

**HUNTER WATER CORPORATION  
AND**



**DEVELOPER DELIVERED  
INFRASTRUCTURE  
CONTRIBUTION DEED**



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**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

[ ] (ABN [ ] ) of  
[ ] (*Developer*)

## **BACKGROUND & PURPOSE OF THIS DEED**

- A. The Infrastructure Funding Standard details the circumstances in which Hunter Water will consider contributing funding towards the completion of water and wastewater capital works by developers where it is in the community's interests for Hunter Water to do so.
- B. The Developer and Hunter Water intend to enter into a Developer Works Deed or Developer Works Deeds which set(s) out the terms on which the Developer agrees to design, construct, complete and test the Infrastructure Assets and transfer ownership of them to Hunter Water.
- C. This Deed sets out the terms on which Hunter Water agrees to pay the Developer the Infrastructure Contribution Sum on account of the Developer's completion of the Infrastructure Assets in accordance with the Developer Works Deed(s) and satisfaction of the Connection Milestones and/or Balance Benchmarks (as appropriate).

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS & INTERPRETATION**

#### **1.1 Definitions**

In this Deed, the following terms have the following meanings:

**Asset List** means the asset list identified as such in the Contribution Schedule and updated by the Notice(s) of Pre-Construction Infrastructure Contribution Estimate and Notice(s) of Infrastructure Contribution Sum.

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

**Balance Benchmark** means the number of Lots (as a percentage of the total Lots Served by the Infrastructure Asset) identified as such in the Asset List.

**Completion Certificate** means a Certificate of Completion or Completion Certificate issued to the Developer pursuant to the Developer Works Deed to which the relevant Infrastructure Assets relates.

**Completion Report** means a report of that name that is in a form acceptable to Hunter Water in its absolute discretion.

**Compliance Certificate** means a compliance certificate issued to the Developer by Hunter Water pursuant to section 50 of the *Hunter Water Act* 1991 (NSW).

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

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

as well as any other information that:

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

**Connection Milestone** means the issuance of a Compliance Certificate(s) for at least 10 Lots (unless otherwise agreed in writing).

**Contribution Notice** means that term as it is defined in clause 5.2(b).

**Contribution Schedule** means Schedule 1 to this Deed.

**Contribution Per Lot** means the amount to be paid per Lot delivered by the Developer on the Site as provided in the Asset List.

**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.

**Deed Date** means the date on which the last party to execute this Deed does so.

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

- (a) are required to design, specify or construct Infrastructure Assets; and
- (b) Hunter Water requires the Developer to create or provide.

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

**Developer Variation** means any variation to an Infrastructure Asset that is not a Directed Variation.

**Developer Works Deed(s)** means the developer works deed(s) executed by the parties in respect of some or all of the Works to be completed by the Developer on the Site, as may be amended from time-to-time by the written agreement of the parties.

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

**Developer's Financing Costs** means any and all costs associated with the Developer's funding of the completion of the Infrastructure Assets, including application fees, bank fees, and interest.

**Directed Variation** means any variation to the Infrastructure Assets directed by Hunter Water in writing.

**GIPA** means the *Government Information (Public Access) Act 2009* (NSW).

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hunter Water Representative** means the person identified as such in the Contribution Schedule or as otherwise appointed by Hunter Water pursuant to clause 4.1(b).

**Infrastructure Assets** means the assets to be delivered as part of the Works and identified as "Infrastructure Assets" in the Asset List.

**Infrastructure Contribution Sum** means the sum notified to the Developer by Hunter Water in a Notice of Infrastructure Contribution Sum in respect of particular Infrastructure Assets, to be paid to the Developer by Hunter Water for the Infrastructure Assets. This sum will not exceed, under any circumstance, the aggregate of the Pre-Construction Infrastructure Contribution Estimate and the total of all agreed additional sums for Directed Variations.

**Initial Infrastructure Contribution Estimate** means the amount identified as such in the Contribution Schedule.

**Infrastructure Funding Standard** means the Hunter Water standard known as the "Funding and Delivery of Growth Infrastructure Standard" (available at [www.hunterwater.com.au](http://www.hunterwater.com.au)), and any supporting guidelines or standards issued under such standard, each as amended from time-to-time.

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

**Law** means:

- (a) Commonwealth, NSW or local government legislation, regulation, by-law and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and

(c) Approvals (including any condition or requirement under them).

