

**HUNTER WATER CORPORATION**

**AND**

Developer:

**DEVELOPER WORKS DEED  
ROUTINE MAJOR 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 works included in the notice of requirements.

## What you have to do next

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

- (a) complete, sign and return an original of the Deed to Hunter Water at 36 Honeysuckle Drive, Newcastle NSW 2300;
- (b) engage a Hunter Water accredited design consultant (see list of accredited design consultants at [www.hunterwater.com.au](http://www.hunterwater.com.au)) to design the works required by the notice of requirements and promptly notify Hunter Water of the identity of such person;
- (c) take out or have one or more of your subcontractors take out (as appropriate) the insurances required by clause 25 of the Deed, noting that the insurance policy required by:
  - (i) clause 25.1 may be taken out by your accredited construction contractor so long as you and Hunter Water are listed as “named insured” on that policy;
  - (ii) clause 25.2 is only required where you have employees; and
  - (iii) clause 25.3 is only required to be taken out by subcontractors with professional services responsibilities;
- (d) engage a Hunter Water accredited construction contractor (see list of accredited construction contractors at [www.hunterwater.com.au](http://www.hunterwater.com.au)) to prepare a Project Plan (as defined in the Deed) and construct the works required by the notice of requirements in accordance with the Deed and promptly notify Hunter Water of the identity of such person;
- (e) obtain a Design Compliance Certificate (as defined in the Deed) from the accredited design consultant in the form required by the Deed confirming that the Design Documents are in accordance with the Deed and that the Project Plan is endorsed; and
- (f) 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 and your accredited design consultant, obtain a Certificate of Completion (as defined in the Deed) and provide a copy to Hunter Water.

### **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. In particular, it is critical that your accredited design consultant understands the scope of his or her certification functions under the Deed.
- (b) You must not commence or procure the commencement of the manufacture or construction of any works required by the notice of requirements until your accredited design consultant has issued you with a Design Compliance Certificate.

## DEED PARTICULARS

| Item | Matter  | Variable  |
|------|---|---|
| 1    | Deed Date   | <input style="width: 100%; height: 40px;" type="text"/>   |
| 2    | Developer   | Name: <input style="width: 90%; height: 30px;" type="text"/><br><br>ABN: <input style="width: 90%; height: 30px;" type="text"/><br><br>Postal Address: <input style="width: 90%; height: 50px;" type="text"/> |
| 3    | Date of Commencement<br>(clause 1.1)                    | <input style="width: 100%; height: 40px;" type="text"/>   |
| 4    | Forecast Completion Date<br>(clause 1.1)                | <input style="width: 100%; height: 40px;" type="text"/>   |
| 5    | Estimated Design and Construction Costs<br>(clause 1.1) | [\$]<br><input style="width: 90%; height: 30px;" type="text"/>  |
| 6    | Hunter Water Representative<br>(clause 1.1)             | The Hunter Water Representative provided by the Notice of Requirements<br><br><input style="width: 90%; height: 30px;" type="text"/>  |
| 7    | Information Documents<br>(clause 1.1)                   | N/A   |
| 8    | Notice of Requirements                                  | <span style="background-color: yellow;">[insert details (eg. date and reference of notice)]</span><br><br><input style="width: 90%; height: 30px;" type="text"/>  |
| 9    | Site<br>(clause 1.1)                                    | <input style="width: 100%; height: 40px;" type="text"/>   |

| Item | Matter  | Variable  |
|------|---|---|
| 10   | Developer Representative<br>(clause 6.2)          | Name: <input data-bbox="746 208 1374 286" type="text"/><br><br>Title: <input data-bbox="724 320 1406 416" type="text"/><br><br>Address for Notice:<br><input data-bbox="727 533 1406 629" type="text"/><br><br>Phone: <input data-bbox="746 663 1406 759" type="text"/><br><br>Email: <input data-bbox="746 801 1406 898" type="text"/> |
| 11   | Hunter Water Approvals<br>(clause 13.2(a))        | <input data-bbox="727 965 1401 1061" type="text" value="N/A"/>  |
| 12   | Public Liability Insurance<br>(clause 25.1)       | \$20 million for each and every claim and unlimited in the aggregate  |
| 13   | Professional Indemnity Insurance<br>(clause 25.3) | \$10 million per claim and in the annual aggregate, with provision for one automatic reinstatement  |

**THIS DEED** is made on the Deed Date

BETWEEN

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

AND

**THE DEVELOPER IDENTIFIED IN ITEM 2 (*Developer*)**

#### **BACKGROUND & PURPOSE OF THIS DOCUMENT**

- A. Section 49(1) of the Hunter Water Act states that if an approval has been given with respect to any land within Hunter Water's area of operations, the developer of that land may apply to Hunter Water for a certificate to the effect that the development complies with section 50 of the Hunter Water Act.
- B. Section 50(1) of the Hunter Water Act states that if an application is made to Hunter Water under section 49(1) of the Hunter Water Act, Hunter Water may:
  - 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 the:
    - 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
    - iii. transfer of the relevant works at no cost to Hunter Water.
- C. Section 50(2) of the Hunter Water Act states that when Hunter Water is satisfied that the requirements of a notice referred to in section 50(1) have been complied with, 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 to the Developer confirming the actions it must 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. This includes a requirement for the Developer to procure the design, construction, completion and testing of the Works and to transfer ownership of them to Hunter Water.
- F. This Deed sets out the terms on which the Developer agrees to undertake these activities.

