

THIS DEED is made on the Deed Date

BETWEEN

HUNTER WATER CORPORATION of 36

Honeysuckle Drive, Newcastle NSW 2300 (*Hunter Water*)

AND

THE CUSTOMER

RECITALS

- A. Hunter Water's operation and maintenance of the Sewer is regulated by the Operating Laws.
- B. Section 31 of the Hunter Water Act states that it is an offence to discharge anything into the Sewer without Hunter Water's written consent.
- C. Section 6.1.1 of the Customer Contract states that customers must obtain Hunter Water's written consent and, if required, execute a separate agreement with it, to discharge Trade Waste into the Sewer.
- D. The Customer has requested Hunter Water's consent to discharge the Substances into the Sewer.
- E. This Deed sets out the terms on which Hunter Water consents to the Customer discharging the Substances into the Sewer.

OPERATIVE PROVISIONS

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed:

Approval means any permit, licence, consent, grant, certificate, sealing or other approval obtained or required to be obtained from any authority (including Hunter Water) or person.

Claim means any claim, demand, remedy, suit, penalty, damage, loss, cost, liability, action, payment, proceeding, expense (including financial loss and legal fees and expenses on an indemnity basis) or right of action.

Commencement Date means the date set out in Item 7.

Customer means the person named in Item 2.

Customer Contract means that term as defined in the Hunter Water Act.

Deed Date means the date set out in Item 1.

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

Discharge Point means the discharge point identified in Item 4.

Domestic Waste means any mixture of faecal material, urine or refuse produced in, and permitted to be disclosed from, any premise used solely for residential purposes.

Environmental Protection Licences means the environmental protection licences held by Hunter Water from time-to-time.

Expiry Date means the date set out in Item 8, as amended in accordance with clause 15.

Fees means the fees calculated by Hunter Water in accordance with Item 16 (using average sample concentrations for the relevant billing period measured by the Sampling and Testing equipment).

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

Hunter Water Representative means the person identified in Item 3 or such other person appointed by Hunter Water from time-to-time.

Indemnified Parties means Hunter Water and the Personnel.

Item means an item of the Deed Particulars.

Operating Laws means the Hunter Water Act, Operating Licence, Trade Wastewater Policy, Trade Wastewater Standard, Environmental Protection Licences and all other laws dealing with similar or related issues.

Operating Licence means Hunter Water's operating licence.

Permitted Discharge Days means the days specified in Item 13.

Permitted Discharge Hours means the hours specified in Item 14.

Personnel means all Hunter Water employees, agents, officers, contractors and consultants.

Premises means the premises identified in Item 5.

Sampling and Testing means the sampling and testing described in Item 10.

Sewer means the sewer system operated by Hunter Water from time-to-time.

Substances means the substances identified in Item 12.

Term means that term as defined in clause 2.

Trade Waste means any substance that is not Domestic Waste.

Trade Wastewater Policy means the policy of that name or similar name maintained by Hunter Water from time-to-time.

Trade Wastewater Standard means the standard of that name or similar name maintained by Hunter Water from time-to-time.

Treatment Equipment means the equipment identified in Item 11.

Treatment Plant means the plant named in Item 9.

Users means all persons who use any part of the Sewer, including Hunter Water and the Personnel.

1.2 Interpretation

In this Deed:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (c) a reference to a document is to that document as varied, novated or replaced;
- (d) every agreement or undertaking by which two or more persons agree or undertake any obligation binds them jointly and severally;
- (e) headings are for reference purposes only;
- (f) a reference to a statute includes all regulations under that statute;
- (g) reference to a statute, regulation, licence, policy or standard is a reference to it as amended or replaced; and
- (h) "including" and "includes" are not words of limitation.

2. TERM

This Deed commences on the Commencement Date and, subject to clause 13, expires on the Expiry Date (the **Term**).