**Liability** means:

(a) any liability of any kind; and

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

**Lot** means a lot on the Site.

**Lots Serviced** means the number of Lots that an Infrastructure Asset will service, identified as such in the Asset List.

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

**Notice of Infrastructure Contribution Sum** means a notice of that name in writing from Hunter Water to the Developer which provides an updated Asset List and confirms the Infrastructure Contribution Sum for an Infrastructure Asset or Infrastructure Assets.

**Notice of Pre-Construction Infrastructure Contribution Estimate** means the notice referred to in clause 5.1(f).

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

**Pre-Construction Infrastructure Contribution Estimate** means the updated estimate of the maximum Infrastructure Contribution Sum payable in respect of an Infrastructure Asset or Infrastructure Assets, as determined in accordance with clause 5.1.

**Procurement Policy** means the Hunter Water policy known as the "Procurement Guidelines for Developer Delivered Infrastructure" (available at [www.hunterwater.com.au](http://www.hunterwater.com.au)), as amended from time-to-time.

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

**Provisional Work** means any item or work identified as such in:

(a) this Deed; or

(b) any document, plan, drawing or similar thing submitted to Hunter Water by or on behalf of the Developer or *vice versa* under or in relation to this Deed or the Developer Works Deed or in relation to any Works.

**Site** means the site identified as such in the Contribution Schedule.

**Sunset Date** means the date identified as such in the Contribution Schedule or as otherwise agreed by the parties in writing.

**Tax Invoice** means a tax invoice that complies with the GST Law.

**Tender Evaluation Report** means a report of that name that complies with clause 5.1(b) and is in a form acceptable to Hunter Water in its absolute discretion.

**Works** means:

- (a) the physical works the Developer must design and construct in accordance with the Developer Works Deed(s), including the Infrastructure Assets; and
- (b) where the funding of particular Provisional Work is approved by the Hunter Water Representative in accordance with clause 5.4, such Provisional Work.

## 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. DOCUMENTS

### 3.1 Ambiguities and Discrepancies

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

### 3.2 **Records and Access to Records**

- (a) The Developer must make and keep, and ensure that all subcontractors make and keep, accurate and detailed records of the Infrastructure Assets and concerning this Deed, including all documentation relevant to the Developer's compliance or non-compliance with the Procurement Policy, the Infrastructure Funding Standard and this Deed (together, **Records**).
- (b) The Records must not be destroyed before the date that is 7 years after the expiry 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/or 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 at its cost and ensure that its subcontractors and suppliers do likewise.

## 4. **REPRESENTATIVES**

### 4.1 **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 available, but may change the Hunter Water Representative from time-to-time. If requested by the Developer, Hunter Water will provide updated contact details for the Hunter Water Representative.
- (c) The Developer must comply with any reasonable direction given by the Hunter Water Representative.
- (d) The Hunter Water Representative may appoint delegates to exercise any of its functions.

### 4.2 **Developer Representative**

- (a) The Developer must ensure that at all times there is a Developer Representative and may only change its identity with the prior written approval of the Hunter Water Representative.
- (b) The Developer must ensure that the Developer Representative works cooperatively and collaboratively with the Hunter Water Representative, and advises the Hunter Water Representative immediately if a conflict of interest arises.

- (c) The Hunter Water Representative may, in their absolute discretion, require the Developer Representative to be replaced if the Hunter Water Representative reasonably believes the Developer Representative to be in breach of the requirements in clause 4.2(b).
- (d) 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.