## **1. DOCUMENTS COMPRISING THIS DEED**

This Deed is comprised of:

- (a) this document;
- (b) the Deed Particulars, which set out the specific details applying to this Deed;
- (c) the Developer Works Deed (Routine Major Works) standard terms (available at [www.hunterwater.com.au](http://www.hunterwater.com.au)); and
- (d) any other document referred to in this Deed.

## **2. NATURE OF DEED**

The Developer must:

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

## **3. GENERAL**

### **3.1 Governing Law and Jurisdiction**

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

### **3.2 Entire Agreement**

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

### **3.3 Counterparts**

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

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## 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;
- (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;
- (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 Design Checklist, Verification and Monitoring Plan and Shutdown Requirements, requirements provided by the Manual: Delivery of Developer Assets, and the then current versions of the WSAA Code 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 to perform the Works, but does not include the exercise by Hunter Water or the Hunter Water Representative of their rights under this Deed.

**Author** means any author of any Copyright Works assigned or licensed to Hunter Water under this Deed.

**Authority** means any:

- (a) court or tribunal; or
- (b) agency, authority, board, department, government instrumentality, government minister, ministry or public or statutory personnel of the Commonwealth or NSW, and any local government.

**Background IP** means Intellectual Property Rights owned by or licensed to the Developer which existed prior to the Deed Date and which are used in performing the Works or otherwise made available to Hunter Water.



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

**Certificate of Completion** means a certificate issued pursuant to clause 18.6(b) and in the form set out in the Manual: Delivery of Developer Assets.

**Completion** means the stage when:

- (a) the Accredited Design Consultant determines that the Works have passed all Pre-Completion Tests and tests directed pursuant to clause 18.3;
- (b) the Works have been connected to the Existing Operations in accordance with clause 18.5;
- (c) the Works are able to be operated safely by Hunter Water under normal operating conditions;
- (d) the Works are in a condition which is compliant with all relevant Laws and the requirements of all relevant Authorities and other relevant persons have been satisfied;
- (e) all documents and information required under this Deed to be supplied to the Hunter Water Representative and Accredited Design Consultant as a prerequisite for Completion, have been supplied;
- (f) the Developer has provided the Hunter Water Representative with a completed copy of the construction issues register referred to in clause 10.5(c);
- (g) all Approvals to be obtained by the Developer under this Deed have been obtained;
- (h) the Developer has provided to the Hunter Water Representative and Accredited Design Consultant a final set of electronic 'work as constructed' drawings of the Works (on CD-ROM or DVD in AutoCAD) which:
  - (i) show the levels, lines, positions and dimensions of the Works as constructed; and
  - (ii) comply with Hunter Water Standard Technical Specification 903 – Work as Constructed Information; and
- (i) the Developer has provided to the Hunter Water Representative:
  - (i) an executed Design Compliance Certificate from the Accredited Design Consultant (in the form set out in the Manual: Delivery of Developer Assets);
  - (ii) an executed Pre-connection Compliance Certificate from the Accredited Design Consultant;
  - (iii) an executed Certificate of Completion from the Accredited Design Consultant; and
  - (iv) an executed final commissions checklist from the Accredited Construction Contractor (in the form set out in the Manual: Delivery of Developer Assets).

**Confidential Information** means information revealed by or on behalf of Hunter Water to the Developer or its Personnel that:

- (a) is by its nature confidential;



- (b) is marked or designated as confidential or proprietary at the time of its disclosure; or
- (c) 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 Works, but not forming part of the Works.

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

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

**Date for Commencement** means the date set out in Item 3.

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

**Deed Date** means the date set out in Item 1.

**Defect** includes any:

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

**Defects Liability Period** means the period commencing on the Date of Completion and expiring 12 months thereafter, unless extended in accordance with clause 20.

**Design Checklist** means the design checklist set out in the Manual: Delivery of Developer Assets.

**Design Compliance Certificate** has the meaning given to that term in clause 9.1.

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

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

**Developer's Design Obligations** means everything needed to design the Works in accordance with this Deed.

**Environment** includes ecosystems and their constituent parts, including people and communities and all natural and physical resources.

**Environmental Law** means any Law relating to the Environment.

**Environmental Requirements** include the requirements of Hunter Water's environmental management plan(s) for the Works and/or Site (a copy of which the Developer acknowledges it has received and understood) and Environmental Laws and/or management plans for the Works and/or Site issued under Environmental Laws.