3. NATURE OF DEED

The parties acknowledge and agree that:

- (a) clause 37 of the Hunter Water Act applies to this Deed;
- (b) the Customer may not bring any Claim against Hunter Water or any Personnel on the basis that this Deed constitutes a Customer Contract; and
- (c) Hunter Water may plead this clause 3 as an absolute bar to any Claim brought by or on behalf of the Customer asserting that this Deed is a Customer Contract.

4. HUNTER WATER AS AN AUTHORITY

The Customer acknowledges and agrees that:

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

5. CUSTOMER'S OBLIGATIONS

5.1 Payment

The Customer must pay Hunter Water all:

- (a) Fees claimed by Hunter Water and other amounts due and payable to Hunter Water under this Deed within 21 days after Hunter Water issues the Customer with a tax invoice in respect of such amounts; and

- (b) interest Hunter Water is entitled to claim from the Customer under the Operating Laws where the Customer fails to pay an amount due and owing to Hunter Water by the Customer by its due date.

5.2 Practical

The Customer must:

- (a) except to the extent permitted by this Deed, not interfere with or interrupt the use and operation of the Sewer;
- (b) ensure that no one, other than persons acting on its behalf and in accordance with this Deed, discharges any matter other than Domestic Waste from the Premises into the Sewer;
- (c) not discharge anything into the Sewer from the Premises (excluding Domestic Waste) that is not permitted by this Deed or, in the case of the Substances, not discharged at the Discharge Point;
- (d) comply with all directions given by Hunter Water in relation to this Deed, including to install additional treatment and Sampling and Testing equipment at the Customer's cost where Hunter Water determines that such equipment is not ensuring the Customer's compliance with this Deed;
- (e) install, calibrate, clean and maintain the Treatment Equipment and all Sampling and Testing equipment in accordance with this Deed, the manufacturer's instructions, the Trade Wastewater Policy and the Trade Wastewater Standard and ensure that all wastewater discharged into the Sewer is treated by the Treatment Equipment and subject to Sampling and Testing prior to such discharge;

- (f) ensure that all Sampling and Testing equipment:
 - (i) is installed between the Treatment Equipment and Sewer to permit instantaneous “grab” testing,
 - (ii) is unobstructed at all times and able to be safely and efficiently accessed; and
 - (iii) samples and tests all wastewater discharged into the Sewer before it enters the Sewer;
- (g) undertake the Sampling and Testing in accordance with this Deed and as otherwise directed by Hunter Water;
- (h) ensure that all residue created by the Treatment Equipment is:
 - (i) carefully handled, processed and stored and doesn't enter to Sewer; and
 - (ii) disposed of in accordance with all laws, Approvals and directions of Hunter Water;
- (i) keep a copy of this Deed at the Premises at all times and close to the Discharge Point;
- (j) where a proposed change in the activities undertaken on the Premises (see Item 6) may have an adverse impact on the Customer's compliance with this Deed, issue a written request for consent to the Hunter Water Representative no less than 30 days prior to the proposed change;
- (k) not allow a change of the type contemplated in clause 5.2(j) to occur without Hunter Water's prior written consent (which may be conditional);
- (l) if Item 17 states that the Premises are:
 - (i) compliant with Hunter Water's requirements for site containment backflow prevention, maintain and test all containment devices in accordance with AS/NZS3500, AS/NZS2845 and all relevant Hunter Water policies, standards and directions and ensure that they remain so throughout the Term; or
 - (ii) not compliant with Hunter Water's requirements for site containment backflow prevention:
 - (A) within the period specified in Item 17, install the site containment backflow equipment described in Item 17 at the Customer's cost; and
 - (B) thereafter maintain and test them in accordance with clause 5.2(l)(i); and
- (m) ensure that it and its employees, agents, officers and contractors:
 - (i) take all steps needed to protect all Users of the Sewer;
 - (ii) comply with all procedures, policies and rules adopted by Hunter Water in connection with the Sewer and/or the performance of this Deed;
 - (iii) comply with, and not do anything which may place Hunter Water in breach of, any laws; and
 - (iv) keep Hunter Water informed of any matters which may adversely affect any User(s) or the Sewer.