## **5. INFRASTRUCTURE CONTRIBUTION SUM AND GST**

### **5.1 Finalisation of Infrastructure Contribution Sum**

- (a) The Developer must conduct and conclude a procurement process in respect of the design and construction of the Infrastructure Assets that complies with the Procurement Policy and the Infrastructure Funding Standard (the **Procurement Process**).
- (b) Once the Procurement Process has been completed for the design of the Infrastructure Assets, and before the Developer engages a design contractor, the Developer must issue a Tender Evaluation Report to the Hunter Water Representative, and provide a notice that confirms:
  - (i) that the Developer has conducted the Procurement Process in accordance with the Procurement Policy; and
  - (ii) the Developer's preferred contractor's programme to complete the design of the relevant Infrastructure Assets;
- (c) Within 28 days after receipt by the Hunter Water Representative of the Tender Evaluation Report and the notice referred to in 5.1(b), the Hunter Water Representative must issue a written notice to the Developer confirming whether the Tender Evaluation Report and notice is:
  - (i) endorsed, in which case the Developer may engage their preferred design contractor; or
  - (ii) not endorsed, in which case:
    - (A) the parties must meet within a reasonable period notified by the Hunter Water Representative after the date of the Hunter Water Representative's notice to attempt to agree; and
    - (B) the Developer must provide to the Hunter Water Representative any additional information the Hunter Water Representative may request prior to the meeting referred to in clause 5.1(c)(ii)(A), including updated and/or revised copies of the Tender Evaluation Report.
- (d) If, following the meeting describe in 5.1(c)(ii)(A), the parties have not reached agreement, then Hunter Water may immediately terminate this Deed pursuant to clause 11.1(a)(i).

- (e) Once the Procurement Process for the design of the Infrastructure Assets has been completed and before the Developer engages a construction contractor to complete some or all of the Infrastructure Assets, the Developer must issue the Tender Evaluation Reports for construction of the Infrastructure Assets to the Hunter Water Representative, and provide a notice that:
- (i) confirms:
    - (A) that the Developer has conducted the Procurement Process in accordance with the Procurement Policy; and
    - (B) the Developer's:
      - (I) preferred contractors' programme to complete the relevant Infrastructure Assets;
      - (II) estimate of when it will apply for Compliance Certificates in respect of all relevant Lots;
      - (III) proposed Pre-Construction Infrastructure Contribution Estimate (including a detailed breakdown and taking into account the Initial Infrastructure Contribution Estimate) calculated by adding the:
        - (aa) Developer's preferred contractors' total cost to complete the Infrastructure Assets (from the design and construction phase); and
        - (bb) an amount on account of the Developer's reasonable project management costs); and
  - (ii) includes all other information and supporting documentation required by Hunter Water.
- (f) Within 28 days after receipt by the Hunter Water Representative of the notice referred to in clause 5.1(e), and each of the Tender Evaluation Reports and Design Documents, the Hunter Water Representative must issue a written notice to the Developer (**Notice of Pre-Construction Infrastructure Contribution Estimate**) confirming whether the proposed Pre-Construction Infrastructure Contribution Estimate is:
- (i) agreed, in which case the Pre-Construction Infrastructure Contribution Estimate will thereafter be the agreed maximum Infrastructure Contribution Sum; or
  - (ii) not agreed, in which case the Notice of Pre-Construction Infrastructure Contribution Estimate must include Hunter Water's proposed Pre-Construction Infrastructure Contribution Estimate.
- (g) If Hunter Water issues a notice to the Developer in accordance with clause 5.1(f)(ii) and the Developer:
- (i) issues a written notice to the Hunter Water Representative within 14 days after its receipt of such notice accepting Hunter Water's proposed Pre-Construction Infrastructure Contribution Estimate;

- (ii) does not notify the Hunter Water Representative in writing within 14 days after its receipt of such notice that it disagrees with Hunter Water's proposed Pre-Construction Infrastructure Contribution Estimate; or
- (iii) commences constructing any Infrastructure Asset(s) prior to notifying the Hunter Water Representative in writing that it disputes Hunter Water's proposed Pre-Construction Infrastructure Contribution Estimate,

then the Pre-Construction Infrastructure Contribution Estimate included in the Notice of Pre-Construction Infrastructure Contribution Estimate will be the agreed maximum Infrastructure Contribution Sum.

(h) If the Developer issues a written notice to the Hunter Water Representative:

- (i) within 14 days after its receipt of a notice under clause 5.1(f)(ii) confirming that it disagrees with Hunter Water's proposed Pre-Construction Infrastructure Contribution Estimate; and
- (ii) prior to commencing the construction of any Infrastructure Asset(s),

then the:

- (iii) parties must meet within a reasonable period notified by the Hunter Water Representative after the date of the Developer's notice under clause 5.1(h)(i) to attempt to agree the Pre-Construction Infrastructure Contribution Estimate; and
- (iv) Developer must provide to the Hunter Water Representative any additional information the Hunter Water Representative may request prior to the meeting referred to in clause 5.1(h)(iii), including updated and/or revised copies of the Tender Evaluation Report, Design Documents and proposed Pre-Construction Infrastructure Contribution Estimate.