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

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

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

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

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

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

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

**Information Document** means any information or material:

- (a) referred to in Item 7;
- (b) 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) referred to, or incorporated by reference, in an Information Document,

other than information, data, documents and material Hunter Water is obliged to warrant by Law.

**Intellectual Property Rights** means all intellectual property rights and other rights in relation to ideas, inventions, innovations, patents, copyright, registered and unregistered designs and trademarks, rights in circuit layouts, mask rights, rights in technologies in development, know-how, trade secrets and confidential information, including any right to register such rights, whether existing in Australia or overseas.

**Item** means an item of the Particulars.

**Law** means:

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

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

**Manual: Delivery of Developer Assets** means the manual of that name available at [www.hunterwater.com.au](http://www.hunterwater.com.au).

**Moral Rights** has the meaning in the *Copyright Act* 1968 (Cth) and similar rights under foreign law.

**Notice of Requirements** means the notice referred to in Item 8.

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



**Personnel** means a party's employees, agents, contractors and consultants, excluding 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 Accredited Design Consultant, and as required in the then current versions of all relevant design codes, including the Hunter Water Design Codes, WSA Code and all relevant Australian Standards.

**Pre-connection Compliance Certificate** means a certificate issued pursuant to clause 18.5 and in the form set out in the Manual: Delivery of Developer Assets.

**Project IP** means all Intellectual Property Rights created by the Developer or any of its Personnel in performing the Works and the Developer's other obligations under this Deed, excluding Background IP.

**Project Plan** means a plan for the completion of the Works that appropriately addresses each of the issues set out in the Manual: Delivery of Developer Assets, including the Verification and Monitoring Plan.

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

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

**Site** means the site identified in Item 9.

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

**Statutory Fee** means any fee, charge or levy payable:

- (a) under any Law that applies to the Works or Site or any part thereof; or
- (b) for any Approval or requirement of any Authority in connection with the Works or any part thereof.

**Temporary Works** means works used in completing the Works but not forming part of the Works.

**Verification and Monitoring Plan** means a verification and monitoring plan that addresses each of the issues set out in the Manual: Delivery of Developer Assets.

**WHS Laws** means Laws 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 all things the Developer must do under this Deed to design, construct, complete and test the works in accordance with this Deed.

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

## 1.2 Interpretation

In this Deed, unless the context otherwise requires:





- (a) reference to a person means an individual, the estate of an individual, a corporation, an authority, an association or joint venture, a partnership, a trust and other entities recognised by Law;
- (b) words importing the singular include the plural and vice versa;
- (c) any reference to a party by its defined term includes its executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (d) clause headings are for reference purposes only;
- (e) reference to a document is to that document as varied, novated, ratified or replaced;
- (f) reference to a statute includes all regulations made under and amendments to it and any statute passed in substitution for that statute or incorporating any of its provisions;
- (g) if a word or phrase is defined, any part of that word or phrase has a corresponding meaning; and
- (h) “including” and “includes” are not words of limitation.

### 1.3 No bias

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

## 2. HUNTER WATER AS AN AUTHORITY

The Developer acknowledges and agrees that:

- (a) this Deed does not affect Hunter Water’s statutory functions or powers; and
- (b) anything Hunter Water does or fails to do pursuant to its statutory functions and powers will not be an act or omission under or in connection with this Deed and the Developer is not entitled to 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) This Deed doesn’t commence until the following conditions are satisfied by the Developer or waived by Hunter Water in writing (the **Conditions Precedent**):
  - (i) the Developer demonstrates to Hunter Water’s satisfaction that the Developer has complied with its insurance obligations under clause 25; and
  - (ii) where it is not the owner of the Site, the Developer demonstrates to Hunter Water’s satisfaction that it is legally entitled to enter into and perform its obligations under this Deed.
- (b) If the Conditions Precedent are not satisfied by the Developer or waived by Hunter Water in writing by the date that is twenty days after the Deed Date, 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 such termination.



## PART B – DOCUMENTATION

### 4. DOCUMENTS

#### 4.1 Ambiguities and Discrepancies

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

#### 4.2 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 be used for any purpose other than the execution of the Works.

#### 4.3 Availability of Documents on Site

While Works are being performed at the Site, one complete set of the Design Documents, Hunter Water Project Requirements and other written information supplied by Hunter Water, the Hunter Water Representative, the Developer or its subcontractors, must be kept at the Site and be available at all reasonable times for viewing by Hunter Water and its nominees.

#### 4.4 Records and Access to Records

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

and the Developer must comply with such notice and ensure that its subcontractors and suppliers do likewise.

