deed does not restrict or affect the unfettered discretion of Hunter Water to exercise any of its statutory functions or powers; and
- (b) anything Hunter Water does, fails to do or purports to do, pursuant to its statutory functions and powers will be deemed to not be an act or omission of Hunter Water under or in connection with this Deed and the Developer is not entitled to, must not make and Hunter Water will not be liable for any claim against Hunter Water in connection with such statutory functions or powers.



3. CONDITIONS PRECEDENT

3.1 Conditions Precedent

- (a) The commencement of this Deed is conditional upon the Developer demonstrating to the reasonable satisfaction of Hunter Water that it has complied with its insurance obligations under clause 28 (the **Condition Precedent**):
- (b) If the Condition Precedent has not been satisfied by the Developer in accordance with clause 3.1(a), or waived by Hunter Water in writing at its absolute discretion, by the date that is 20 days after the Deed Date, then Hunter Water may terminate this Deed by written notice to the Developer and Hunter Water will have no liability to the Developer in relation to any such termination.
- (c) All obligations not expressed to apply on the Commencement Date apply from the Deed Date.

4. NATURE OF DEED

The Developer must execute and complete the WUC in accordance with this Deed and using Best Practice and perform and observe all other provisions expressed in or reasonably inferred from this Deed which are to be performed and observed by the Developer.

5. SEPARABLE PORTIONS

- (a) In addition to the Separable Portions set out in Item 9 (if any), Separable Portions may be directed by the Hunter Water Representative in writing at any time up until the Date of Completion of all of the Works, provided that any such direction clearly identifies the relevant portion of the Works and Forecast Completion Date.
- (b) Clauses 13, 14, 19, 21, 22 and 24 apply separately to each Separable Portion and references therein to the Works mean so much of the Works as is comprised in the relevant Separable Portion.

PART B – DOCUMENTATION AND SECURITY

6. SECURITY

6.1 Security

As a condition precedent to the achievement of Completion, the Developer must provide Hunter Water with security in accordance with this clause 6 and Item 11.

6.2 Form

All security to be provided by the Developer under this Deed must be:

- (a) in the form of an unconditional, irrevocable, payable-on-demand banker's undertaking in the form set out in Schedule 1 or such other form approved by Hunter Water in writing;



- (b) duly stamped where required by Law; and
- (c) from a bank which carries on commercial banking in Newcastle, is licensed under the *Banking Act* 1959 (Cth) and satisfies the Rating Criteria.

6.3 Release of Security

Subject to Hunter Water's rights under clause 6.4, Hunter Water must release the security provided by the Developer under this clause 6 within 28 days after the expiry of the last Defects Liability Period to expire under this Deed.

6.4 Conversion and Use

- (a) Without limiting any of Hunter Water's other rights, Hunter Water may, at any time, convert into money any security that does not consist of money and may use those moneys to:
 - (i) satisfy any debt due from the Developer to Hunter Water which remains unpaid 7 days after payment was due and payable by the Developer; and/or
 - (ii) pay for any costs, losses, expenses or damages Hunter Water claims it has incurred or suffered or reasonably considers it might in the future incur or suffer as a consequence of any act or omission of the Developer Hunter Water asserts constitutes a breach of this Deed or any Contribution Deed for Developer Delivered Infrastructure.
- (b) The Developer must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of the security from paying Hunter Water pursuant to the security;
 - (ii) Hunter Water from taking any steps which may be a precondition to obtaining payment under the security; or
 - (iii) Hunter Water from using the moneys received under the security.
- (c) Hunter Water will not be liable for any loss occasioned by the conversion of any security into money in accordance with this clause 6.4.

6.5 Holding of and Interest on Security

- (a) Hunter Water does not hold any security (including the proceeds of any undertaking converted into money by Hunter Water) as a trustee and Hunter Water is not obliged to hold the proceeds resulting from any conversion of an undertaking into money in any particular account.
- (b) If Hunter Water converts an undertaking into money, any interest earned on it will be retained by Hunter Water.

6.6 Deed of Guarantee and Indemnity

If Item 12 indicates that a deed of guarantee and indemnity is to be provided by the Developer, the Developer must provide Hunter Water with such a deed:

- (a) by the date that is 20 days after the Deed Date;



- (b) in the form contained in Schedule 4; and
- (c) duly executed by the Guarantor.

7. DOCUMENTS

7.1 Ambiguities and Discrepancies

- (a) 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.
- (b) All ambiguities and discrepancies in and between the documents comprising this Deed are at the Developer's risk and it has no entitlement to any payment as a result of any direction from the Hunter Water Representative under clause 7.1(a).

7.2 Dimensions and Levels of Quality

- (a) Where any discrepancy exists between figured and scaled dimensions in any documents comprising this Deed, the figured dimensions prevail.
- (b) Where inconsistent levels of quality are indicated in any documents comprising this Deed, the more specific or higher level of quality applies.

7.3 Hunter Water Supplied Documents

All documents supplied by or on behalf of Hunter Water to the Developer:

- (a) remain the property of Hunter Water and must be returned to Hunter Water on demand; and
- (b) must not, without the prior written approval of Hunter Water, be used, copied or reproduced for any purpose other than the execution of the WUC.

7.4 Records and Access to Records

- (a) The Developer must make and keep, and ensure that all Subcontractors make and keep, accurate records of the WUC, including all documents referred to in this Deed, calculations and mark ups, complete photographic records, quality system documents and records, results of the examination and testing of any work or Equipment, all Consultants' reports and opinions obtained by the Developer in relation to the matters referred to in this clause 7.4 and all necessary supporting documents, whether in writing or stored on any other medium (together, **Records**).
- (b) The Records must not be destroyed before the later of:
 - (i) 7 years after the Date of Completion; or
 - (ii) the resolution of all claims and disputes between the parties under this Deed.
- (c) At any time up until the Developer is no longer required to maintain the Records under this Deed, Hunter Water may give a notice to the Developer requiring it to produce some or all Records so



Hunter Water and/or its nominees can inspect and copy them and the Developer must comply with any such notice.

7.5 Information Documents

- (a) Without limiting or otherwise affecting clause 7.5(b):
 - (i) the parties agree that Hunter Water does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy or completeness of any Information Documents;
 - (ii) whether or not an Information Document or any part thereof forms an exhibit or attachment to this Deed, the Developer acknowledges that:
 - (A) the Information Document or part thereof does not form part of this Deed and clause 7.5(b) applies to the Information Document or part thereof; and
 - (B) it does so only for the purposes of identification of that document or part thereof;
 - (iii) insofar as is permitted by Law, Hunter Water will not be liable upon any claim by the Developer arising out of or in any way in connection with:
 - (A) the provision of, or purported reliance upon, or use of Information Documents to or by the Developer or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by Hunter Water to provide any information to the Developer.
- (b) The Developer:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to it by, Hunter Water or anyone on behalf of Hunter Water or any other information, data, representation, statement or document for which Hunter Water is responsible; or
 - (B) the accuracy, adequacy or completeness of such information, data, representation, statement or document for the purposes of entering into this Deed or carrying out the WUC,but nothing in this subclause limits or affects the Developer's obligations under this Deed;
 - (ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that Hunter Water entered into the Deed relying on the warranties, acknowledgements and agreements in clauses 7.5(a), 7.5(b)(i) and 7.5(b)(ii).
- (c) The Developer releases and indemnifies Hunter Water and its Personnel from and against:



- (i) any Liability to or claim by any other person; and
- (ii) without being limited by clause 7.5(a), any Liability incurred by Hunter Water or any of its Personnel,

arising out of or in any way in connection with:

- (iii) the provision of, or purported reliance upon, or use of, Information Documents to or by the Developer or any other person to whom the Information Documents are disclosed by the Developer or a failure by Hunter Water to provide any information to the Developer;
- (iv) any breach by the Developer of this clause 7.5; or
- (v) the Information Documents being relied upon by the Developer or its Personnel in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false or misleading" (as defined in the *Competition and Consumer Act 2010* (Cth)), or any equivalent State legislation.

PART C – RELATIONSHIPS

8. RELATIONSHIP INTENT

- (a) The Developer acknowledges that it is responsible for managing all relationships that arise during the course of the Works, including:
 - (i) Subcontractors which have been approved by Hunter Water pursuant to clause 10; and
 - (ii) owners of or stakeholders in any Extra Land.
- (b) Hunter Water and the Developer must each appoint a Representative pursuant to clause 9 for the day to day conduct of this Deed.

9. REPRESENTATIVES

9.1 Hunter Water Representative

- (a) The parties acknowledge and agree that the Hunter Water Representative acts as the agent of Hunter Water, is subject to the directions of Hunter Water and will act solely in the interests of Hunter Water.
- (b) Hunter Water must ensure that at all times there is a Hunter Water Representative, but may at any time change any Hunter Water Representative by written notice to the Developer.
- (c) The Developer must comply with any direction given by the Hunter Water Representative pursuant to this Deed.
- (d) The Hunter Water Representative may from time-to-time appoint delegates to exercise any of its functions under this Deed however, the appointment of a delegate does not prevent the Hunter Water Representative from exercising any function.



- (e) The Hunter Water Representative must notify the Developer in writing of the appointment and name of any delegate and the functions delegated to him or her as well as the termination of any such appointment.

9.2 Developer Representative

- (a) The Developer must superintend the execution of the WUC at all times by a competent person and, as at the Deed Date, that person is the person named in Item 13 (the ***Developer Representative***).
- (b) The Developer may only change the Developer Representative with the prior written approval of the Hunter Water Representative.
- (c) The Developer acknowledges and agrees that:
 - (i) a direction of the Hunter Water Representative related to the execution of WUC is deemed to have been given to the Developer if it is given to the Developer Representative; and
 - (ii) matters within the knowledge of the Developer Representative are deemed to be within the knowledge of the Developer.

10. SUBCONTRACTING

10.1 Restrictions on Subcontracting

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

- (a) design consultant is an Accredited Design Consultant;
- (b) supplier is an Accredited Supplier;
- (c) non-design consultant is an Accredited Construction Contractor; or
- (d) subcontractor is approved in writing by Hunter Water (which is at Hunter Water's absolute discretion and may be on terms); and
- (e) the relevant subcontract contains provisions:
 - (i) to the effect that the Subcontractor must not assign or subcontract any of the subcontracted WUC without the prior written consent of Hunter Water;
 - (ii) to the effect that the Subcontractor must maintain insurances on terms equivalent to those required to be maintained by the Developer under clause 28;
 - (iii) which will enable the Developer to discharge its obligations and liabilities to Hunter Water under this Deed in respect of the subcontracted WUC;
 - (iv) similar to those included in clauses 20.2 and 25 to enable the assignment by the Developer to Hunter Water of all Project IP and Developer's Background IP; and
 - (v) which state that upon the termination of the subcontract, the Subcontractor must, if so directed by Hunter Water:



- (A) provide to Hunter Water all relevant designs, documents and materials; and
- (B) do all things necessary to assign or novate to Hunter Water the Developer's interest in the subcontract.

10.2 **No restrictions**

The Developer warrants that it has no agreement, arrangement or understanding with any Subcontractor which would or might:

- (a) restrict the supply of spare parts for the Works directly to Hunter Water; or
- (b) interfere with, restrict or impede Hunter Water in the exercise of any right under this Deed.