(i) If, within 14 days after the meeting contemplated in clause 5.1(h)(iii), the parties have not reached agreement on the Pre-Construction Infrastructure Contribution Estimate, then Hunter Water may immediately terminate this Deed by written notice to the Developer and will have no Liability to the Developer under or arising out of this Deed.

(j) If the Hunter Water Representative fails to issue a notice in accordance with clause 5.1(f), it will be deemed to have issued a notice in accordance with clause 5.1(f)(ii) in respect of the notice at the end of the prescribed period.

(k) For the avoidance of doubt, where:

- (i) this Deed applies to Infrastructure Assets being completed pursuant to more than one Developer Works Deed; and
- (ii) the Developer undertakes more than one Procurement Process,

then unless otherwise directed by Hunter Water, the process set out in this clause 5.1 applies to each Procurement Process for each Infrastructure Asset.

- (l) Hunter Water may issue an updated Pre-Construction Infrastructure Contribution Estimate in the event of a failure by the Developer to comply with any provision of this clause 5.1, the Procurement Policy or the Infrastructure Funding Standard.
- (m) The Developer must not commence construction of the Infrastructure Assets prior to receiving the Notice of Pre-Construction Infrastructure Contribution Estimate.

## 5.2 Payment

- (a) Once the Developer has:
  - (i) received a Completion Certificate in respect of the relevant Infrastructure Assets; and
  - (ii) submitted a Completion Report to the Hunter Water Representative in respect of the relevant Infrastructure Assets,

Hunter Water will, within 28 days after receipt of the Completion Report, issue the Developer with a Notice of Infrastructure Contribution Sum in respect of the relevant Infrastructure Assets, based on Hunter Water's assessment of the actual cost to the Developer of those Infrastructure Assets (including reasonable project management costs but excluding any Financing Costs) and subject to the Pre-Construction Infrastructure Contribution Estimate.

- (b) Once the Developer has:
  - (i) satisfied a Connection Milestone;
  - (ii) received a Notice of Infrastructure Contribution Sum in respect of the relevant Infrastructure Assets; and
  - (iii) satisfied all other conditions precedent to payment under this Deed,it may issue a written notice to the Hunter Water Representative (in such form and including such detail and supporting documentation as the Hunter Water Representative may require) (each a **Contribution Notice**) that confirms:
  - (iv) the Connection Milestone the Developer claims to have satisfied or, if applicable, that the Developer is claiming to have reached the Balance Benchmark;
  - (v) the portion of the Infrastructure Contribution Sum it claims is payable in respect of its satisfaction of the relevant Connection Milestone pursuant to the Contribution Per Lot identified in the Asset List;
  - (vi) an updated estimate of the timings to achieve the remaining Connection Milestones (if applicable); and
  - (vii) that all conditions precedent to payment included in this Deed have been satisfied.
- (c) Within 14 days after the date on which the Hunter Water Representative receives a Contribution Notice, it must, by written notice to the Developer Representative:
  - (i) approve the Contribution Notice; or
  - (ii) reject the Contribution Notice, giving reasons for such rejection.
- (d) Where the Hunter Water Representative issues a notice in accordance with:

- (i) clause 5.2(c)(i):
  - (A) the Developer must within 14 days thereafter submit to Hunter Water a Tax Invoice in the amount of that portion of the Infrastructure Contribution Sum claimed in the approved Contribution Notice; and
  - (B) subject to clause 5.2(f), Hunter Water must, within 56 days after its receipt of a Tax Invoice issued in accordance with clause 5.2(d)(i)(A) pay the Developer the amount claimed in the Tax Invoice; or
- (ii) clause 5.2(c)(ii), the Developer will not be entitled to claim payment of the portion of the Infrastructure Contribution Sum claimed in the relevant Contribution Notice until a further Contribution Notice (if any) concerning the relevant portion of the Infrastructure Contribution Sum is accepted by the Hunter Water Representative in accordance with clause 5.2(c)(i).
- (e) If the Hunter Water Representative fails to issue a notice in accordance with clause 5.2(c)(i) or 5.2(c)(ii) within 14 days after the date on which it received a Contribution Notice, it will be deemed to have issued a notice in accordance with clause 5.2(c)(ii) in respect of that notice at the end of that period. On request from the Developer Representative, the Hunter Water Representative will then provide reasons for the rejection.
- (f) If Hunter Water disputes an amount included in a Tax Invoice, it must notify the Developer in writing of the reasons for the dispute and the disputed amount is not payable by Hunter Water until it is determined using the dispute resolution mechanism included in the relevant Developer Works Deed that the disputed amount is owed the Developer.