#### 4.5 Information Documents

The Developer warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations and agrees that Hunter Water:

- (a) does not warrant or assume any duty of care for the accuracy, adequacy or completeness of any Information Document;



- (b) insofar as is permitted by Law, will not be liable upon any claim by the Developer arising out of:
  - (i) the provision of or purported reliance upon Information Documents to or by the Developer or any other person to whom Information Documents are disclosed; or
  - (ii) a failure by Hunter Water to provide any information to the Developer; and
- (c) entered into the Deed relying on the warranties and agreements in this clause 4.5.



## PART C – RELATIONSHIPS

### 5. RELATIONSHIP INTENT

- (a) The Developer is responsible for managing all relationships that arise during the course of the Works.
- (b) The parties must each appoint a representative pursuant to clause 6 for the conduct of this Deed.

### 6. REPRESENTATIVES

#### 6.1 Hunter Water Representative

- (a) 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 change the Hunter Water Representative by written notice to the Developer.
- (c) The Developer must comply with any direction given by the Hunter Water Representative.
- (d) The Hunter Water Representative may appoint delegates to exercise any of its functions by written notice to the Developer.

#### 6.2 Developer Representative

- (a) The Developer must ensure that at all times the Deed is managed by a competent person and, as at the Deed Date, that person is the person named in Item 10 (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 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 within the knowledge of the Developer.

### 7. SUBCONTRACTING

#### 7.1 Restrictions on Subcontracting

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

- (a) design consultant is an Accredited Design Consultant;
- (b) supplier is an Accredited Supplier; or
- (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 subcontract contains provisions:



- (i) to the effect that the relevant subcontractor or supplier must:
  - (A) not assign or subcontract Works or supplies without Hunter Water's prior written consent; and
  - (B) maintain insurances as required by clause 25, excluding professional indemnity insurance in the case of Accredited Construction Contractors and Accredited Suppliers where the product to be supplied is "completely off the shelf";
- (ii) which will enable the Developer to comply with this Deed;
- (iii) similar to those included in clauses 17.2, 22 and 28.1; and
- (iv) which state that, if the relevant subcontract is terminated, 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 novate the subcontract to Hunter Water.

## 7.2 No restrictions

The Developer warrants that it has no arrangement with any subcontractor which might restrict the supply of spare parts for the Works directly to Hunter Water or interfere with Hunter Water in the exercise of any right under this Deed.

## 7.3 Developer's Liabilities and Obligations Unaffected

None of the following:

- (a) any accreditation of a subcontractor or supplier by Hunter Water;
- (b) the subcontracting of any Works or supplies; or
- (c) 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 its subcontractors and suppliers and their Personnel.



## **PART D – DESIGN REQUIREMENTS**

### **8. GENERAL DESIGN WARRANTIES**

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

- (a) comply with this Deed;
- (b) are fit for their intended purposes;
- (c) comply with all Laws, Environmental Requirements, Hunter Water Project Requirements and Applicable Requirements;
- (d) are suitable for the Site, Environment and conditions in which the Works will operate;
- (e) do not infringe any Intellectual Property Right or other protected right; and
- (f) include all features and items necessary for the efficient operation and maintenance of the Works.

### **9. DESIGN REVIEW AND VALIDITY**

#### **9.1 Design Obligations and Design Review**

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

#### **9.2 Design validity**

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

## **PART E – CONSTRUCTION REQUIREMENTS**

### **10. PROGRESS AND PROGRAMMING OF THE WORKS**

#### **10.1 Commencement**

The Developer must commence construction of the Works promptly after it is issued with a Design Compliance Certificate and proceed with due expedition in accordance with this Deed and the approved Project Plan.

#### **10.2 Progress Reports**

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

#### **10.3 Forecast Completion Date**

The Developer must achieve Completion by the Forecast Completion Date and must promptly notify the Hunter Water Representative of anything which may delay the Works and give details of the possible delay.



#### 10.4 Project Plan

- (a) The Developer must review and update the Project Plan throughout the completion of the Works to take account of any material changes in circumstances which affects the value of the Works and/or the Forecast Completion Date, and must submit the updated plan to the Hunter Water Representative and the Accredited Design Consultant for the latter's endorsement.
- (b) Once an updated Project Plan is approved by the Accredited Design Consultant in writing, the Developer must comply with that version until any further amended version is approved by the Accredited Design Consultant.
- (c) The Developer must ensure that the Accredited Design Consultant maintains a register of all Project Plans it receives, reviews and approved or rejects.

#### 10.5 Surveillance by Accredited Design Consultant

In the period between the date on which construction of the Works is commenced and the Date of Completion, the Developer must ensure that the Accredited Design Consultant:

- (a) completes the surveillance and audit activities set out in the Manual: Delivery of Developer Assets;
- (b) manages any requests for information or design changes from the Accredited Construction Contractor and/or Accredited Suppliers; and
- (c) where the Works are not being completed in accordance with this Deed, records all such issues in a register of construction issues along with the date on which the relevant non-conformance was rectified.