5.3 Reporting

The Customer must:

- (a) immediately notify Hunter Water by:
 - (i) telephone (49 799 712); and
 - (ii) email
(plumbing@hunterwater.com.au),of any breach or likely breach of this Deed by the Customer (including all relevant information); and
- (b) comply with the reporting obligations set out in Item 15; and
- (c) ensure that all written correspondence it issues to Hunter Water or the Hunter Water Representative in respect of this Deed references the account number detailed in Item 2.

6. CUSTOMER RIGHTS

Subject to its compliance with the remainder of this Deed, the Customer may discharge the Substances into the Sewer at the Discharge Point:

- (a) in the concentrations specified in Item 12;
- (b) up to the Maximum Daily Discharge Mass specified in Item 12;
- (c) up to the Maximum Daily Discharge Rate specified in Item 12; and
- (d) in between the Permitted Discharge Hours.

7. ACCESS

In addition to Hunter Water's rights of entry under the Hunter Water Act, the Customer acknowledges and agrees that:

- (a) at any time during the Term Hunter Water may direct the Customer to provide Hunter Water and/or its nominee(s) with access to the Premises as is required by Hunter Water to:
 - (i) inspect the Treatment Equipment and/or Sampling and Testing equipment;
 - (ii) take samples and install sampling equipment; and
 - (iii) assess the Customer's compliance with this Deed;
- (b) where Hunter Water issues the Customer with a direction pursuant to clause 7(a), the Customer must:
 - (i) comply with that direction;
 - (ii) allow Hunter Water and its nominee(s) to carry out inspections and tests without interruption or interference;
 - (iii) provide all assistance reasonably required by Hunter Water and its nominee(s); and
- (c) where Hunter Water determines as a result of the exercise of its rights under this clause 7 that the Customer is not complying with its obligations under this Deed, all costs incurred by Hunter Water pursuant to this clause 7 will be a debt due and payable from the Customer to Hunter Water within 21 days after Hunter Water issues the Customer with a tax invoice in respect of such amounts.

8. ESTIMATES

If it is determined by Hunter Water that:

- (a) some or all:
 - (i) Treatment Equipment; and/or
 - (ii) Sampling and Testing equipment,
 is not functioning in accordance with this Deed; and/or
- (b) for any other reason the Sampling and Testing equipment is not accurately measuring the volume and content of Trade Waste being discharged at the Discharge Point,

Hunter Water may:

- (c) estimate (acting reasonably and at the Customer's expense) the volume of Trade Waste being discharged into the Sewer at the Discharge Point; and
- (d) any additional Fees payable by the Customer as a result of such estimation will be due and payable to Hunter Water within 21 days after Hunter Water issues the Customer with a tax invoice in respect of such amounts.

9. ACCESS TO RECORDS

- (a) The Customer must make and keep, and ensure that all relevant employees, agents, officers and contractors make and keep, accurate records concerning the Customer's compliance with this Deed, including information concerning the Treatment Equipment and/or Sampling and Testing equipment (including the dates of all maintenance and cleaning) and detailed supporting documentation.
- (b) On Hunter Water providing no less than 5 days' prior notice to the Customer:

- (i) Hunter Water and/or its nominee(s) may inspect and copy records of the type referred to in clause 9(a); and
- (ii) the Customer must make available to Hunter Water and/or its nominee(s) hard and softcopies of such records.
- (c) The records referred to in clause 9(a) must not be destroyed by or on behalf of the Customer before the date that is 7 years after the end of the Term.