### 5.3 **Sunset Date**

Notwithstanding clause 5.1 and the Contribution Schedule, on and from the earlier of the:

- (a) date on which this Deed is terminated in accordance with its terms; and
- (b) Sunset Date,

the Developer is barred from making any claim from Hunter Water for payment of:

- (c) some or all of the Infrastructure Contribution Sum; and/or
- (d) any other money in respect of any fact, matter or thing arising out of or in any way in connection with this Deed.

### 5.4 **Provisional Work**

Notwithstanding clauses 5.1 and 5.2, the Developer:

- (a) must not use any of the Infrastructure Contribution Sum to fund the performance of Provisional Work; and
- (b) is barred from making any claim against Hunter Water for payment in respect of the performance of such work,

unless, prior to the commencement of the relevant Provisional Work, the:

- (c) Developer issues a written notice to the Hunter Water Representative that:
  - (i) identifies the portion of the Infrastructure Contribution Sum that is to be used to fund the performance of the relevant Provisional Work;
  - (ii) demonstrates compliance with the Procurement Process in relation to the pricing of the relevant Provisional Work, including detailed quotes; and
  - (iii) includes all other information and supporting documentation required by the Hunter Water Representative; and
- (d) Hunter Water Representative confirms to the Developer in writing that the Developer may use the portion of the Infrastructure Contribution Sum identified in its notice under clause 5.4(c) to fund the performance of the relevant Provisional Work.

## 5.5 Repayment

If Hunter Water pays some or all of the Infrastructure Contribution Sum to the Developer and:

- (a) Hunter Water subsequently:
  - (i) terminates this Deed in accordance with its terms or is deemed to have done so; or
  - (ii) forms the view (acting reasonably), that the Developer has been paid some or all of the Infrastructure Contribution Sum in circumstances where Hunter Water was not obliged to pay such amount(s), including where the Developer has failed to comply with clause 5.1, 5.4 or 10; or
- (b) the Developer fails to obtain a Compliance Certificate for all Lots Serviced for the relevant Infrastructure Asset by the Sunset Date,

Hunter Water may, by written notice to the Developer, require the Developer to repay to Hunter Water, as a debt due and immediately owing:

- (c) in the case of clause 5.5(a)(i) or 5.5(b) (respectively), some or all payments made to the Developer by Hunter Water pursuant to this Deed; or
- (d) in the case of clause 5.4(a)(ii), all overpayments made to the Developer by Hunter Water pursuant to this Deed.

## 5.6 GST

- (a) Except where the context suggests otherwise, terms used in this clause 5.6 have the meaning given to those terms by the GST Law.
- (b) Any part of a supply that is treated as a separate supply for GST purposes will be treated as a separate supply for the purposes of this clause 5.6.
- (c) Unless otherwise expressly stated, all consideration to be provided under this Deed is inclusive of GST.
- (d) Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs,

expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (e) If GST is payable in relation to a supply made under or in connection with this Deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 5.6(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 5.6(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 5.6(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

## **6. DEVELOPER'S INDEMNITIES**

### **6.1 General Indemnity**

The Developer indemnifies Hunter Water and its Personnel from and against any Liability to or claim by any other person and Liability suffered or incurred by Hunter Water or any of its Personnel, arising out of, or in any way in connection with, the Developer's:

- (a) breach of this Deed or any Law;
- (b) negligent act or omission (including acts and omissions of its Personnel);
- (c) conduct of the Procurement Process; or
- (d) claim for payment from Hunter Water under or arising out of this Deed in excess of the sum of the Pre-Construction Infrastructure Contribution Estimate and the value of any Directed Variations.