10.3 **Developer's Liabilities and Obligations Unaffected**

None of the following:

- (a) any accreditation of a Subcontractor by Hunter Water;
- (b) approval given by Hunter Water under clause 10.1;
- (c) the delivery or assignment of any warranty under clause 10.4;
- (d) the subcontracting of any WUC to a Subcontractor or any work by a Subcontractor; or
- (e) the termination or rescission of a subcontract,

will relieve the Developer from any obligation under this Deed and the Developer is liable to Hunter Water for the acts, defaults and omissions of Subcontractors and their employees and agents as if they were acts, defaults or omissions of the Developer.

10.4 **Warranties from Subcontractors**

- (a) The Developer must, as a prerequisite to Completion, procure and provide Hunter Water with duly completed and executed collateral warranty deed polls from all Subcontractors who performed WUC in the form of Schedule 3 and in favour of Hunter Water.
- (b) In addition to clause 10.4(a), the Developer must assign to Hunter Water the benefit of all warranties it obtains from Subcontractors and manufacturers and suppliers of Equipment and other items incorporated into the Works where such warranties operate beyond the Defects Liability Period. These warranties and rights must be such that they can be directly enforced by Hunter Water against the parties giving the warranties.
- (c) Nothing in this clause 10.4, nor any collateral warranty deed poll or assignment of warranty rights affects the Developer's obligations or liabilities, nor derogates from any rights Hunter Water may have against the Developer, in respect of the subject matter of the collateral warranty deed polls or assigned warranties.



PART D – DESIGN REQUIREMENTS

11. GENERAL DESIGN REQUIREMENTS

11.1 General Design Warranties

- (a) The Developer warrants to Hunter Water and repeats on each day of the term of this Deed that it will procure the completion of the Developer's Design Obligations such that the Design Documents:
 - (i) comply with this Deed;
 - (ii) are and at all relevant times remain, fit for their intended purposes;
 - (iii) comply with all Laws, Environmental Requirements, the Hunter Water Project Requirements and Applicable Requirements;
 - (iv) are suitable for the Site, Environment and conditions in which the Works will operate;
 - (v) do not infringe any Intellectual Property Right or other protected right; and
 - (vi) include all features and items of plant and Equipment necessary for the proper and efficient operation and maintenance of the Works;
- (b) The Developer warrants and for all purposes it will be deemed to be the case that, prior to the Deed Date, it was given reasonable opportunity prior to executing this Deed to undertake and have others undertake, tests and investigations relating to the subject matter of Information Documents and for design purposes and otherwise;

12. DESIGN REVIEW AND VALIDITY

12.1 Design Obligations and Design Review

- (a) The Developer must carry out the Developer's Design Obligations in accordance with this Deed and the Hunter Water Project Requirements.
- (b) The Design Documents are to be submitted to Hunter Water by the Developer for review on 2 occasions:
 - (i) on the achievement of Concept Design Completion; and
 - (ii) on the achievement of Detailed Design Completion,and the Developer must not commence or procure the commencement of the preparation of detailed Design Documents unless and until the Hunter Water Representative has given the Developer written permission to use the concept Design Documents.
- (c) The Developer must provide the Hunter Water Representative with 14 days' prior notice of the anticipated date of submission of the Design Documents to the Hunter Water Representative (**Advance Notice**).



- (d) The Developer must submit the Design Documents to the Hunter Water Representative together with the following in the case of the detailed Design Documents:
 - (i) a certificate from the Accredited Design Consultant who prepared them (in the form set out in Part 1 of Schedule 2); and
 - (ii) an estimate (to the reasonable satisfaction of Hunter Water) of the anticipated value of the Works which, if required by the Hunter Water Representative, must be prepared by an independent and experienced quantity surveyor.
- (e) Whenever the Developer submits Design Documents to the Hunter Water Representative, the Developer must notify the Hunter Water Representative that they are documents to which this clause 12.1 applies.
- (f) Within:
 - (i) if the Developer has provided the Advance Notice, 28 days; or
 - (ii) otherwise, 42 days,after its receipt of any Design Documents so identified, the Hunter Water Representative must give the Developer written notice notifying it that it has or does not have permission to use the Design Documents for:
 - (iii) in the case of the concept Design Documents, the purpose of preparing the detailed Design Documents; and
 - (iv) in the case of the detailed Design Documents, the execution of the WUC.
- (g) If the Hunter Water Representative notifies the Developer that it does not have such permission, the Hunter Water Representative must give reasons why permission was not given and the Developer must promptly submit new or amended Design Documents to the Hunter Water Representative and this clause 12.1 applies to those documents.
- (h) The Developer must not commence or procure the commencement of the manufacture or construction of any part of the Works unless and until:
 - (i) the detailed Design Documents have been certified by the Accredited Design Consultant pursuant to clause 12.1(d)(d)(i); and
 - (ii) the Hunter Water Representative has given the Developer a written notice that the Developer has permission to use the detailed Design Documents for the execution of the WUC (**Design Permission**).
- (i) Notwithstanding the remainder of this clause 12.1, the Developer must give the Hunter Water Representative throughout the preparation of the Design Documents the opportunity to review, comment on and monitor the design performance of the Developer in accordance with this clause.



12.2 Design validity

- (a) The Design Permission will be valid for a period of 12 months from the date of issue (**Design Validity Period**).
- (b) If the Developer has not substantially commenced the manufacture or construction of the Works prior to the expiration of the Design Validity Period, then the Design Permission will lapse and the Developer must undertake the following prior to the commencement of the manufacture or construction of any part of the Works:
 - (i) revise the Design Documents to comply with any changes to Applicable Requirements;
 - (ii) obtain a certificate from the Accredited Design Consultant (in the form set out in Part 1 of Schedule 2);
 - (iii) resubmit the Design Documents and the certificate to the Hunter Water Representative; and
 - (iv) obtain the Design Permission from the Hunter Water Representative,in accordance with clause 12.1.

12.3 Compliance with and changes to Laws, Environmental Requirements and Applicable Requirements

- (a) The Developer is responsible for ensuring that the Design Documents comply with all Laws, Environmental Requirements at all times, at its cost.
- (b) If a Change Event arises during the Design Validity Period, the Developer is not required to amend the Design Documents to address the Change Event unless the Hunter Water Representative issues the Developer a direction to rectify pursuant to clause 14.1.
- (c) If the Hunter Water Representative issues the Developer a direction to rectify under clause 12.3(b), Hunter Water must pay the Developer its reasonable costs incurred as a direct result of the direction.

PART E – CONSTRUCTION REQUIREMENTS

13. PROGRESS AND PROGRAMMING OF THE WORKS

13.1 Commencement

The Developer must commence the WUC promptly after the Commencement Date and proceed with the performance of the WUC with due expedition.

13.2 Advance Notice by Developer

The Developer must give the Hunter Water Representative no less than 14 days' advance notice of when the Developer requires any information or instructions from Hunter Water.



13.3 Progress Reports

The Developer must submit to the Hunter Water Representative, whenever requested to do so by the Hunter Water Representative, written reports on the progress of the WUC to the Hunter Water Representative's satisfaction.

13.4 Forecast Completion Date

- (a) The Developer must achieve Completion by the Forecast Completion Date.
- (b) The Developer may request Hunter Water's approval to amend the Forecast Completion Date by notice in writing to the Hunter Water Representative.
- (c) Hunter Water may in its discretion extend the Forecast Completion Date by notice to the Developer.

13.5 Delay and Disruption

- (a) The Developer accepts and will bear the risk of and liability for bringing the Works to Completion by the Forecast Completion Date, notwithstanding any delays or disruptions. The Developer must minimise any delay in the performance of its obligations under this Deed.
- (b) Immediately upon the Developer becoming aware of anything which may delay the WUC, the Developer must notify the Hunter Water Representative and give details of the possible delay.
- (c) The Developer is not entitled to recover or seek to recover any costs or damages from Hunter Water for any delay or disruption in the execution of the WUC howsoever caused.

14. VARIATIONS

14.1 Variations to the WUC

- (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 WUC;
 - (ii) change the Works, including any addition, decrease, omission, demolition or removal;
 - (iii) change the character or quality of any Equipment or work;
 - (iv) change the levels, lines, positions or dimensions of anything described in the Design Documents or any part of the WUC; and/or
 - (v) 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:
 - (vi) the parties (acting reasonably) have agreed the value of the variation prior to the Developer giving effect to it; or



- (vii) failing agreement of the type contemplated in clause 14(a)(vi) within 14 days after the date of 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 WUC except as directed or approved in writing by the Hunter Water Representative.
- (c) Any work, Equipment or other item that, by virtue of the operation of clause 18.1(a), is taken to be specifically mentioned in this Deed, is deemed to be part of the WUC and will not be a variation nor require a variation direction under this clause 14.

15. SITE

15.1 Access to the Site by Hunter Water and Others

- (a) Hunter Water and its Personnel may at any time have access to any part of the Site.
- (b) The Developer must at all times give Hunter Water and other persons authorised in writing by Hunter Water, access to the WUC at any place where it is being carried out or Equipment is being prepared or stored.

15.2 Control of Site

- (a) Notwithstanding and without limiting any rights Hunter Water may have under this Deed, to the extent permitted by all relevant Laws, the Developer is responsible for the management and control of the Site and must:
 - (i) control access to, and the security and maintenance of, and must ensure public safety on, and adjacent to, the Site;
 - (ii) keep any delays or disruptions to the movement of the public and all road users to an absolute minimum; and
 - (iii) comply with all directions of Authorities with respect to such access and movement.
- (b) The parties acknowledge and agree that, to the extent permitted by all relevant Laws, nothing in this Deed will be construed to mean or imply that Hunter Water has any responsibility for any act or omission by the Developer or its Subcontractors or agents, including compliance or noncompliance with any Laws, Approvals or this Deed.

15.3 Extra Land

- (a) The Developer must:
 - (i) procure for itself and at its cost rights over any land or buildings in addition to the Site necessary for the WUC to be executed in accordance with this Deed;
 - (ii) not commence any part of WUC until it has demonstrated to the reasonable satisfaction of Hunter Water that in respect of any Extra Land for which it is not the owner, it is legally



entitled to enter into and perform its obligations under this Deed and to carry out the transactions contemplated within it;

- (iii) as a condition precedent to Completion:
 - (A) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (B) provide to the Hunter Water Representative:
 - (I) a properly executed release on terms satisfactory to the Hunter Water Representative from all claims from the owner(s) or occupier(s) of, and from any other person(s) having an interest in, Extra Land; or
 - (II) if the Developer is unable to obtain such a release despite using its best endeavours to do so, a statement from the Developer to the effect that such persons have failed or refused to execute such a release within 20 days after it was provided to them by the Developer following completion of the work on the Extra Land; and
- (iv) indemnify Hunter Water from and against any Liability to or claim by any person and any Liability suffered or incurred by Hunter Water, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
 - (A) such owner or occupier has not executed such a release; and
 - (B) the claim or Liability arises out of or in connection with the WUC.
- (b) The Developer acknowledges and agrees that:
 - (i) integration of the requirements for access to Extra Land is at the Developer's sole risk; and
 - (ii) Hunter Water will not be liable upon any claim (insofar as is permitted by Law) by the Developer or any of its Personnel arising out of or in connection with:
 - (A) identifying and obtaining access to Extra Land; or
 - (B) any delay, additional costs or other effects related to the ability of the Developer or its Subcontractors to obtain access to Extra Land.