10. MEETINGS

- (a) If at any time during the Term, Hunter Water directs the Customer to attend a meeting to discuss issues concerning this Deed (including meetings with third parties), the Customer acknowledges and agrees that:
 - (i) it must, and must ensure that all of its employees, agents, officers and contractors required by Hunter Water, attend and answer all questions and provide such other assistance asked or required by Hunter Water and/or its nominee(s); and
 - (ii) each such meeting will be attended by representatives from Hunter Water and any such other persons notified to the Customer by Hunter Water.
- (b) Other than in the case of an emergency, Hunter Water will provide the Customer with at least 7 days' prior notice of any meeting Hunter Water requires the Customer to attend pursuant to this clause 10.

11. INDEMNITY

11.1 General Indemnity

The Customer must indemnify and keep indemnified on demand and by way of continuing indemnity, defend and save harmless, the Indemnified Parties from and against all Claims arising out of, or in any way in connection with:

- (a) the Customer's breach of this Deed;
- (b) any act or omission of any of its employees, agents, officers or contractors;
- (c) contamination of the Sewer caused or contributed to by the Customer or any of its employees, agents, officers or contractors;
- (d) loss of or damage to property and any loss resulting from such loss or damage;
- (e) the illness, injury to or death of any person; or
- (f) any breach of a duty of confidence owed to Hunter Water by the Customer,

however, any such liability will be reduced proportionally to the extent that it is contributed to by a negligent act or omission of an Indemnified Party.

11.2 Other Beneficiaries

- (a) Without affecting the rights of the parties under this Deed, where an indemnity in this Deed is expressed to be given by the Customer in favour of a person other than Hunter Water, this Deed operates as a deed poll by the Customer for the benefit of that person and such person may rely on, and enforce, each indemnity as a

deed poll made in the person's favour by the Customer.

- (b) If for any reason a person is unable to rely on, or enforce, an indemnity as contemplated by clause 11.2(a), the Customer must execute all documents needed to give full benefit of the indemnities to the person as contemplated by the indemnities.

11.3 Proportionate liability

To the fullest extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and all equivalent Commonwealth legislation are excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed.

12. CUSTOMER WARRANTIES

The Customer:

- (a) warrants on the Deed Date and repeats on each day of the Term, that:
 - (i) all information concerning the Premises, Discharge Point, Treatment Equipment and Sampling and Testing equipment it:
 - (A) provided to or procured the provision of to Hunter Water or any Personnel prior to the Deed Date; and
 - (B) provides to or procures the provision of to Hunter Water or any Personnel after the Deed Date,

(together, **Reliance Information**) is or will be (as appropriate) complete and accurate and can be relied upon by Hunter Water and all Personnel

- for the purposes contemplated in or ascertainable from this Deed;
- (ii) it has all Approvals needed to satisfy its obligations under this Deed and all laws and will comply with all such Approvals and laws at all times;
- (iii) the installation and operation of the Treatment Equipment and all Sampling and Testing equipment has been or will be undertaken:
- (A) by suitably licenced, qualified and experienced tradespeople using the level of care, skill and diligence expected of tradespeople expert in carrying out similar activities; and
- (B) using materials and equipment of the standards prescribed by this Deed and fit for all relevant purposes;
- (iv) all necessary corporate and other action has been taken to authorise the execution and performance of this Deed, including obtaining the approval of all relevant landlords where the Customer does not own the Premises;
- (v) its obligations under this Deed are valid, legal and binding and enforceable against it in accordance with this Deed; and
- (vi) where it enters into this Deed as the trustee of a trust:
- (A) it is the sole trustee of the relevant trust (the **Trust**) and no action has been taken to remove or replace it;
- (B) it has the power under the trust deed of the Trust (the **Trust Deed**) to execute and perform its obligations under this Deed;
- (C) all necessary action has been taken to authorize the execution and performance of this Deed under the Trust Deed and the constituent documents of the Trust;
- (D) 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 the Trust's beneficiaries;
- (E) the Trust Deed will not be varied or revoked without Hunter Water's prior written consent; and
- (F) the Customer will not:
- (I) retire as trustee of the Trust or appoint any new or additional trustee(s);
- (II) default in its duties as trustee of the Trust; or
- (III) exercise any power to appoint a new beneficiary or class of beneficiary.
- (b) acknowledges and agrees that:
- (i) all discharges into the Sewer from the Premises will be deemed by Hunter Water to have been made by or on behalf of the Customer;