## **7. DEVELOPER WARRANTIES**

### **7.1 Warranties**

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

- (a) it is legally entitled to, and has power to, enter into and perform its obligations under this Deed;
- (b) any claim submitted to Hunter Water by the Developer for some or all of the Infrastructure Contribution Sum will not include any amount on account of:
  - (i) Developer's Financing Costs;
  - (ii) Developer Variations; or
  - (iii) the performance of Provisional Work,

unless written confirmation has been received by the Developer in accordance with clause 5.4(d) in respect of the relevant Provisional Work;

- (c) notwithstanding that the cost of completing the Works may exceed the cost estimated as at the Deed Date or in the Notice of Pre-Construction Infrastructure Contribution Estimate, the Developer:
  - (i) will not make any claim against Hunter Water in respect of such costs in excess of the Infrastructure Contribution Sum; and
  - (ii) is barred from making any claim against Hunter Water for payment in excess of the Infrastructure Contribution Sum; and
- (d) 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.

## 7.2 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 7.1 and 13.7 in entering into this Deed and would not have done so 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 to execute all documents required to ensure that this Deed is binding on them.

## 8. LIMITATION OF LIABILITY

## 8.1 **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 capped at the value of that portion of the Infrastructure Contribution Sum paid or payable to the Developer by Hunter Water in accordance with this Deed at the time of the relevant claim.

## 8.2 **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.

## 9. **CONFIDENTIALITY**

### 9.1 **Restriction on Disclosure**

- (a) Subject to clause 9.1(b) the Developer must not, even after the expiry or earlier termination of this Deed, disclose to a third party any of the contents of this Deed or any Confidential Information.
- (b) The restrictions imposed by clause 9.1(a) do not apply to the disclosure of any of the contents of this Deed or any Confidential Information which is:
  - (i) now or hereafter comes into the public domain through no default of the Developer or any of its Personnel;
  - (ii) required to be disclosed by Law; or
  - (iii) in the reasonable opinion of the Developer, required to be disclosed to any of its financiers, insurers or professional advisers for any purpose contemplated in this Deed or the Developer Works Deed, provided that the Developer first obtains (and enforces if required by Hunter Water) an undertaking from each such person to comply with clause 9.1(a) as if it applied to them directly.

### 9.2 **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 9.2(a).

### 9.3 **Public Access to Government Information**

- (a) The Developer acknowledges and agrees that Hunter Water is subject to the GIPA.
- (b) The Developer acknowledges that Hunter Water may be required to disclose Confidential Information related to matters in this Deed, including but not limited to the Works and the Procurement Process.

- (c) In accordance with section 121 of the GIPA, 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 this Deed; and
  - (ii) information received by the Developer from Hunter Water.
- (d) The Developer must provide Hunter Water with copies of any information referred to in clause 9.3(c) and requested by Hunter Water at the Developer's expense.
- (e) Any failure by the Developer to comply with any request pursuant to clause 9.3(c) or 9.3(d) will be a material breach of this Deed and entitle Hunter Water to immediately terminate this Deed.

## **10. CORRUPTION PREVENTION**

- (a) The Developer must ensure that, except as declared to Hunter Water in writing prior to the Deed Date, no officer, senior manager or employee of the Developer, or any subcontractor included in the Procurement Process or engaged to perform the Works at any time, has or is engaged in corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988* (NSW).
- (b) If the Developer or an officer, senior manager or employee of the Developer or any subcontractor included in the Procurement Process or engaged to perform the Works at any time, is found by the Independent Commission Against Corruption to have engaged in corrupt conduct (as defined by the *Independent Commission Against Corruption Act 1988* (NSW)), Hunter Water may terminate this Deed immediately, or require the Developer to terminate any subcontract, by providing written notice to the Developer.
- (c) The Developer must submit with each Tender Evaluation Report a statement to the effect that it is not aware of any perceived or actual conflict of interest, or of any corrupt conduct, in connection with the Procurement Process or the awarding of the contract.
- (d) If the Developer becomes aware that the Developer, or an officer, senior manager or employee of the Developer or any subcontractor included in the Procurement Process or engaged to perform the Works at any time, has an actual or perceived conflict of interest, they must immediately notify Hunter Water and Hunter Water may elect to terminate this Deed immediately by providing written notice to the Developer, or provide other such direction as Hunter Water deems reasonable in the circumstances.
- (e) The Developer must maintain a conflict of interest register.

## **11. DEFAULT AND TERMINATION**

### **11.1 Default by the Developer**

- (a) If the Developer commits a breach of this Deed and it is, in Hunter Water's opinion:
  - (i) incapable of remedy within a reasonable period, Hunter Water may immediately terminate this Deed by written notice to the Developer; or

- (ii) capable of remedy within a reasonable period, 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 11.1(a)(ii), the Developer does not fix the breach to Hunter Water's satisfaction, Hunter Water may terminate this Deed by written notice to the Developer.