15.4 Site Conditions

- (a) The Developer warrants and for all purposes it will be deemed to be the case that, prior to the Deed Date, it:
 - (i) examined this Deed, the Site and its surroundings and any other information made available to the Developer by or on behalf of Hunter Water;
 - (ii) examined, investigated and relied solely upon its own assessment, skill, expertise and inquiries in respect of all information relevant to the risks and circumstances having an effect on its obligations under this Deed;



- (iii) has made adequate allowance for the costs of complying with its obligations under this Deed and all matters necessary for the due and proper completion of the WUC;
 - (iv) informed itself of all matters relevant to all industrial matters relevant to the Site;
 - (v) had sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to this Deed, the Information Documents, the Site Conditions and the risks and other circumstances having an effect on this Deed; and
 - (vi) undertook sufficient tests and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to make an informed decision about whether to enter into this Deed.
- (b) Except to the extent required by Law, Hunter Water makes no representation to the Developer in respect of:
 - (i) the Site Conditions and what may be encountered during the execution of the WUC or otherwise in respect of the Site Conditions, Extra Land or their surroundings; or
 - (ii) the existence, location, condition or availability of any Utility Service.
- (c) The Developer accepts the Site and any Extra Land in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of all Liability, delay or disruption it suffers or incurs and any adverse effect on the Works or Temporary Works, arising out of, or connected with the Site Conditions encountered in performing the WUC.
- (d) The Developer must investigate, design and construct the Works and Temporary Works in accordance with this Deed and will not be relieved of such obligations irrespective of:
 - (i) the Site Conditions encountered in performing the WUC;
 - (ii) the condition or characteristics (including all subsurface conditions) of:
 - (A) the Site or any Extra Land, the Environment or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Site or any Extra Land, the Environment or their surroundings; and
 - (iii) any assumptions or estimates the Developer may have made in relation to the Site Conditions or the characteristics of any of the matters referred to in clause 15.

15.5 Project Site Meetings

- (a) The Developer must convene meetings on the Site, or at such other place as the Hunter Water Representative may direct, whenever directed to do so by the Hunter Water Representative.
- (b) Such meetings must be attended by:
 - (i) the Developer Representative (or his or her delegate);
 - (ii) the Hunter Water Representative (or his or her delegate); and



- (iii) anyone else whose attendance the Hunter Water Representative directs the Developer to procure.
- (c) The Developer must provide the Hunter Water Representative with an agenda prepared in consultation with the Hunter Water Representative for each meeting under clause 15.5 no less than 72 hours prior to each such meeting.
- (d) All meetings held under clause 15.5 will be chaired by the Hunter Water Representative (or his or her delegate) and the chairperson must give all attendees minutes of the meeting within 72 hours after the meeting however, such minutes may not be relied on by either party as a document evidencing the giving or receipt of a notice required to be given under this Deed.

15.6 Availability of Documents on Site

- (a) While WUC is being performed at the Site, one complete set of the Hunter Water Project Requirements, the Design Documents required for construction at the Site and other written information supplied by Hunter Water, the Hunter Water Representative, the Developer and the Subcontractors (including information supplied electronically), must be kept at the Site or other location approved in writing by Hunter Water and must be available at all reasonable times for viewing by Hunter Water and its nominees.
- (b) During the manufacture or assembly of any significant part of the Works away from the Site, a set of the Design Documents relevant to that part of the work must be kept at the place of manufacture or assembly and be available for viewing by Hunter Water and its nominees.

16. LAWS, CODES AND STANDARDS

16.1 Compliance with Laws, Codes and Standards and Payments

- (a) The Developer must:
 - (i) comply with and satisfy all Laws, Environmental Requirements and Applicable Requirements applicable to this Deed and the WUC;
 - (ii) pay all Statutory Fees payable in connection with this Deed and the WUC (whether payable by the Developer or Hunter Water), including any building and construction industry training levy, long service leave levy and work health and safety levy;
 - (iii) pay all Taxes payable in connection with this Deed and the WUC;
 - (iv) pay all stamp, transfer, transaction, registration, financial institution, bank account debit and other duties (including fines and penalties) which may be payable in relation to the performance or enforcement of this Deed; and
 - (v) pay all insurance premiums the Developer is required by Law to pay and ensure that all Subcontractors do likewise.



- (b) If a Law, Environmental Requirement or relevant Applicable Requirement is at variance with this Deed or the Hunter Water Project Requirements, as soon as the Developer discovers the difference, it must notify the Hunter Water Representative in writing.
- (c) Nothing in clause 16.2 or clause 17 limits the generality of this clause 16.1.

16.2 Licences and Approval

- (a) With the exception of the Approvals identified in Item 15, the Developer shall procure, maintain and pay for all Approvals necessary for the lawful carrying out of the WUC or relating to the completion, occupation or use of the WUC. Copies of all such Approvals must be provided to the Hunter Water Representative prior to any item being placed into service.
- (b) At all times until the date that is 20 days after the expiry of the last Defects Liability Period, the Developer must hold, comply with and satisfy, and ensure that all of its Personnel do likewise, all Approvals they are by Law required to hold to carry out work of the type required by this Deed and provide copies of such Approvals to the Hunter Water Representative upon its request.

17. WORKS, HEALTH AND SAFETY AND THE ENVIRONMENT

17.1 Safety and the Environment

- (a) Without limiting its duties under the WHS Legislation, the Environmental Requirements and clause 17.2, the Developer must:
 - (i) ensure that all WUC is carried out in a safe manner and so as to protect persons, property and the Environment, including:
 - (A) erecting and maintaining all safeguards necessary for safety and protection; and
 - (B) posting danger signs and other warnings against hazards and notifying Hunter Water and other users of all relevant dangerous or hazardous conditions;
 - (ii) ensure that all persons for whom it is responsible or over whom it is capable of exercising control while carrying out WUC comply with all WHS Legislation (including the obligations to consult, cooperate and coordinate activities with all other persons who have a work, health and safety duty in relation to the same matter) and Environmental Requirements;
 - (iii) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while carrying out WUC comply with all safety and environmental directions issued from time-to-time to the Developer by Hunter Water and any direction of the Hunter Water Representative given following a perceived failure to comply with any such direction;
 - (iv) maintain appropriate safety and environmental precautions and programs to prevent injury to persons or damage to property or the Environment on, about or adjacent to the Site and any Extra Land;



- (v) comply with all safety, environmental and security requirements of Hunter Water to enable Hunter Water to comply with, and not place Hunter Water in breach of, its obligations under the WHS Legislation and Environmental Laws;
 - (vi) have appropriate first aid facilities available on the Site at all times and a member of its staff fully qualified and experienced in work, health and safety;
 - (vii) ensure that appropriate signs (including contact names and telephone numbers (including after-hours)) are placed on the Site;
 - (viii) when directed by the Hunter Water Representative in writing, provide access and all necessary assistance to the Hunter Water Representative to allow a complete audit of the Developer's work, health and safety records and to enable Hunter Water to comply with its obligations under the WHS Legislation;
 - (ix) ensure that, if any Law requires that a person:
 - (A) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - (B) workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (x) insofar as it or any of its Personnel, in carrying out WUC, is a person conducting a business or undertaking that:
 - (A) designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) (the **WHS Act**) applies;
 - (B) manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
 - (C) imports plant, substances or structures to whom section 24 of the WHS Act applies;
 - (D) supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
 - (E) installs, constructs or commissions plant or structures to whom section 26 of the WHS Act applies,comply with the applicable obligations under the WHS Act; and
 - (xi) ensure that all subcontracts include obligations equivalent to the Developer's under this clause 17.1.
- (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 any WUC, the Hunter Water Representative



may direct the Developer to change its manner of work or cease work, and the Developer must comply and will have no claim against Hunter Water in connection with any such direction.

- (c) The Developer acknowledges and agrees that where this Deed states that any aspect of the WUC or Works is to be “fit for purpose”, a reference to the “intended purpose” (or any similar expression) of the WUC or Works requires, amongst other things, that the relevant WUC or Works, when completed, will be designed and constructed in compliance with all health and safety requirements contained in the WHS Legislation.

17.2 Principal Contractor

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**):

- (a) the Developer is the “principal contractor” for the WUC; and
- (b) if the engagement referred to in clause 17.2(a) is not valid, it will exercise and fulfil the functions and obligations of a principal contractor under the WHS Regulation as if the Developer was the principal contractor in respect of the WUC.

18. EQUIPMENT AND WORK

18.1 Developer to Provide

- (a) Except to the extent that this Deed expressly provides otherwise, the Developer must do all work and procure, supply and transport everything necessary for the proper performance of the WUC and discharge of the Developer’s obligations under this Deed, including supplying items which, though not specifically mentioned in this Deed:
 - (i) can reasonably be inferred from this Deed as being required for the proper performance of the WUC and discharge of the Developer’s obligations under this Deed;
 - (ii) would be required by Best Practice; or
 - (iii) are indispensably necessary for the completion of the WUC,as if that work, Equipment or other items were specifically mentioned in this Deed.
- (b) Except where it is expressly provided that Hunter Water will carry out an obligation under this Deed at its cost, all things required to be supplied or performed by the Developer under this Deed will be at its cost.

18.2 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 or other items by a proprietary, trade or 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.

18.3 Quality Assurance

- (a) The Developer must, and must ensure that all Subcontractors:
 - (i) plan, establish and maintain a quality assurance system which is certified to or compliant with ISO9001 or is compliant with the NSW Government Quality Management Systems Guidelines for Construction; and
 - (ii) provide the Hunter Water Representative with access to those systems to enable auditing.
- (b) Any such quality assurance system or audit by Hunter Water:
 - (i) will only be used as an aid to achieving compliance with this Deed and to document such compliance; and
 - (ii) does not relieve the Developer of its responsibility to comply with this Deed.

18.4 Details of Manufacture and Supply

Upon request by the Hunter Water Representative, the Developer must provide particulars of the mode and place of manufacture, source of supply, performance capacities and other information reasonably requested, in respect of any Equipment or other items to be supplied by the Developer under or used in connection with this Deed.

18.5 Defective Equipment or Work

- (a) If the Hunter Water Representative discovers Equipment or work (including materials) provided by the Developer or any Subcontractor which is not in accordance with this Deed, it may direct the Developer to:
 - (i) remove the Equipment or work from the Site;
 - (ii) demolish the work;
 - (iii) redesign, reconstruct, replace or correct the Equipment or work; or
 - (iv) not deliver the Equipment to the Site.
- (b) The Hunter Water Representative may direct the times within which the Developer must commence and complete the activities contemplated in clause 18.5(a).
- (c) If the Developer fails to comply with a direction issued under this clause 18.5 within the time specified in the direction, Hunter Water may have that work carried out by others and the cost incurred by Hunter Water in doing so will be a debt due and payable from the Developer to Hunter Water.