### 11. VARIATIONS

- (a) The Hunter Water Representative may direct the Developer to do any one or more of the following at any time prior to the Date of Completion:
  - (i) increase, decrease or omit any part of the Works;
  - (ii) change the character or quality of any Equipment or work;
  - (iii) change the levels, lines, positions or dimensions of any part of the Works; and/or
  - (iv) demolish or remove Equipment or work no longer required by Hunter Water,and the Developer must comply with such directions at Hunter Water's cost, provided that:
  - (v) the parties (acting reasonably) have agreed the value of the variation prior to the Developer giving effect to it; or
  - (vi) failing agreement of the type contemplated in clause 11(a)(v) 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 Works except as directed in writing by the Hunter Water Representative.



## **12. SITE**

### **12.1 Access to the Site by Hunter Water and Others**

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

### **12.2 Control of Site**

- (a) To the fullest extent permitted by Law, the Developer is responsible for the management and control of the Site and must:
  - (i) control access to it; and
  - (ii) comply with all directions of Authorities with respect to such access.
- (b) To the fullest extent permitted by Law, nothing in this Deed will mean that Hunter Water has any responsibility for any act or omission by the Developer or its Personnel.

### **12.3 Site Conditions**

Except as required by Law, Hunter Water makes no representation in respect of and has no Liability for the:

- (a) Site Conditions and what may be encountered during the execution of the Works; or
- (b) existence, location, condition or availability of any utility service.

## **13. LAWS, CODES AND STANDARDS**

### **13.1 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 Works;
  - (ii) pay all Statutory Fees and taxes payable in connection with this Deed and the Works; and
  - (iii) pay all insurance premiums the Developer is required 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 and comply with Hunter Water's determination.
- (c) Nothing in clause 13.2 or clause 14 limits the generality of this clause 13.1.

### **13.2 Licences and Approval**

- (a) With the exception of the Approvals identified in Item 11, the Developer must procure, maintain and pay for all Approvals necessary for the lawful completion of the Works. 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 its Personnel do likewise, all Approvals





they are by Law required to hold to complete the Works and provide copies of such Approvals to the Hunter Water Representative upon its request.

## **14. WORK, HEALTH AND SAFETY AND THE ENVIRONMENT**

### **14.1 Safety and the Environment**

- (a) The Developer must:
  - (i) ensure that all Works are carried out in accordance with all relevant WHS Laws and Environmental Requirements; and
  - (ii) when directed by the Hunter Water Representative, provide access and all necessary assistance to allow a complete audit of the Developer's work, health and safety and environmental records.
- (b) If the Hunter Water Representative considers there is a risk to the health and safety of people or damage to property or the Environment arising from Works, it may direct the Developer to change its methods or cease work, and the Developer must comply and will have no claim against Hunter Water.

### **14.2 Principal Contractor**

- (a) The Developer acknowledges and agrees that, as between the Developer and Hunter Water and for the purposes of clause 293 of the *Work Health and Safety Regulation 2011* (NSW) (the WHS Regulation):
  - (i) the Developer is the "principal contractor" for the Works; and
  - (ii) if the engagement referred to in clause 14.2(a)(i) is not valid, it will fulfil the obligations of a principal contractor under the WHS Regulation as if it was the principal contractor in respect of the Works.
- (b) Notwithstanding clause 14.2(a), the Developer may appoint an Accredited Construction Contractor engaged by the Developer to complete the Works as "principal contractor" for the Works without Hunter Water's consent.

## **15. EQUIPMENT AND WORK**

### **15.1 Developer to Provide**

Except to the extent this Deed expressly provides otherwise, the Developer must do everything necessary to discharge its obligations under it at its cost, including supplying items which:

- (a) can reasonably be inferred as being required for the discharge of the Developer's obligations; or
- (b) would be required by Best Practice,

as if that work, Equipment or other items were specifically mentioned in this Deed.

### **15.2 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.

### 15.3 Quality Assurance

The Developer must, and must ensure that all subcontractors and suppliers:

- (a) establish and maintain a quality management system which is compliant with the NSW Government Quality Management System Guidelines for Construction; and
- (b) provide the Hunter Water Representative and its nominees with access to those systems to enable auditing.

### 15.4 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 requested, in respect of any Equipment or other items to be used by the Developer in connection with this Deed.

### 15.5 Defective Equipment or Work

- (a) If, during the progress of the Works, the Hunter Water Representative discovers Equipment or Work 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 15.5(a).
- (c) If the Developer fails to comply with a direction under this clause 15.5, Hunter Water may have the work carried out by others and the cost of doing so will be a debt due and payable to Hunter Water.

## 16. CARE OF THE WORKS AND REINSTATEMENT OF DAMAGE

### 16.1 Care of the Works

The Developer is responsible for:

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



## 16.2 Reinstatement

If loss or damage occurs to the Works, Site 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 the relevant thing conforms with this Deed.