- (ii) the warranties included in clause 12(a) are unaffected by any:
 - (A) recommendation, receipt or review of, comment on, rejection or approval of any information or equipment by or on behalf of Hunter Water; or
 - (B) failure by Hunter Water to do any of the things referred to in clause 12(b)(i)(A); and
- (iii) none of the acts or omissions referred to in clause 12(b)(ii):
 - (A) limit or exclude any obligation or liability of the Customer under or arising out of this Deed;
 - (B) prejudice any of Hunter Water's rights against the Customer;
 - (C) impose on Hunter Water or any Personnel a duty of care to the Customer;
 - (D) result in Hunter Water or any Personnel assuming any responsibility or liability for the adequacy, quality, compliance or fitness of or any errors in or omissions from the Treatment Equipment or Sampling and Testing equipment or other information provided to Hunter Water by or on behalf of the Customer; or
 - (E) constitute an admission that Hunter Water or any Personnel have checked any information for errors, omissions or compliance with this Deed;
- (iv) Hunter Water has:
 - (A) not verified the suitability of the Treatment Equipment or Sampling and Testing equipment or any Reliance Information; and
 - (B) entered into this Deed in reliance on the warranties and acknowledgements given in clauses 12(a) and 12(b) and would not have entered into this Deed had they not been provided; and
- (v) where it enters into this Deed as the trustee of a trust:
 - (A) it is personally liable to perform the obligations of the Customer under this Deed, even though it enters into this Deed as trustee of the Trust; and
 - (B) it must cause any successor of the Trust and any person who becomes a trustee of the Trust jointly with the Customer to execute all documents required to ensure that this Deed is binding on them.

13. SUSPENSION

13.1 Direction to Suspend

Hunter Water may, in its absolute discretion, suspend some or all of the Customer's rights under this Deed by written notice to the Customer and for such time as Hunter Water thinks fit and the Customer must comply with such direction.

13.2 Lifting of Suspension

Any suspension directed by Hunter Water in accordance with clause 13.1 must be lifted by Hunter Water by written notice to the Customer as soon as practicable after Hunter Water is satisfied that the circumstance that gave rise to the suspension no longer exists.

13.3 Failure to Comply

If:

- (a) the Customer fails to comply with a direction issued in accordance with clause 13.1; or
- (b) Hunter Water suspects that the Customer is not complying with such direction,

then Hunter Water may:

- (c) immediately terminate this Deed by written notice to the Customer; and/or
- (d) enter onto the Premises (itself or using a nominee) and take such actions as it believes are necessary to ensure compliance with such direction.

13.4 Costs of Suspension

Any cost or loss incurred by:

- (a) the Customer by reason of a suspension directed by Hunter Water in accordance with clause 13.1 will be borne by the Customer and it is barred from bringing any Claim against Hunter Water or any Personnel in respect of such direction; or
- (b) Hunter Water in taking action of the type contemplated in clause 13.3 will be payable to Hunter Water by the Customer as a debt due and payable.

14. TERMINATION

(a) Hunter Water may terminate this Deed (in whole or in part) immediately by written notice to the Customer if:

(i) subject to clause 14(a)(ii), the Customer breaches this Deed and fails to rectify it within 3 days after Hunter Water directs it to do so;

(ii) the Customer:

(A) commits a substantial breach of this Deed that is incapable of remedy or has the potential to cause damage to persons, property (including the Sewer) or the environment;

(B) does something which places or may place Hunter Water or the Customer in breach of any law;

(C) fails to install, bypasses or tampers with any Treatment Equipment or Sampling and Testing equipment; or

(D) suffers an event which, in Hunter Water's opinion, materially compromises the Customer's ability to satisfy its obligations under this Deed; or

(iii) Hunter Water is for any reason unable to accept at the Treatment Plant wastewater discharged into the Sewer by or on behalf of the Customer.