19. CARE OF THE WORKS AND REINSTATEMENT OF DAMAGE

19.1 Care of the Works



Except where damage is directly caused or contributed to by a negligent act or omission of Hunter Water (in which case the Developer's liability will be reduced proportionally), the Developer is responsible for:

- (a) the care of:
 - (i) the WUC; and
 - (ii) unfixed goods and materials, including anything provided by Hunter Water to the Developer or brought onto the Site by a Subcontractor,from and including the Deed Date to midnight on the Date of Completion, at which time, responsibility for the care of the Works passes to Hunter Water; and
- (b) any loss of or damage to the Works caused by the Developer or its Personnel, or by any Subcontractor or other person for whom the Developer is responsible, while carrying out work on the Site during the Defects Liability Period.

19.2 Reinstatement

If loss or damage occurs to the WUC or any unfixed goods and materials intended for incorporation into the Works during the period for which the Developer is responsible for their care, the Developer must, at its cost, promptly rectify such loss or damage so that the relevant thing conforms in every respect with the provisions of this Deed.

20. PROTECTION OF PEOPLE AND PROPERTY

20.1 Generally

- (a) The Developer acknowledges and agrees that:
 - (i) Hunter Water and all users of the Existing Operations must be able to continue using the Existing Operations during the course of the WUC's completion as if the WUC was not being undertaken;
 - (ii) it will not, and nor will its Personnel, have exclusive use of any Existing Operations during the course of carrying out the WUC; and
 - (iii) in using any Existing Operations, it will:
 - (A) ensure the minimum disturbance to the Existing Operations;
 - (B) keep itself informed of and comply with and not do anything which may place Hunter Water in breach of any Law applying to the Existing Operations; and
 - (C) ensure that in completing the WUC, the Works properly interface with and connect to the Existing Operations so as to enable the Works, when completed, to fully comply with the requirements of this Deed.
- (b) The Developer must:
 - (i) provide all things and take all measures necessary to protect people and property;



- (ii) avoid unnecessary interference with the passage of people and vehicles into and out of, adjacent to, around, on or about the Site or the Existing Operations and comply with Hunter Water's reasonable directions in relation to them;
 - (iii) avoid interference with the activities of any user of land adjacent to the Site; and
 - (iv) avoid nuisance and unreasonable noise and disturbance.
- (c) If the Developer, any Subcontractor or any of their Personnel damage(s) property in performing or failing to perform any of the WUC, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer, Subcontractor or their Personnel to pay.
- (d) If the Developer fails to comply with an obligation under this clause, in addition to any other right of Hunter Water, Hunter Water may have the subject work carried out by others and the costs incurred by Hunter Water in doing so will be a debt due and payable from the Developer to Hunter Water.
- (e) Without limiting any other obligation or liability of the Developer, to the maximum extent permitted by Law, the Developer indemnifies Hunter Water and its Personnel from and against any Liability to or claim by any person and loss suffered or incurred by Hunter Water and its Personnel arising out of any breach of this clause by the Developer.

20.2 Urgent Protection and ad hoc repairs

If:

- (a) urgent action is necessary to prevent an Emergency or mitigate its effects; or
- (b) the Hunter Water Representative determines, acting reasonably, that the estimated cost to rectify a particular Defect during the Defects Liability Period is less than the Defect Rectification Threshold,

in addition to its other rights under this Deed and at Law, Hunter Water may take the necessary action or rectify the relevant Defect (as appropriate) and the costs incurred by Hunter Water in doing so will be a debt due and payable from the Developer to Hunter Water.

PART F – COMPLETION AND DEFECTS

21. PRE-COMPLETION TESTS AND CERTIFICATES

21.1 Testing Equipment and Calculations

The Developer must provide, install, calibrate, operate, maintain and be responsible for the accuracy of all instrumentation and equipment required for all Pre-Completion Tests, and immediately remove all such things after the completion of the Pre-Completion Tests unless it forms part of the Works.

21.2 Pre-Completion Test Costs

The Developer will bear the cost of all Pre-Completion Tests and inspections required under this Deed, including costs payable to or incurred by Hunter Water.



21.3 General Test and/or Inspection Rights

- (a) At any time before the expiry of the Defects Liability Period, Hunter Water may, acting reasonably, direct the Developer to:
 - (i) carry out any test and/or inspection not described in this Deed; or
 - (ii) uncover any part of the Works or make openings in any part of the Works,and the Developer must comply with such direction as soon as practicable and reinstate any affected part of the Works such that it complies with this Deed.
- (b) No part of the Works may be covered up on the Site without carrying out any test and/or inspection required under this Deed and the Developer must give reasonable written notice to the Hunter Water Representative whenever any such Works are ready for testing or inspection.

21.4 Pre-Completion Tests

- (a) The Developer must:
 - (i) give the Hunter Water Representative 14 days' prior written notice of its intention to carry out any Pre-Completion Test, which notice must include details of the item to be tested, Pre-Completion Test to be performed and proposed date and location; and
 - (ii) thereafter carry out the Pre-Completion Tests.
- (b) The Hunter Water Representative and its nominee(s) may attend and witness any Pre-Completion Test.
- (c) The Developer agrees that:
 - (i) neither the performance of any Pre-Completion Test or other test, nor the issue of a test report, releases it from any of its obligations under this Deed; and
 - (ii) the Hunter Water Representative is entitled to order the cessation of any Pre-Completion Test or other test if damage to the Works, any Existing Operations or other property or personal injury, is likely to result from its continuation and the Developer must comply with any such direction.

21.5 Connection

The Developer acknowledges and agrees that:

- (a) it must not connect any WUC to any Existing Operations until the Hunter Water Representative:
 - (i) determines that the Works have passed all Pre-Completion Tests and are in order for connection to the Existing Operations; and
 - (ii) approves any such connection in writing (which may be conditional);



- (b) it will notify the Hunter Water Representative in writing no less than 14 days prior to the date on which the Developer or anyone on its behalf intends to connect any WUC to any Existing Operations to allow the Hunter Water Representative or its nominee(s) to witness such work; and
- (c) it will comply with Hunter Water's reasonable directions in connection with the Existing Operations and ensure that its subcontractors do likewise.

21.6 Completion

- (a) As soon as the Developer forms the view that the Works have reached Completion, it must give written notice to the Hunter Water Representative stating that it is a notice under this clause 21.6(a).
- (b) Within 14 days after receipt of the notice under clause 21.6(a), the Hunter Water Representative must either:
 - (i) issue a Completion Certificate; or
 - (ii) notify the Developer of any Defects and/or other reasons for not issuing a Completion Certificate.
- (c) If the Hunter Water Representative notifies the Developer of any Defects and/or other reasons for not issuing a Completion Certificate, the Developer must promptly correct such issues and clauses 21.6(a) and (b) will reapply.
- (d) If the Hunter Water Representative fails to issue a Completion Certificate or notice in accordance with clause 21.6(b), then the Works will be deemed to have not reached Completion.

21.7 Effect of and Correction or Modification of Certificates

- (a) The issuing of a Completion Certificate is not an admission that the requirements of this Deed have been met and does not prejudice any rights or remedies of Hunter Water.
- (b) The Hunter Water Representative may, by a certificate, correct any error in any Completion Certificate or modify any or both certificates.

22. OWNERSHIP, OPERATION AND MAINTENANCE OF WORKS

On and from the midnight on the Date of Completion:

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



23. DEFECTS LIABILITY

23.1 Rectification of Defects - Defects Liability Period

- (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) The Hunter Water Representative may direct the Developer to promptly rectify, or procure the rectification of, at the Developer's own cost, any Defect in the Works which becomes apparent during the Defects Liability Period. The direction:
 - (i) may be given at any time up to 20 days after the expiration of the Defects Liability Period;
 - (ii) must identify the Defect and state a date by which it must be rectified; and
 - (iii) may state a date by which the rectification work must commence.
- (c) Where a Defect is rectified during a Defects Liability Period, a separate Defects Liability Period will automatically apply in respect of the rectification work and be for the same duration as the initial Defects Liability Period. The separate Defects Liability Period will commence on the date the rectification work is completed and this clause 23.1 and clause 23 will apply in respect of the rectification work and the Defects Liability Period for that rectification work.
- (d) In addition to rectifying a Defect, the Developer must, at its own cost, locate and rectify the cause of the Defect and the term 'rectification work' includes the modification of plant or equipment to eliminate the need for future rectification work.
- (e) If rectification work is not commenced or completed by the stated dates, Hunter Water may have such work carried out at the Developer's expense (but without prejudice to any other rights Hunter Water may have against the Developer with respect to the Defect) and the cost of such work will be a debt due and payable from the Developer to Hunter Water.
- (f) The Developer must not remove any Works from the Site for repair, replacement or modification without the prior written consent of the Hunter Water Representative.

23.2 Records, Access and Times for Rectification Work

- (a) The Developer must keep written records of all Defects and rectification work and must give reasonable notice in writing to the Hunter Water Representative before commencing such work.
- (b) All rectification work undertaken by the Developer under this clause 23 must be undertaken:
 - (i) at times which have been approved in writing by Hunter Water; and
 - (ii) in a manner which causes as little inconvenience to Hunter Water as is possible.



PART G – GENERAL OBLIGATIONS

24. DEVELOPER WARRANTIES

24.1 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 has carefully examined and understands its and Hunter Water's obligations under all relevant Laws and the Environmental Requirements applicable to this Deed, the Site and the WUC;
- (c) it is suitably skilled, qualified and experienced (or will procure such skills, qualifications and experience) to complete or procure the completion of the WUC in accordance with this Deed;
- (d) it will in completing or procuring the completion of the WUC, exercise a high standard of care, skill, judgment and diligence commensurate with Best Practice;
- (e) it has or all relevant Subcontractors have, and will retain and comply with until the expiry of the last Defects Liability Period to expire, all Approvals required by Law to carry out the WUC;
- (f) it will only engage employees and Subcontractors who are suitably skilled, qualified and licenced to carry out the WUC in accordance with this Deed and Best Practice;
- (g) it is fully responsible for the methods of investigation, design and construction and will execute and complete the WUC in accordance with this Deed and the Design Documents;
- (h) all Equipment and other items supplied under this Deed by the Developer will be new (unless otherwise agreed in writing by Hunter Water), in conformity with their description and fit for the purpose(s) for which they are supplied under this Deed;
- (i) all workmanship will be to the standards specified in this Deed, and to the extent such standards are not specified, commensurate with Best Practice;
- (j) on the date immediately after the Date of Completion, Hunter Water will receive good and clear title to the Works, including all Equipment and other items incorporated therein;
- (k) the Works, when completed, will:
 - (i) comply with this Deed in all respects;
 - (ii) comply with all Laws, Environmental Requirements, the Hunter Water Project Requirements and all Applicable Requirements;
 - (iii) be suitable for the Site, Environment and conditions in which the Works will operate;
 - (iv) meet the standards of workmanship specified in this Deed, and to the extent such standards are not specified, standards commensurate with Best Practice;
 - (v) be free from Defects;



- (vi) not infringe any Intellectual Property Right or other protected right; and
- (vii) enable maintenance and repairs to be undertaken in no less efficient manner than would be expected in plant and equipment similar to the Works;
- (l) the Works will:
 - (i) be completed in accordance with, and satisfy the requirements of, this Deed;
 - (ii) upon Completion, be fit for their intended purposes; and
 - (iii) thereafter remain fit for their intended purposes for the duration of the applicable Design Life;
- (m) all information provided by or on behalf of the Developer in relation to this Deed was true and accurate and was not misleading in any material respect as at the date it was provided;
- (n) it is legally entitled to, and has power to, enter into and perform its obligations under this Deed and to carry out the transactions contemplated within it;
- (o) where it is not the owner of the Site, as between the owner of the Site and the Developer, the Developer is legally entitled to enter into and perform its obligations under this Deed and to carry out the transactions contemplated within it;
- (p) the signing, delivery and performance of this Deed does not contravene the Developer's constitution or any document or arrangement binding upon it or any Law to which it is subject; and
- (q) 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 or replace it;
 - (ii) it has the power under the trust deed of the Trust (the **Trust Deed**) to execute and perform its obligations under this Deed;
 - (iii) all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed and any other constituent documents of the Trust;
 - (iv) this Deed is executed and all transactions relating to it are or will be performed as part of the due and proper administration of the Trust and are or will be for the benefit of its beneficiaries;
 - (v) the Trust Deed will not be varied or revoked without the prior written consent of Hunter Water; and
 - (vi) 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.