## 17. PROTECTION OF PEOPLE AND PROPERTY

### 17.1 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 completion of the Works as if they were not being undertaken;
  - (ii) it will not, and nor will its Personnel, have exclusive use of any Existing Operations; and
  - (iii) in using any Existing Operations, it will not do anything which may place itself or Hunter Water in breach of any Law applying to the Existing Operations.
- (b) If the Developer fails to comply with an obligation under this clause, 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.
- (c) 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 arising out of any breach of this clause by the Developer.

### 17.2 Urgent Action

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

- (a) it must immediately notify the Hunter Water Representative; and
- (b) if urgent action is necessary to prevent or mitigate its effects, Hunter Water may take all necessary action 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

### 18. PRE-COMPLETION TESTS AND CERTIFICATES

#### 18.1 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.

#### 18.2 Pre-Completion Test Costs

The Developer bears the cost of completing all Pre-Completion Tests and inspections required under this Deed.



### 18.3 General Test and/or Inspection Rights

- (a) At any time before the expiry of the Defects Liability Periods, Hunter Water may 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 as soon as practicable and at its own cost 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.

### 18.4 Pre-Completion Tests

- (a) The Developer must:
  - (i) give the Hunter Water Representative and the Accredited Designer 14 days' prior written notice of its intention to carry out any Pre-Completion Test, which must include details of the item to be tested, Pre-Completion Test to be performed and the date and location; and
  - (ii) thereafter carry out the Pre-Completion Tests in accordance with that notice and the Project Plan.
- (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.

### 18.5 Connection

The Developer acknowledges and agrees that:

- (a) it must not connect any Works to any Existing Operations until the:
  - (i) Accredited Design Consultant determines that the Works have passed all Pre-Completion Tests and are in order for connection to the Existing Operations and has issued the Developer with a Pre-connection Compliance Certificate; and
  - (ii) Hunter Water Representative has approved any such connection in writing (which may be conditional);



- (b) it will notify the Hunter Water Representative in writing no less than 10 days prior to the date on which the Developer or anyone on its behalf intends to connect any Works 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.

#### **18.6 Completion**

- (a) As soon as the Developer believes the Works have reached Completion, it must give written notice to the Hunter Water Representative stating that it is a notice under this clause 18.6.
- (b) Within 14 days after receipt of the notice under clause 18.6(a), the Developer must arrange for the Accredited Design Consultant to issue to the Developer and the Hunter Water Representative either:
  - (i) a Certificate of Completion; or
  - (ii) a notice that identifies any Defects and/or other reasons for not doing so.
- (c) If the Accredited Design Consultant notifies the Developer of any reasons for not issuing a Certificate of Completion, the Developer must promptly correct such issues and clauses 18.6(a) and (b) will reapply.

#### **18.7 Effect of and Correction or Modification of Certificates**

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

### **19. OWNERSHIP, OPERATION AND MAINTENANCE OF WORKS**

On and from midnight on the Date of Completion:

- (a) ownership of the Works transfers to Hunter Water, free of any Security Interest and at no cost; and
- (b) subject to 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.

### **20. DEFECTS LIABILITY**

#### **20.1 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, 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 up to 20 days after the expiration of the Defects Liability Periods;
  - (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 apply in respect of it 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 20.1 will apply in respect of such work.
- (d) In addition to rectifying a Defect, the Developer must, at its own cost, locate and rectify its cause and the term 'rectification work' includes modifying plant and equipment to eliminate the issue.
- (e) If rectification work is not commenced or completed by the stated dates, Hunter Water may have it completed and the associated cost will be a debt due and payable from the Developer to Hunter Water.

## 20.2 Records, Access and Times for Rectification Work

All rectification work undertaken by the Developer under this clause 20 must be undertaken:

- (a) at times which have been approved in writing by Hunter Water; and
- (b) in a manner which causes as little inconvenience to Hunter Water as is possible.

## PART G – GENERAL OBLIGATIONS

### 21. DEVELOPER WARRANTIES

#### 21.1 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 Works;
- (c) it will in completing or procuring the completion of the Works, exercise a high standard of care, skill and diligence commensurate with Best Practice and ensure that its subcontractors do likewise;
- (d) 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 Works;
- (e) it is responsible for all methods of investigation, design and construction and will complete the Works in accordance with this Deed and the Design Documents;
- (f) the Works, when completed, will:
  - (i) comply with this Deed, the WSAA Code and all Laws, Environmental Requirements, the Hunter Water Project Requirements and Applicable Requirements;
  - (ii) not infringe any Intellectual Property Right or other protected right; and
  - (iii) enable maintenance and repairs to be undertaken in an efficient manner;
- (g) the Works are fit for their intended purposes;
- (h) it is legally entitled to, and has power to, enter into and perform its obligations under this Deed; and
- (i) where the Developer is the trustee of a trust:



- (i) it is the sole trustee of the relevant trust (the **Trust**) and no action has been taken to remove it;
- (ii) it has the power under the trust deed of the Trust (the **Trust Deed**) to 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 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 Hunter Water's prior written consent; 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.