#### 11.2 **Insolvency of Developer**

- (a) Where the Developer is comprised of two or more persons, a reference to the "Developer" in this clause 11.2 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.

#### 11.3 **Termination of Developer Works Deed or related Developer Delivered Infrastructure Contribution Deed**

If a Developer Works Deed or related Developer Delivered Infrastructure Contribution Deed is terminated for any reason, unless Hunter Water advises the Developer in writing otherwise, this Deed will automatically terminate at the same time as the Developer Works Deed or related Developer Delivered Infrastructure Contribution Deed terminates and Hunter Water will have no Liability to the Developer under or arising out of this Deed or such termination.

### 12. **INTELLECTUAL PROPERTY RIGHTS**

#### 12.1 **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 procuring and 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; 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.

#### 12.2 **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.

### 12.3 **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.
- (c) Hunter Water may sub-licence any of the rights granted under clause 12.3(b).

### 12.4 **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, including by executing any consents required by Hunter Water.

## 13. **GENERAL**

### 13.1 **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.

### 13.2 **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.

### 13.3 **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.

### 13.4 **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 – 5 days after it is posted; or
    - (B) to or from a place outside Australia – 14 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 Contribution Schedule or as a party otherwise notifies the sender in writing from time-to-time.

### 13.5 Further Assurances

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

### 13.6 No Merger

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

### 13.7 Non Reliance

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 13.7(a) and (b).

### 13.8 Survival

Clauses 1 - 3, 5.3, 5.4, 5.5, 7, 9 and 12 survive any termination or expiry of this Deed.

### 13.9 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.

### 13.10 Entire Agreement

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

### 13.11 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.

### 13.12 **Assignment**

The Developer must not assign, novate or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with it, without the prior written consent of Hunter Water.

### 13.13 **Guarantee - credit check on parent company or director**

If so requested in writing by Hunter Water at any time during the term of this Deed, the Developer must procure and lodge with the Hunter Water Representative within 7 days after being directed to do so, a deed of guarantee in respect of the Developer's obligations and liabilities under this Deed:

(a) from:

- (i) a parent or related company of the Developer; or
- (ii) a director or directors of the Developer, or a director or directors of a parent or related company of the Developer; and

(b) in a form,

approved by Hunter Water in writing.

### 13.14 **Power to Extend**

- (a) Notwithstanding any other provision in this Deed, Hunter Water may extend the period of time in which it is required to perform an activity under this Deed by providing written notice to the Developer that the time has been extended, and the new period of time required for compliance.
- (b) If requested by the Developer, the Hunter Water Representative will provide reasons for the extension of time.

EXECUTED as a Deed in **Newcastle**

**SIGNED, SEALED AND DELIVERED** as a )  
deed for and on behalf of **Hunter Water** )  
**Corporation** (ABN 46 228 513 446) by its )  
authorised representative in the presence of: )  
)

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Print Name

.....  
Print Name

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

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

.....  
Director Signature

.....  
Director / Secretary Signature

.....  
Print Name

.....  
Print Name

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

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

.....  
Signature of Witness

.....  
Signature

.....  
Print Name

.....  
Print Name

Schedule 1

Contribution Schedule

1. Asset List

Funding Category <sup>1</sup>	Asset Name	Asset Value	Contributing lots <sup>2, 3</sup>	Contribution per lot

<sup>1</sup> Category 1, 2a, 2b or 2c

<sup>2</sup> Contributing lots represent the lead developer lots under Category 1, 2a, 2b and 2c.

<sup>3</sup> If the lead developer holds less than 25% of the lots in the asset, the contributing lots equivalent to 25% of the lots connecting to the asset.

2. Representative Details

Developer Representative means:

Name: [ ]

Title: [ ]

Address for Notice:  
[ ]

Phone: [ ]

Email: [ ]

Hunter Water Representative means:

Name: [ ]

Title: [ ]

Address for Notice:  
[ ]

Phone: [ ]

Email: [ ]

**3. Site Details**

**Site** means [  ] as provided in Development Application



No. [  ] issued by [  ] on [  ]  
and as per the plan provided in Schedule 2.



**4. Sunset**

**Sunset Date** means [  ]



**Schedule 2**  
**Site Plan**