24.2 Warranties Unaffected

The Developer acknowledges and agrees that the:

- (a) warranties in clause 24.1 and the Developer's other guarantees, warranties, obligations and liabilities under this Deed, remain unaffected; and
- (b) Developer will bear and continue to bear full liability and responsibility in accordance with this Deed for the performance of the WUC,

notwithstanding any one or more of the following:

- (c) any design work carried out by Hunter Water, the Developer or others before the Commencement Date and included in this Deed;
- (d) the involvement of Subcontractors in the execution of any WUC;
- (e) any receipt or review of, or comment on, or rejection or approval of, or permission to use or deemed permission to use, or expression of satisfaction or dissatisfaction with:
 - (i) any Design Document;
 - (ii) any other document or information provided by the Developer;
 - (iii) any submission, proposal or recommendation by the Developer; or
 - (iv) any of the Developer's work methods or procedures,by or on behalf of Hunter Water or the Hunter Water Representative;
- (f) any supervision, superintendence or review of, or comment on, or rejection or approval of, or expression of satisfaction or dissatisfaction with:
 - (i) any of the Developer's Subcontractors or Equipment selections;
 - (ii) the execution of any WUC; or
 - (iii) any work, plant, Equipment or materials,by or on behalf of Hunter Water or the Hunter Water Representative;
- (g) any failure by Hunter Water or the Hunter Water Representative to do any of the things referred to in clauses 24.2(c) to (f) ; or
- (h) any variation directed or approved by Hunter Water or the Hunter Water Representative.

24.3 No Duty of Care or Liability Imposed on Hunter Water

Without limiting any other provision of this Deed, no receipt of nor any review, comment, approval, consent, rejection, permission to use, deemed permission to use, permission to proceed, expression of satisfaction or dissatisfaction, supervision or superintendence by or on behalf of Hunter Water or the Hunter Water Representative concerning:

- (a) any Design Documents or other information provided by the Developer; or



- (b) any work, plant, equipment, materials or other aspect of the WUC, nor any failure by Hunter Water or the Hunter Water Representative to do any of those things, will:
- (c) limit or exclude any obligation or liability of the Developer;
- (d) prejudice any of Hunter Water's rights against the Developer;
- (e) impose on Hunter Water or the Hunter Water Representative any duty of care to the Developer;
- (f) result in Hunter Water or the Hunter Water Representative assuming any responsibility or liability for:
 - (i) the adequacy, quality, compliance or fitness of; or
 - (ii) any errors in or omissions from, the Works or any part thereof or any Design Documents or other information provided by the Developer; or
- (g) constitute an admission that Hunter Water, the Hunter Water Representative or any of their agents or employees have checked any Design Documents, other information or work for errors, omissions or compliance with this Deed.

24.4 Acknowledgment of Reliance

The Developer acknowledges that:

- (a) Hunter Water has relied on each of the acknowledgements, warranties and agreements given in clauses 7.5, 24 and 33.13 in entering into this Deed;
- (b) Hunter Water would not have entered into this Deed but for those acknowledgements, warranties and agreements; and
- (c) where the Developer is the trustee of a trust, the Developer:
 - (i) is personally liable to perform the obligations of the Developer under this Deed even though it enters into this Deed as trustee of a trust; and
 - (ii) must cause any successor of the trust and any person who becomes a trustee of the trust jointly with the Developer to execute all documents required to ensure that this Deed is binding on them.

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Developer's Representations and Warranties

The Developer represents and warrants that:

- (a) it has all necessary rights and licences to Intellectual Property Rights subsisting in any matter, thing or process used or to be used by or on behalf of the Developer in performing the WUC or provided or to be provided by it to Hunter Water under this Deed;



- (b) it is able to, or will acquire the rights necessary to enable it to, assign the Intellectual Property Rights referred to in clauses 25.3(a) and 25.3(b); and
- (c) the Design Documents, Works, Project IP, Developer's Background IP and any use of them by or on behalf of Hunter Water will not infringe the Intellectual Property Rights of any third party.

25.2 Indemnities

- (a) The Developer indemnifies Hunter Water and its Personnel from and against:
 - (i) any Liability to or claim by any other person; and
 - (ii) any Liability suffered or incurred by Hunter Water and/or any of its Personnel, as a result of:
 - (iii) the Design Documents, Works, Project IP or Developer's Background IP (or any use of any of them by or on behalf of Hunter Water) or any methods of working used by the Developer, infringing any Intellectual Property Rights of a third party; or
 - (iv) the Design Documents or the Works infringing any Moral Rights.
- (b) If Hunter Water is sued in relation to any matter the subject of the indemnity in clause 25.2 (**Proceedings**), Hunter Water must promptly give the Developer written notice thereof.
- (c) If due to any Proceeding, either Hunter Water or the Developer is prevented from using all or part of the Design Documents, Works, Project IP or Developer's Background IP, the Developer must:
 - (i) at its own expense and in addition to its other obligations under this Deed, take all steps necessary to make the Design Documents, Works, Project IP or Developer's Background IP non-infringing or acquire any necessary licence; and
 - (ii) indemnify Hunter Water for all costs associated with making the Design Documents, Works, Project IP or Developer's Background IP non-infringing or acquiring any necessary licence,and if the Developer is unable to procure such rights within such time as Hunter Water directs, the Developer must promptly, and at its own expense, comply with any direction Hunter Water may give to:
 - (iii) modify the infringing matter;
 - (iv) replace the affected part of the infringing matter so as to overcome the infringement; and/or
 - (v) remove the affected part of the infringing matter and compensate Hunter Water for any cost, loss, expense or damage incurred by Hunter Water.

25.3 Intellectual Property Rights Granted to Hunter Water

- (a) The Developer assigns to Hunter Water all Intellectual Property Rights in all Design Documents and Project IP on and from the date of its creation.



- (b) The Developer also grants to Hunter Water a perpetual, irrevocable, non-exclusive, fully assignable and royalty free licence for Hunter Water and others engaged by it to use and copy the Developer's Background IP to the extent necessary to exercise Hunter Water's rights with respect to the Design Documents and the Project IP (including the use, operation, maintenance, repair and replacement of the Works).
- (c) Hunter Water may grant a sub-licence of any of the rights granted by the Developer under clause 25.3(a) or any part thereof to any person engaged by Hunter Water in connection with the Works or Existing Operations, provided the terms thereof are consistent with the licence.
- (d) Nothing in this Deed, nor the supply of any document or information to the Developer by or on behalf of Hunter Water, will result in the transfer to the Developer of any Intellectual Property Rights owned by or licenced to Hunter Water.

25.4 Moral Rights

- (a) The Developer must procure from each Author express agreement that he or she will not enforce any Moral Rights he or she may have, presently or in the future, in the Copyright Works, including by executing any Moral Rights' consents required by Hunter Water.
- (b) Without limiting clause 25.4(a), the Developer warrants that Hunter Water and its successors, assigns and licensees may:
 - (i) exercise any rights in relation to the Copyright Works, without identifying any person as the individual responsible for creating any material comprising such works;
 - (ii) have the Copyright Works bear the name of Hunter Water or any other person; and
 - (iii) modify, alter, adapt, distort or otherwise change any of the Copyright Works as it deems fit.
- (c) The Developer must ensure that any agreement referred to in clause 25.4(a) is genuinely given and not obtained by duress or by the making of any false or misleading statement.

26. DEVELOPER'S INDEMNITIES

26.1 Damage to Persons and Property

The Developer indemnifies Hunter Water and its Personnel against:

- (a) loss of or damage to any property and any Liability resulting from such loss or damage; and
- (b) any Liability to or claims against Hunter Water or any of its Personnel by any person in respect of personal injury or death and for losses resulting from such loss or damage,

caused by, arising out of, or in any way in connection with the WUC or any failure by the Developer to comply with its obligations under this Deed or any Law.

26.2 General Indemnity

- (a) The Developer indemnifies Hunter Water and its Personnel from and against any Liability to or claim by any other person and Liability suffered or incurred by Hunter Water or any of its



Personnel, 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.

- (b) Where the Developer indemnifies Hunter Water and its Personnel under this Deed from and against any Liability, its liability to indemnify Hunter Water will be reduced proportionally to the extent that a negligent act or omission of Hunter Water contributed to the Liability or claim.

26.3 No Exclusion

Neither clause 26.1 or 26.2 applies to exclude any other right of Hunter Water or its Personnel to be indemnified by the Developer under this Deed or any other right or remedy of Hunter Water or its Personnel arising out of or as a consequence of any breach of this Deed by the Developer.

27. LIMITATION OF LIABILITY

27.1 Liability Cap

To the fullest extent permitted by Law, and except as expressly provided in this Deed, Hunter Water's maximum aggregate liability to the Developer under or arising out of this Deed or any Law is \$1.

27.2 Excluded Loss

- (a) To the fullest extent permitted by Law, Hunter Water and its Personnel will have no liability to the Developer or any of its Personnel for Excluded Loss under or arising out of this Deed.
- (b) **Excluded Loss** means any:
 - (i) loss of revenue, use, data, production, goodwill, profit, income, business, contract or anticipated savings;
 - (ii) financing costs or increase in operating costs; or
 - (iii) other financial or economic loss or any other special or indirect loss or damage.

27.3 Proportionate Liability Schemes

- (a) It is agreed that, to the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act* 2002 (NSW) (the **Proportionate Liability Scheme**) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed.
- (b) Without limiting the generality of clause 27.3(a), it is further agreed that the rights, obligations and liabilities of the parties are as specified in this Deed and not otherwise.
- (c) The Developer further agrees that:
 - (i) in each subcontract it enters into for the carrying out of WUC or for the supply of materials, it will include provisions that (to the extent permitted by Law), exclude the application of the Proportionate Liability Scheme; and



- (ii) it will require and ensure that each Subcontractor or supplier will include in any further contract it enters into with a third party for the carrying out of WUC, provisions that (to the extent permitted by Law), exclude the application of the Proportionate Liability Scheme.

27.4 Hunter Water's right to be indemnified

If any of the provisions of the Proportionate Liability Scheme apply to any claim between Hunter Water and the Developer, the Developer will indemnify Hunter Water and its Personnel against any Liability to or claim by any other person and Liability suffered or incurred by Hunter Water or any of its Personnel for which the Developer would be liable but for the operation of a Proportionate Liability Scheme.