## 21.2 Warranties Unaffected

The Developer acknowledges and agrees that:

- (a) the warranties provided by the Developer under this Deed remain unaffected; and
- (b) it will bear full liability and responsibility in accordance with this Deed for the performance of the Works, notwithstanding any one or more of the following:
  - (c) any design work carried out by Hunter Water, the Developer or others before the Deed Date;
  - (d) the involvement of subcontractors in the execution of any Works;
  - (e) any receipt or review of, or comment on, or rejection or approval of, any:
    - (i) Design Document;
    - (ii) other document or information provided by the Developer; or
    - (iii) of the Developer's work methods or procedures,  
by or on behalf of Hunter Water or the Hunter Water Representative;
  - (f) any supervision, review of, or comment on, or rejection or approval of:
    - (i) any of the Developer's subcontractors, suppliers or Equipment selections;
    - (ii) the execution of any Works; 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 anything referred to in clauses 21.2(c) to (f); or



- (h) any variation directed or approved by Hunter Water or the Hunter Water Representative.

### 21.3 No Duty of Care or Liability Imposed on Hunter Water

Without limiting the remainder of this Deed, no receipt of nor any review, comment, approval, rejection or supervision 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 Works,  
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 Design Documents or other information provided by the Developer; or
  - (g) constitute an admission that Hunter Water or any of its Personnel have checked any Design Documents, other information or work for errors, omissions or compliance with this Deed.

### 21.4 Acknowledgment of Reliance

The Developer acknowledges and agrees that:

- (a) Hunter Water has relied on each of the acknowledgements, warranties and agreements given in clauses 4.5, 21 and 28.8 in entering into this Deed and would not have executed this Deed but for them; and
- (b) 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; and
  - (ii) must cause any successor of the trust and any person who becomes a trustee of it with the Developer to execute all documents required to ensure that this Deed is binding on them.

## 22. INTELLECTUAL PROPERTY RIGHTS

### 22.1 Developer's Representations and Warranties

The Developer represents and warrants that:

- (a) it has all necessary Intellectual Property Rights subsisting in any thing or process to be used by or on behalf of the Developer in performing the Works or to be provided 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 22.3(a) and 22.3(b); and





- (c) the Design Documents, Works, Project IP, 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.

## 22.2 Indemnities

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

- (a) any Liability to or claim by any other person; and
- (b) any Liability suffered or incurred by Hunter Water and/or any of its Personnel,

as a result of:

- (c) the Design Documents, Works, Project IP or Background IP (or any use of any of them by or on behalf of Hunter Water) infringing any Intellectual Property Rights of a third party; or
- (d) the Design Documents or the Works infringing any Moral Rights.

## 22.3 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 grants to Hunter Water a perpetual, irrevocable, non-exclusive, fully assignable and royalty free licence for Hunter Water to use and copy the 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 sub-licence any of the rights granted under clause 22.3(b).

## 22.4 Moral Rights

The Developer must procure from each Author express agreement that he or she will not enforce any Moral Rights he or she has in the Copyright Works, including by executing any consents required by Hunter Water.

## 23. DEVELOPER'S INDEMNITIES

### 23.1 General Indemnity

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

- (a) loss of or damage to any property and any Liability resulting from such loss or damage;
- (b) any Liability to or claims 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; and
- (c) 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



## **24. LIMITATION OF LIABILITY**

### **24.1 Liability Cap**

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

### **24.2 Proportionate Liability Schemes**

To the fullest extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed.

## **25. INSURANCES**

### **25.1 Public Liability Insurance**

(a) Within 30 days of the Deed Date, the Developer must:

(i) take out a public liability insurance policy in its name and Hunter Water's and for an amount not less than that specified in Item 12, covering claims in respect of:

- (A) damage to, loss or destruction of, or loss of use of, real or personal property;
- (B) injury to, or disease or death of, persons; and
- (C) financial loss,

arising out of or in connection with the Works; or

(ii) procure that the Accredited Construction Contractor engaged by the Developer to complete the Works takes out a policy that complies with clause 25.1(a)(i), but also names Hunter Water and the Developer as named insured.

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

### **25.2 Insurance of Employees**

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

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

### **25.3 Professional Indemnity Insurance**

The Developer must ensure that any Consultants and subcontractors with professional services responsibilities effect and maintain professional indemnity insurance policies covering any breach of duty they owe in a professional capacity for an amount not less than that specified in Item 13.

### **25.4 Periods of Insurance**

The Developer must ensure that:

(a) the policy referred to in clause 25.3 is maintained until the date that is 6 years after the Date of Completion; and



- (b) all other policies required under this clause 25 are maintained until the expiry of the last Defects Liability Period.