(b) The Customer may terminate this Deed at any time by providing no less than 30 days' prior notice in writing to this effect to the Hunter Water Representative.

(c) If this Deed is terminated for any reason:

- (i) the Customer must:
 - (A) immediately pay all amounts due to Hunter Water in respect of this Deed;
 - (B) immediately cease, and ensure that its employees, officers, agents and contractors immediately cease, discharging anything other than Domestic Waste into the Sewer; and
 - (C) at its own cost, comply with all directions given by Hunter Water in respect of this Deed, including the performance of additional tests and the provision of additional reports; and
- (ii) such termination is without prejudice to any other right or remedy of Hunter Water.

15. RENEWAL OF DEED

- (a) On or before the date that is 30 days prior to the Expiry Date, Hunter Water will issue the Customer with a notice confirming that:
 - (i) unless otherwise notified to the Hunter Water Representative in writing by the Customer, on the day immediately after the Expiry Date, this Deed will renew for a further term equal to the period stated in the Hunter Water notice;
 - (ii) subject to the Customer agreeing to the amendments identified in the Hunter Water notice (which acceptance will be deemed if the

Customer continues to dispose of Trade Waste into the Sewer after the Expiry Date), Hunter Water is willing to renew this Deed for a further term equal to the original term; or

- (iii) this Deed will expire on the Expiry Date.
- (b) Notwithstanding the remainder of this clause 15, if, as at the Expiry Date, Hunter Water has not:
 - (i) issued the Customer with a notice pursuant to clause 15(a); or
 - (ii) terminated this Deed in accordance with clause 14,this Deed will automatically renew for a further period equal to the original term from the day immediately after the Expiry Date.

16. COSTS

The Customer:

- (a) will bear all costs it incurs in connection with the preparation and performance of this Deed; and
- (b) releases and forever discharges Hunter Water and the Personnel from all Claims it may have in respect of such costs and expenses.

17. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

18. 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 that or any other jurisdiction.

19. NO WAIVER

- (a) An election to affirm or terminate this Deed 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.

20. 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 either left at the addressee's address or sent to it by mail or email.
- (b) If a notice, consent or other communication 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 their immediate presence;

- (ii) sent by mail, it is taken to have been received:

- (A) within Australia - four days after it is posted; or

- (B) to or from a place outside Australia – twelve 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.

- (c) The parties' postal and email addresses are those set out in Items 2 and 3, or as a party otherwise notifies to the sender in writing from time-to-time.

21. FURTHER ASSURANCES

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

22. INCONSISTENCY

If any inconsistency is discovered within or between the provisions of this Deed, the Customer must promptly inform the Hunter Water Representative in writing and he or she will inform the Customer of the interpretation it must follow.

23. ENTIRE AGREEMENT

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

24. COUNTERPARTS

This Deed may be executed in any number of counterparts and each, when taken together, will constitute one agreement.

25. NO MERGER

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

26. ASSIGNMENT

The Customer must not assign, novate or otherwise seek to transfer any or all of this Deed without the prior written approval of Hunter Water and any purported assignment, novation or transfer without such consent is a material breach of this Deed and of no effect.

27. CONTRA PROFERENTEM

This Deed is not to be interpreted against the interests of a party merely because that party

proposed this Deed or some provision in it or because that party relies on a provision of this Deed for its benefit.

28. AMENDMENT

This Deed may be amended by Hunter Water at any time by written notice to the Customer and the Customer acknowledges and agrees that any such amendment will not constitute a breach or repudiation of this Deed.

29. SURVIVAL

This clause 29 and clauses 1, 12, 3, 4, 6, 10, 13, and 15 - 28 survive the expiry or termination of this Deed.