28. INSURANCES

28.1 Public Liability Insurance

- (a) On or before the Deed Date, the Developer must effect and maintain a public liability insurance policy in the joint names of the parties and for an amount not less than that specified in Item 16, covering claims in respect of:

- (i) damage to, loss or destruction of, or loss of use of, real or personal property;
- (ii) injury to, or disease or death of, persons; and
- (iii) financial loss,

arising out of or in connection with the WUC, including liability arising out of Constructional Plant not covered under the motor vehicle insurance cover required under clause 28.2.

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

28.2 Motor Vehicle Insurance

- (a) On or before the Deed Date, the Developer must effect and maintain motor vehicle compulsory third party insurance as required by Law and motor vehicle comprehensive and third party property insurance (for amounts not less than those specified in Item 17) for all vehicles used in the performance of, or in connection with, the WUC.

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

28.3 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 WUC.

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

28.4 Professional Indemnity Insurance

The Developer must ensure that any Consultants and Subcontractors with design responsibilities effect and maintain a professional indemnity insurance policy covering any breach of duty owed by that



Consultant or Subcontractor in a professional capacity for an amount not less than that specified in Item 18.

28.5 Periods of Insurance

The Developer must maintain:

- (a) the professional indemnity insurance referred to in clause 28.4 until the date that is 6 years after the Date of Completion; and
- (b) the other insurances required under this clause 28 until the expiry of the last Defects Liability Period to expire,

and ensure that all relevant Consultants and Subcontractors do likewise.

28.6 Proof of Insurance

- (a) Whenever requested in writing by Hunter Water, the Developer must produce evidence by way of certificates of currency to the satisfaction of Hunter Water of the insurances effected and maintained in accordance with this clause 28.
- (b) Notwithstanding clause 28.6(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.

28.7 Failure to Produce Proof of Insurance

If, after being requested in writing by Hunter Water to do so, the Developer fails to produce evidence of compliance with its insurance obligations under this clause 28 to the satisfaction of Hunter Water, Hunter Water may effect and maintain the relevant insurance and pay the premiums and the premiums so paid will be a debt due and payable from the Developer to Hunter Water.

28.8 Notices of Potential Claims and Co-operation

The Developer must:

- (a) as soon as practicable, inform Hunter Water in writing of any occurrence that may give rise to a claim under any of the policies required by this clause 28 and keep Hunter Water informed of subsequent developments concerning the claim;
- (b) co-operate with and provide all necessary assistance to Hunter Water concerning any claims under any of the policies mentioned in clause 28; and
- (c) ensure that Subcontractors in respect of their operations similarly inform and co-operate.

28.9 General Obligations

- (a) The Developer must:
 - (i) not do or permit, or omit to do, anything which prejudices or could prejudice any of the insurances it is required to maintain by this clause 28;



- (ii) immediately rectify anything which prejudices or could prejudice any of the insurances it is required to maintain by this clause 28;
 - (iii) reinstate any insurance policy it is required to maintain by this clause 28 should it lapse;
 - (iv) give full and particular information to its insurer(s) of all matters and things the non-disclosure of which might prejudice or affect any insurance policy it is required to maintain by this clause 28 or the payment of all or any benefits under any such insurance policy;
 - (v) comply at all times with the terms of each policy it is required to maintain by this clause 28; and
 - (vi) to the extent that it is able to recover under a policy of insurance it is required to maintain under this clause 28 (or could have recovered but for a failure of the Developer to maintain the required policy), use its best endeavours to recover under the relevant policy and indemnify Hunter Water and all relevant Hunter Water Personnel up to the relevant level of insurance the Developer is required to hold under this clause 28 should it fail to do so.
- (b) Any insurance policy required to be effected in accordance with this Deed by the Developer in joint names must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.
- (c) The effecting of insurance and the approval of any insurance policy or insurer by Hunter Water does not limit any liabilities or obligations of the Developer under or arising out of this Deed.
- (d) The Developer must ensure that the insurance policies it is required to effect and maintain under this clause 28 are each taken out with a reputable insurer which has a financial standing rated by Standard & Poor’s of less than A-.

29. CONFIDENTIALITY

29.1 General Restriction

- (a) The Developer acknowledges and agrees that during the performance of this Deed it may receive or obtain Confidential Information from or on behalf of Hunter Water.
- (b) Subject to the exceptions in clause 29.2, the Developer acknowledges and agrees that it will not, whether before or after the expiration or sooner determination of this Deed, without the prior written consent of Hunter Water, divulge or permit to be disclosed to any person any of the contents of this Deed or Confidential Information.

29.2 Exceptions

The restrictions imposed by clause 29.1 will not apply to the disclosure of any of the contents of this Deed or Confidential Information:



- (a) which is now or hereafter comes into the public domain through no default of the Developer or any of its Personnel;
 - (b) which is required to be disclosed by Law; or
 - (c) to a court in the course of proceedings before it or him to which the Developer is a party,
- provided that the Developer first obtains (and enforces if required by Hunter Water) an undertaking from each such person to comply with clause 29.1 as if it applied to them directly.

29.3 **Media Releases**

The Developer must:

- (a) not issue any information, publication, document or article for publication concerning this Deed, the Works, Hunter Water or any of its Personnel in any media without Hunter Water's prior written approval; and
- (b) refer to Hunter Water any enquiries from media of the type contemplated in clause 29.3(a).

29.4 **Right to Injunctive Relief**

The Developer acknowledges and agrees that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 29 and Hunter Water will be entitled, without limiting any of its other rights or remedies, to such injunctive relief as may be deemed proper by a court if any such breach occurs.

29.5 **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 duly authorised representative(s) 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 WUC; and
 - (ii) information received by the Developer from Hunter Water to enable it to carry out the WUC.
- (c) For the purposes of clause 29.5(b), information does not include information the Developer is entitled to withhold pursuant to the GIPA Act.
- (d) The Developer must provide Hunter Water with copies of any information referred to in clause 29.5(b) and requested by Hunter Water at the Developer's expense.
- (e) Any failure by the Developer to comply with any request pursuant to clause 29.5(b) or 29.5(d) will be a material breach of this Deed and entitle Hunter Water to immediately terminate this Deed.



30. DISPUTE RESOLUTION

30.1 Notice of Dispute

If any dispute arises between the parties as to any fact, matter or thing arising out of or in connection with this Deed, either party may give the other a notice adequately identifying the matters in dispute (**'Notice of Dispute'**) and that dispute must be dealt with in accordance with this clause 30.

30.2 Executive Negotiation

If the dispute the subject of a Notice of Dispute is not otherwise resolved before then, executives from each party must meet within 14 days after the date of the Notice of Dispute to attempt in good faith to resolve the dispute. The senior executives must have authority to agree a resolution of the dispute. Unless the parties agree otherwise, the meeting will be held in Newcastle at a place nominated by Hunter Water.

30.3 Mediation

If the parties fail to resolve the relevant dispute within 20 days after the first meeting held in accordance with clause 30.2, then:

- (a) either party may submit the dispute to mediation in accordance with the then current Resolution Institute Rules for Mediation;
- (b) the mediator will be the person agreed between and jointly appointed by the parties or, failing such agreement within 14 days after the dispute's submission, the mediator nominated by the President of the Law Society of New South Wales upon request by either party and jointly appointed by the parties; and
- (c) the parties will each be liable for half of the mediator's costs and fees.

30.4 Summary Relief

Notwithstanding anything to the contrary in this clause 30, nothing in this Deed shall prevent a party from bringing court proceedings:

- (a) to enforce payment due under this Deed;
- (b) to seek urgent or interlocutory relief; or
- (c) if any mediation held in accordance with clause 30.3 fails to resolve a dispute.

30.5 Continuance of Performance

Despite the existence of a dispute, both parties must continue to perform their obligations under this Deed.



31. DEFAULT AND TERMINATION

31.1 Default by the Developer

If the Developer commits a substantial breach of this Deed, Hunter Water may give it a written notice to show cause.

31.2 Requirements of a Notice by Hunter Water to Show Cause

A notice given under clause 31 must:

- (a) state that it is a notice under clause 31;
- (b) specify the alleged substantial breach;
- (c) require the Developer to show cause in writing why Hunter Water should not terminate this Deed;
- (d) specify the time and date by which the Developer must show cause; and
- (e) specify the place at which cause must be shown.

31.3 Rights of Hunter Water

If, by the time specified in a notice given under clause 31, the Developer fails to show reasonable cause why Hunter Water should not terminate this Deed, Hunter Water may, without prejudice to any other right or remedy, terminate this Deed by written notice to the Developer.

31.4 Insolvency of Developer

- (a) Where the Developer is comprised of two or more persons, a reference to the “Developer” in this clause 31.4 means any one or more of those persons.
- (b) If:
 - (i) the Developer informs Hunter Water in writing or creditors generally that the Developer is insolvent or is financially unable to proceed with this Deed;
 - (ii) in relation to the Developer:
 - (A) notice is given of a meeting of creditors with a view to the Developer entering a deed of company arrangement; or
 - (B) a controller, administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed;
 - (iii) the Developer enters a deed of company arrangement with creditors;
 - (iv) an application is made to a court for the winding up of the Developer and it is not stayed within a further 14 days;
 - (v) a winding up order is made in respect of the Developer;
 - (vi) the Developer resolves by special resolution that it be wound up voluntarily;
 - (vii) a mortgagee of any property of the Developer takes possession of that property; or



(viii) the Developer takes or suffers in any place, any step or action analogous to any of those mentioned in clauses 31.4(b)(i) to (vii),

then Hunter Water may, without giving a notice to show cause and without prejudice to any other right or remedy, terminate this Deed.

- (c) The rights given by this clause 31.4 are in addition to any other rights of Hunter Water and may be exercised notwithstanding that there has been no breach of this Deed.

31.5 Rights of Hunter Water on Termination

If Hunter Water terminates this Deed under clause 31.3 or 31.4:

- (a) the rights and liabilities of the parties are the same as they would be at common law had the Developer repudiated this Deed and Hunter Water elected to treat this Deed as at an end and recover damages; and
- (b) Hunter Water may, without payment of compensation:
- (i) take possession of the Design Documents (whether complete or not);
 - (ii) take possession of the Site and the Works and any property of Hunter Water which is in the care, possession or control of the Developer; and
 - (iii) have recourse to the security provided by the Developer.

31.6 Termination for Convenience

- (a) Hunter Water may, by giving the Developer at least 28 days' prior notice in writing, terminate this Deed for convenience, effective on the date specified in that notice.
- (b) If Hunter Water exercises its rights under this clause 31.6, it will not be obliged to have nor give the Developer any reason for doing so and will not have any Liability to the Developer.

32. PPS ACT

The Developer acknowledges and agrees that:

- (a) if and to the extent that Hunter Water at any time forms a belief that Hunter Water is, or will become, a secured party arising out of or in connection with this Deed, Hunter Water may, at the Developer's expense, take all steps Hunter Water considers necessary to:
- (i) perfect, protect, record, register, amend or remove the registration of, the Hunter Water Security Interest in any relevant personal property that is the subject of the Security Interest ("relevant personal property"); and
 - (ii) better secure Hunter Water's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things necessary to assist Hunter Water to take the steps described in clause 32(a);



- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of Hunter Water in the relevant personal property;
- (d) if, and only if, Hunter Water is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Developer and Hunter Water agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this Deed, the amount or performance obligation secured by the Hunter Water Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) it must immediately notify Hunter Water if the Developer becomes aware of any person other than Hunter Water taking steps to register or registering a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of Hunter Water's interest in relevant personal property.