#### 25.5 **Proof of Insurance**

- (a) Whenever requested by Hunter Water, the Developer must produce evidence to the satisfaction of Hunter Water that all relevant insurances have been effected and maintained in accordance with this clause 25
- (b) Notwithstanding clause 25.5(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.

#### 25.6 **Failure to Produce Proof of Insurance**

If, after being requested by Hunter Water to do so, the Developer fails to produce evidence of compliance with its insurance obligations under this clause 25 to the satisfaction of Hunter Water, Hunter Water may effect the relevant insurance(s) and the premiums will be a debt due and payable from the Developer to Hunter Water.

#### 25.7 **General Obligations**

- (a) The Developer must:
  - (i) not do or permit or not do anything which prejudices any of the insurances it is required to maintain by this clause 25;
  - (ii) immediately fix anything which prejudices any of the insurances it is required to maintain by this clause 25;
  - (iii) reinstate any insurance policy it is required to maintain by this clause 25 should it lapse;
  - (iv) give detailed information to its insurer(s) of all matters the non-disclosure of which might prejudice the level of cover available under any policy required by this clause 25;
  - (v) comply at all times with the terms of each policy it is required to maintain by this clause 25; and
  - (vi) use its best endeavours to recover under a policy it is required to maintain under this clause 25 and indemnify Hunter Water and its Personnel up to the relevant level of insurance it is required to hold under this clause 25 should it fail to do so,

and ensure that all relevant Consultants and subcontractors do likewise.

- (b) Any insurance policy required to name more than one person as a named insured must include a cross liability clause and an acknowledgement that the insurer accepts the term “insured” applies to all of them as if a separate policy of insurance had been issued to each of them.
- (c) The Developer must ensure that all policies it is required to take out under this clause 25 are taken out with reputable insurers.



## **26. CONFIDENTIALITY**

### **26.1 General Restriction**

Except to the extent required by Law, the Developer must not, even after the expiry or termination of this Deed, disclose any of the contents of this Deed or Confidential Information.

### **26.2 Media Releases**

The Developer must:

- (a) not issue any information or document for publication concerning this Deed, the Works, Hunter Water or any Hunter Water 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 26.2(a).

### **26.3 Public Access to Government Information**

- (a) The Developer acknowledges and agrees that Hunter Water is subject to the *Government Information (Public Access) Act 2009 (NSW)* (the **GIPA Act**).
- (b) In accordance with section 121 of the GIPA Act, the Developer must, upon receipt of a written request from Hunter Water, provide Hunter Water or its nominee with immediate access to the following information contained in records held by the Developer:
  - (i) information that relates directly to the carrying out of the Works; and
  - (ii) information received by the Developer from Hunter Water to enable it to carry out the Works.
- (c) The Developer must provide Hunter Water with copies of any information referred to in clause 26.3(b) and requested by Hunter Water at the Developer's expense.
- (d) Any failure by the Developer to comply with any request pursuant to clause 26.3(b) or 26.3(c) will be a material breach of this Deed and entitle Hunter Water to immediately terminate this Deed.

## **27. DEFAULT AND TERMINATION**

### **27.1 Default by the Developer**

- (a) If the Developer commits a substantial breach of this Deed, Hunter Water may issue a notice to fix to the Developer which sets out a time for the rectification of the breach.
- (b) If, by the time included in the notice under clause 27.1(a), the Developer does not fix the breach, Hunter Water may terminate this Deed by written notice to the Developer.

### **27.2 Insolvency of Developer**

- (a) Where the Developer is comprised of two or more persons, a reference to the "Developer" in this clause 27.2 means any one or more of those persons.
- (b) If Hunter Water believes the Developer has suffered or is likely to suffer an event which suggests that it is unable to pay its debts as and when they fall due, then Hunter Water may, without giving a notice to show cause, terminate this Deed.

### **27.3 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 27.3, 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.

## **28. GENERAL**

### **28.1 Costs**

Each party will bear:

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

### **28.2 No Waiver**

- (a) An election to affirm or terminate this Deed and a waiver of any rights created by 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 delay in or partial or failure to exercise any right or remedy.
- (c) Any right or remedy arising upon a breach of this Deed is not waived by a delay in or partial or failure to exercise that right or remedy.

### **28.3 Joint and Several Obligations and Liabilities**

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

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

### **28.4 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' addresses are as set out in the Particulars, or as a party notifies the sender in writing from time-to-time.

#### 28.5 **Further Assurances**

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

#### 28.6 **No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed.

#### 28.7 **Approvals and Consent**

Subject to any 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 discretion; and
- (b) are not obliged to give their reasons for doing so.

#### 28.8 **Non Reliance**

Without limiting clauses 4.5 and 12.3, 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 28.8(a) and (b).

#### 28.9 **Survival**

Clauses 22 (and the licences granted under it) 23, 24, 25, 26 and 28 survive any termination or expiry of this Deed.



EXECUTED as a Deed in **Newcastle**

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

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

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

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

**[Note: Hunter Water to Execute.]**

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