For the purposes of this clause 32, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" have the meanings given to those terms in the PPS Act.

33. GENERAL

33.1 Costs

Each party will bear:

- (a) its own costs associated with the preparation and execution of this Deed and any subsequent consent, agreement, approval, waiver or amendment; and
- (b) unless the context otherwise provides, the costs associated with the performance of its obligations under this Deed.

33.2 Governing Law and Jurisdiction

- (a) This Deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the jurisdiction of the courts of New South Wales.



33.3 Enforceability and prohibition

- (a) A provision of, or the application of a provision of, this Deed that is prohibited in a jurisdiction is in that jurisdiction ineffective only to the extent of that prohibition.
- (b) A provision of, or the application of a provision of this Deed that is void, illegal or unenforceable in a jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in any jurisdiction.

33.4 No Waiver

- (a) An election to affirm or terminate this Deed consequent upon a breach and a waiver of any rights created by or arising upon default under this Deed must be in writing and signed by the party making the election or granting the waiver.
- (b) A breach of this Deed is not waived by a failure to exercise, a delay in exercising, or the partial exercise of any right or remedy available under this Deed or in Law.
- (c) Any right or remedy created by, or arising upon a breach of or a default under, this Deed is not waived by any failure to exercise or delay in the exercise or the partial exercise of that right or remedy.

33.5 Joint and Several Obligations and Liabilities

If the Developer comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons):

- (a) its obligations and liabilities under this Deed bind those persons jointly and severally;
- (b) those persons must notify Hunter Water of their leader who must have authority to bind the Developer and each of those persons; and
- (c) the Developer must not alter its composition or legal status without the prior written consent of Hunter Water.

33.6 Notices

- (a) A notice, consent 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 the addressee's address or sent to the addressee 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 - three 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' postal and email addresses are those set out in the Particulars, or as a party notifies the sender in writing from time-to-time.

33.7 Further Assurances

Each party must do all things and execute all further documents necessary to give full effect to this Deed.

33.8 Inconsistency

If there is any inconsistency between the provisions of this Deed and the provisions of its schedules, the provisions of this Deed prevail to the extent of the inconsistency.

33.9 Entire Agreement

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

33.10 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts taken together will be taken to constitute one agreement.

33.11 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

33.12 Approvals and Consent

Subject to any express provision in this Deed to the contrary, Hunter Water and the Hunter Water Representative:

- (a) may give or withhold any consent or approval to be given under this Deed in their sole discretion; and
- (b) are not obliged to give their reasons for doing so.

33.13 Non Reliance

Without limiting clauses 7.5 and 15.4, the Developer:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this Deed or not, made by or provided to the Developer by Hunter Water or anyone on behalf of Hunter Water for the purposes of entering into this Deed;



- (b) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that Hunter Water has entered into this Deed relying upon the warranties in clauses 33.13(a) and (b).

33.14 **Survival**

Clauses 25 (and the licences granted under it) 26, 27, 28, 29 and 33 survive any termination or expiry of this Deed.



EXECUTED as a Deed in **Newcastle**

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:)

Signature of Witness

Print Name

Signature of Authorised Representative

Print Name

[Note: Where the Developer is a company, use the following execution block.]

SIGNED, SEALED AND DELIVERED as a deed by)
)
)
)

(ABN

in accordance with section 127 of the *Corporations Act*
2001 (Cth):

Director Signature

Print Name

Director / Secretary Signature

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)
)
)
)

Signature of Witness

Print Name

Signature

Print Name



Schedule 1
Approved Form of Unconditional Undertaking

[Letterhead of guarantor bank]

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

Bank Guarantee

At the request of [] (ABN []) of []

(the **Developer**) and in consideration of Hunter Water accepting this Guarantee in relation to the Developer

Works Deed dated [] (the **Transaction**), []

(the **Bank**) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded under this Guarantee by Hunter Water to a maximum total sum of A\$[insert amount] (the **Sum**).

This Guarantee is to continue until the first to occur of:

- (a) 4.00 pm on [] (the **Expiry Date**);
- (b) the return to the Bank of this Guarantee at [the above address]; or
- (c) payment to Hunter Water by the Bank of the whole of the Sum.

If the Bank receives a written demand at one of its offices no later than the Expiry Date that purports to be signed on behalf of Hunter Water and demands payment of all or any part of the Sum (not exceeding the maximum amount available under this Guarantee), then the Bank unconditionally agrees to make such payment to Hunter Water immediately without further reference to the Developer and despite any notice to the contrary from the Developer. Despite anything else in this Guarantee, the Bank may, at any time and without being required to do so, pay to Hunter Water the whole of the Sum or such part of the Sum as has not already been paid to Hunter Water by the Bank and, upon such payment, the liability of the Bank under this Guarantee will immediately cease and determine.

The Sum will be automatically reduced by the amount of any payment to Hunter Water by the Bank under this Guarantee.

This Guarantee cannot be assigned or transferred without the written consent of the Bank.

This Guarantee is governed by the laws of New South Wales.

[]

[insert signature block]



Schedule 2 Certificates

Part 1

Accredited Design Consultant's Design Certificate

To: Hunter Water Representative

From:

[insert Accredited Design Consultant's name and ABN (where relevant)] (the **Consultant**)

In accordance with the terms of clause 12 of the deed between Hunter Water Corporation (ABN 46 228 513 446) and [insert Developer's name and ABN

(where relevant)] (the **Developer**) dated (**Deed**) with respect to the Works, we hereby certify that:

- (a) the attached Design Documents:
 - (i) comply with all the requirements of the Deed, including the Hunter Water Project Requirements and the current versions of the Hunter Water Design Codes, Water Services Association of Australia (WSAA) Sewerage (WSAA02) and Water Supply (WSAA03) design codes and all relevant Australian Standards; and
 - (ii) are documented to enable construction and maintenance in compliance with the Deed (including, to the extent applicable, in respect of the correction of Defects); and
- (b) the Consultant has addressed all issues of review, comment and consultation with Hunter Water in respect of the Design Documents.

Terms defined in the Deed have the same meaning in this Certificate.

Signed for and on behalf of

[Consultant]



Part 2

Accredited Construction Contractor's Certificate of Completion

To: Hunter Water Representative

From:

[insert Accredited Construction Contractor's name and ABN (where relevant)] (the **Contractor**)

In accordance with the terms of the deed between Hunter Water Corporation (ABN 46 228 513 446) and

[insert Developer's name and ABN (where relevant)] (the **Developer**) dated (**Deed**) with respect to the Works, we hereby certify that the completed Works have been constructed in accordance with the Deed and the Design Documents Hunter Water has given the Developer permission to use in accordance with the Deed.

Terms defined in the Deed have the same meaning in this Certificate.

Signed for and on behalf of

[Contractor]



Schedule 3
Collateral Warranty Deed Poll

Subcontractor's Collateral Warranty Deed Poll

--

Subcontractor



THIS DEED POLL is made at

on

IN FAVOUR OF

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

AND

ABN

of (*Developer*)

BY

ABN

of (*Subcontractor*)

RECITALS

- A. The Developer has entered into the Deed with Hunter Water in respect of the Works.
- B. The Subcontractor has entered into an agreement with the Developer in respect of the Subcontract Works, Services or Products, which form part of or were used to complete the Works.
- C. In return for Hunter Water allowing the Subcontract Works, Services or Products to be used in or to complete the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed Poll.
- D. The obligations created by this Deed Poll are in addition to the obligations of the Subcontractor to the Developer and do not affect any other rights or remedies available to Hunter Water against the Developer or Subcontractor.

OPERATIVE PROVISIONS

1. Definitions

In this Deed Poll:

Deed means the deed dated [insert date] between Hunter Water and the Developer in respect of the Works.

Subcontract Works, Services or Products means the works, services and/or products identified in the Schedule.

Warranty Period means the period stated in the Schedule.

Works means the works described in the Schedule.

2. Warranty

The Subcontractor warrants that all works and/or services performed and all materials supplied by the Subcontractor as part of the Subcontract Works, Services or Products will:

- (a) comply in all respects with the requirements of the Deed; and
- (b) where the Subcontract Works, Services or Products involve design services, all designs completed by the Subcontractor:



- (i) comply with the Hunter Water Project Requirements (as defined in the Deed) and the current versions of the Water Services Association of Australia (WSAA) Sewerage (WSAA02) and Water Supply (WSAA03) design codes and all relevant Australian Standards;
 - (ii) enable maintenance in compliance with the Deed (including, to the extent applicable, in respect of the correction of Defects); and
 - (iii) address all design issues raised by Hunter Water in respect of the Design Documents; or
- (c) where the Subcontract Works, Services or Products involve construction work, the completed works have been constructed in accordance with the Design Documents Hunter Water has given the Developer permission to use in accordance with the Deed.

3. Replacement or making good Subcontract Works, Services or Products

- (a) The Subcontractor must at its cost make good, to the reasonable satisfaction of Hunter Water, any of the Subcontract Works, Services or Products which, within the Warranty Period, are found to:
- (i) be of a lower standard or quality than referred to in clause 2; or
 - (ii) have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- (b) The liability of the Subcontractor under this clause 3 is reduced to the extent that deterioration is caused by:
- (i) mishandling, damage before installation, or incorrect installation, in each case caused by others;
 - (ii) normal wear and tear; or
 - (iii) incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor.

4. Indemnity

The Subcontractor indemnifies Hunter Water against all costs, losses and damages suffered or incurred by Hunter Water arising out of or in connection with any breach by the Subcontractor of clause 2 or 3.

5. Notice of Defects

Hunter Water may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

6. Time to remedy

The Subcontractor must do everything necessary to remedy all breaches notified to it by Hunter Water under clause 5 within a reasonable time after Hunter Water's notice.

7. Failure to remedy

- (a) If the Subcontractor fails to carry out and complete the work and/or or services specified in Hunter Water's notice under clause 6 within a period determined by Hunter Water to be reasonable in the



circumstances, Hunter Water may give written notice to the Subcontractor that Hunter Water intends to have that work carried out by others.

- (b) If the Subcontractor fails to complete the work by the date specified in a notice given pursuant to clause 7(a), Hunter Water may have the work carried out by others, and the Subcontractor indemnifies Hunter Water against all costs, losses and damages suffered or incurred by Hunter Water in doing so.

8. Urgent action by Hunter Water

- (a) Hunter Water may take any urgent action necessary to protect the Works (including the Subcontract Works, Services or Products), other property or people as a result of a breach of clause 2 by the Subcontractor.
- (b) The Subcontractor agrees that Hunter Water taking such action does not affect any obligation of the Subcontractor under this Deed.
- (c) The Subcontractor indemnifies Hunter Water against all costs, losses and damages it suffers or incurs in taking that action.

9. Operation of Deed

This Deed comes into effect when executed by the Subcontractor, and is effective even though it has not been executed by Hunter Water or the Developer.

10. Independent advice

The Subcontractor warrants that, prior to entering into this Deed it:

- (a) read the terms of this Deed; and
- (b) had the opportunity to take, but may not have elected to take, independent legal advice as to the nature and extent of this Deed.

11. Entire agreement

This Deed contains the entire agreement between the parties with respect to its subject matter.

12. No waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed operates as a waiver and nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

13. Costs

Each party shall bear its own costs relating to this Deed and to any activities contemplated by it.

14. Further assurances

Each party shall take all steps, execute all documents and do everything reasonably required by the other party to give effect to this Deed.



15. Governing law

This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

16. Severance

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

Executed and delivered as a deed poll

[Note: Where the Subcontractor is a company, use the following execution block.]

SIGNED, SEALED AND DELIVERED as a deed by)

)

(ABN)

in accordance with section 127 of the *Corporations Act*
2001 (Cth):

Director Signature

Print Name

Director / Secretary Signature

Print Name

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

SIGNED, SEALED AND DELIVERED as a deed by)

)

in the presence of:)

)

Signature of Witness

Print Name

Signature of Witness

Print Name



SCHEDULE

1. Subcontract Works, Services or Products:

2. Warranty Period:

3. Works:



Schedule 4
Approved Form of Deed of Guarantee and Indemnity

Date	
Parties	
1.	<div style="display: flex; align-items: center;"><div style="border: 1px solid black; width: 350px; height: 25px; margin-right: 10px;"></div>ABN <div style="border: 1px solid black; width: 150px; height: 25px; margin-left: 10px;"></div></div>
	of <div style="border: 1px solid black; width: 480px; height: 25px; display: inline-block;"></div> (the Guarantor)
2.	Hunter Water Corporation (ABN 46 228 513 446) of 36 Honeysuckle Drive, Newcastle NSW 2300 (Hunter Water)
Recitals	
A	<p>Hunter Water and <div style="border: 1px solid black; width: 520px; height: 25px; display: inline-block;"></div></p> <p>ABN <div style="border: 1px solid black; width: 260px; height: 25px; display: inline-block;"></div> of <div style="border: 1px solid black; width: 260px; height: 25px; display: inline-block;"></div></p> <p style="text-align: right;">(the Developer) executed a works deed on or about</p> <p><div style="border: 1px solid black; width: 180px; height: 25px; display: inline-block;"></div> under which the Developer is to complete and handover the Works to Hunter Water (the Works Deed).</p>
B	Hunter Water's execution of the Works Deed was conditional upon the Guarantor executing this Guarantee.

It is agreed as follows

1 Interpretation

Terms that are defined in the Works Deed and used in this Guarantee have the same meaning given to them in the Works Deed.

2 Guarantor's Obligations

2.1 Guarantee of Performance

The Guarantor guarantees to Hunter Water the due and punctual performance of every legal, equitable, contractual, statutory or other duty, undertaking, warranty, guarantee, indemnity, covenant, agreement or other obligation on the part of the Developer which at any time arises under or in connection with the Works Deed (**Obligation**) including, without limitation:

- (a) any Obligation on the part of the Developer to pay Hunter Water any costs, expenses, damages or other liabilities, whether present, future, liquidated or unliquidated;
- (b) any Obligation arising from any variation to the Works Deed:
 - (i) agreed between the Developer and Hunter Water in writing; or
 - (ii) made in accordance with the Works Deed;

at any time, whether or not the Guarantor is aware of or consents to the variation; and



(c) the Unenforceable Developer Obligations referred to in clause 2.6, (collectively, the ***Developer's Obligations***).

2.2 Enforcement

If the Developer defaults in the due and punctual performance of any one or more of the Developer's Obligations and at any time after that default Hunter Water gives written notice to the Guarantor of that default and Hunter Water's intention to exercise its rights under this Guarantee in respect of that default, then the Guarantor must (without further notice from Hunter Water) immediately remedy or cause to be remedied the default.

2.3 Indemnity For Loss

The Guarantor indemnifies Hunter Water and its Personnel and agrees at all times hereafter to keep them indemnified from and against all damages, costs, losses, expenses and liabilities either may suffer or incur consequent upon or arising out of the Developer's Obligations not being performed, observed or fulfilled and the Guarantor agrees that the indemnity given by the Guarantor under this clause is:

- (a) a separate and additional Obligation of the Guarantor under this Guarantee;
- (b) given by the Guarantor as a principal indemnifier and not as a surety; and
- (c) given on the other terms of this Guarantee (with all necessary changes being made) so far as those other terms can apply.

2.4 Continuing Guarantee and Indemnity

- (a) This Guarantee shall be a continuing Obligation and security and shall not be wholly or partially satisfied or discharged by the payment at any time or times hereafter of any sum of money for the time being due to Hunter Water under the Works Deed or by any settlement, account, the performance of any other Obligation or any other matter or thing.
- (b) This Guarantee and all Obligations of the Developer to Hunter Water extends to and are security for all sums of money at any time due to Hunter Water despite any special payment, settlement of account, the performance of any other Obligation or other matter or thing in circumstances where the Developer is unable (for whatever reason) to satisfy the relevant Obligation.

2.5 Liability Not Discharged By Other Events

The liability of the Guarantor and the rights of Hunter Water under this Guarantee shall not be avoided by:

- (a) the granting of time or other indulgence or concession to the Developer;
- (b) the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of Hunter Water against the Developer;
- (c) any neglect or omission to enforce such rights;
- (d) the liquidation of the Developer or any other event of the type contemplated in clause 31.4 of the Works Deed occurring in respect of the Developer;
- (e) the variation, termination, cancellation, rescission, assignment or novation of the Works Deed in whole or in part;
- (f) the Works Deed being or becoming void or voidable in whole or in part; or
- (g) any other act, matter or thing which under the Law relating to sureties would or might but for this provision release the Guarantor from its Obligations under this Guarantee or any part of them.



2.6 Invalidity of Contractor's Obligations

Despite any other provisions of this Guarantee, the guarantee and indemnity given by the Guarantor under this Guarantee also extends and applies to Obligations on the part of the Developer which were void from the beginning, or have been subsequently avoided or are otherwise unenforceable by Hunter Water as a result of:

- (a) any legal limitation, disability or incapacity relating to the Developer;
- (b) any delay, neglect or failure to register or perfect the Works Deed or obtain any consent or authorisation necessary to give legal effect to the Works Deed (other than by reason of an act or omission of Hunter Water);
- (c) the Developer's failure to comply with any Law; or
- (d) any death, mental incapacity, winding up, liquidation, bankruptcy, insolvency, voluntary administration, composition of debts, scheme of reconstruction, official management, receivership, assignment of property, scheme of arrangement or other incapacity, insolvency or demise on the part of or entered into by the Developer,

whether or not Hunter Water should have known about the same (collectively, called ***Unenforceable Contractor's Obligations***).

2.7 Guarantor Not To Compete With Principal in Estate of Contractor

Until the Guarantor is entitled to a release of this Guarantee, the Guarantor shall not be entitled on any grounds to and shall not:

- (a) be subrogated to Hunter Water or claim the benefit of any security held by Hunter Water; or
- (b) claim or receive the benefit of any distribution, dividend or payment arising out of any assignment for the benefit of creditors, arrangement with creditors, winding up, reconstruction or other demise of the Developer so as to diminish any distribution, dividend or payment which (but for such claim or receipt) Hunter Water would be entitled to receive, even where such claim or receipt would arise in respect of a matter not connected with the Guarantor's rights as a surety.

2.8 Avoided Payments Disregarded and Principal Reinstated

- (a) If:
 - (i) a claim is made that any payment or transaction affecting or relating to the Developer's Obligations is void or voidable under any law relating to bankruptcy or the protection of creditors; and
 - (ii) that claim is upheld, conceded or compromised,

Hunter Water will immediately become entitled against the Guarantor to all rights in respect of the Developer's Obligations as it would have had if the payment or transaction (or so much of it as is held or conceded to be void or voidable or as is foregone on compromise) had not taken place.

- (b) The Guarantor must, on such claim being upheld, conceded or compromised, do all things required by Hunter Water to restore to Hunter Water the full benefit of this Guarantee immediately prior to such payment or transaction.

3 Interest on Judgment

Should Hunter Water obtain a judgment or order against the Guarantor, the Guarantor shall pay to Hunter Water interest on the amount owing under such judgment or order from the date of such



judgment or order until payment at the applicable rate in the Works Deed or at the rate awarded in the relevant judgment or order (whichever is higher).

4 Warranties

The Guarantor makes the following representations and warranties for the benefit of Hunter Water:

- (a) the Guarantor has the requisite power to execute and perform this Guarantee;
- (b) execution and performance of the Guarantee have been duly authorised; and
- (c) the Guarantor is not executing this Guarantee in reliance upon any promise, representation or statement by Hunter Water.

5 Assignment

- (a) Hunter Water may assign the benefit of this Guarantee at its absolute discretion and is entitled to provide any information it may have concerning the Guarantor to any proposed assignee.
- (b) The Guarantor may not assign or novate or otherwise deal with any of its rights and obligations under this Guarantee without the consent of Hunter Water.
- (c) References in this Guarantee to the Guarantor, Hunter Water and the Developer shall be taken to include their respective successors and permitted assigns.

6 Governing Law

This Guarantee and any matter arising in connection with it shall be governed by the laws of the State of New South Wales, and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

7 Goods and Services Tax

7.1 Definitions

Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.

In this Guarantee:

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge, except for any interest or penalty, fine, or other charge imposed on Hunter Water after it has received the relevant guarantee or indemnity payment due under this Guarantee;

GST Amount means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

Payment means:



- (a) the amount of any monetary consideration (other than a GST Amount payable under this clause); and
- (b) the GST of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Guarantee and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

7.2 Payment Exclusive of GST

The parties agree that:

- (a) all Payments have been set or determined at an amount which is net of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply, the GST Amount in respect of the Payment shall be paid to Hunter Water as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the Principal will provide to the Guarantor a Tax Invoice, before any GST Amount is payable under this clause 7.

7.3 Net Down of Reimbursements

If a Payment to Hunter Water is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by Hunter Water, then the payment will be reduced by the amount of any input tax credit to which Hunter Water is entitled for that loss, cost or expense.

8 Stamp Duty

The Guarantor agrees to bear all stamp duty payable or assessed in connection with this Guarantee.

9 Notices

- (a) All notices to or by a party to this Guarantee must be:
 - (i) in writing; and
 - (ii) sent by mail or delivered by hand.
- (b) A notice shall be deemed to be duly given or made when delivered to the recipient at the address set out in this Guarantee or otherwise notified to it in writing by the intended recipient from time-to-time.

10 Counterparts

- (a) This Guarantee may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- (b) The parties have signed, sealed and delivered this Guarantee on the day and year mentioned above.

11 Equivalent defences, set off and counterclaim

The Guarantor is entitled to any equivalent defences, set off and counterclaim as the Developer under the Works Deed.



EXECUTED as a Deed in **Newcastle**

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:)
)

Signature of Authorised Representative

Print Name

Signature of Witness

Print Name

[Note: Where the Guarantor is a company, use the following execution block.]

SIGNED, SEALED AND DELIVERED as a deed)
by)
(ABN) in)
accordance with section 127 of the *Corporations Act*
2001 (Cth):)

Director Signature

Print Name

Director / Secretary Signature

Print Name

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

SIGNED, SEALED AND DELIVERED as a deed)
by in the)
presence of:)
)

Signature of Witness

Print Name

Signature of Witness

Print Name