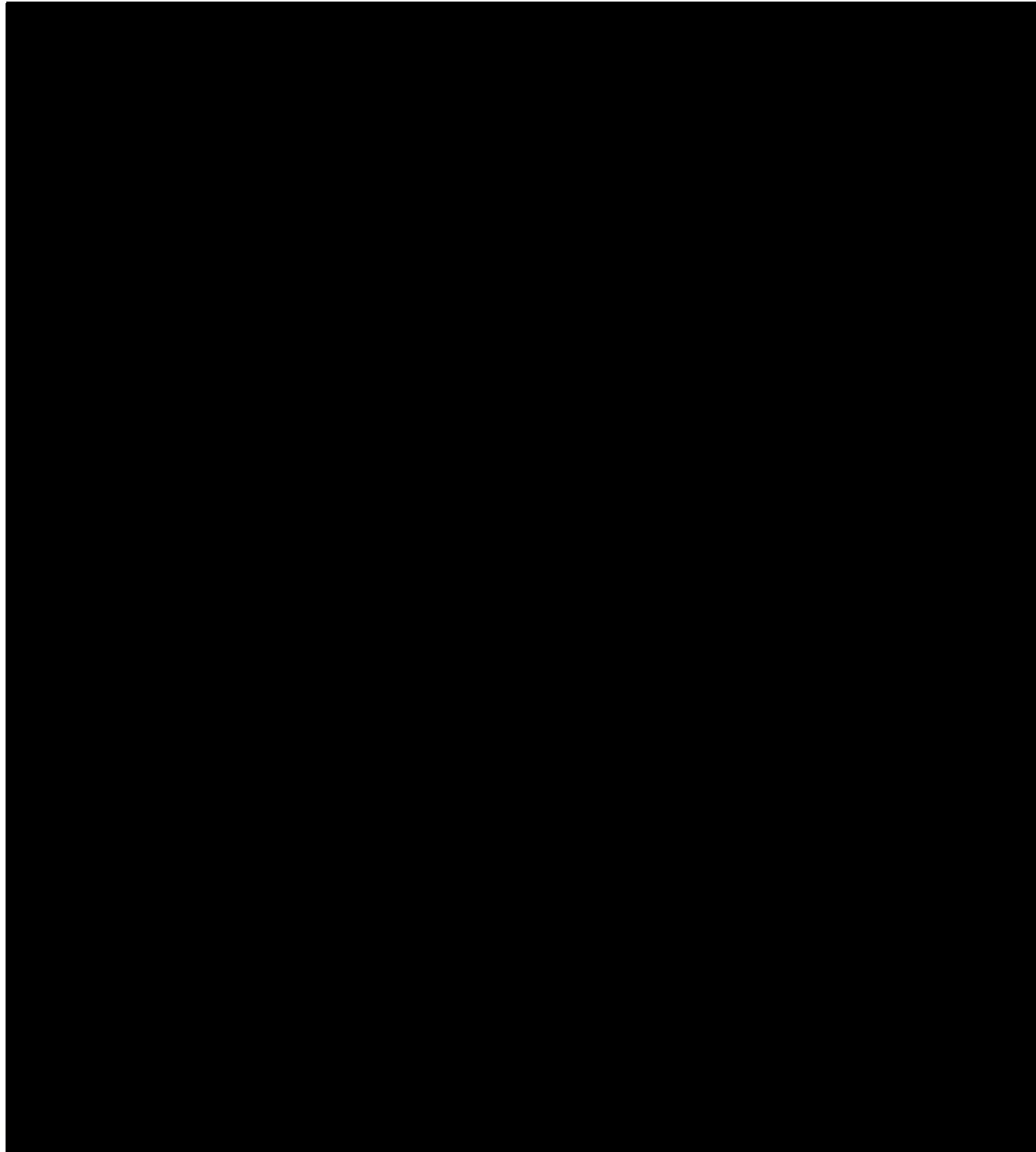


C

C

Schedule 29 – Separate Contractor Deed

Refer to clause 37A of the GC21 General Conditions of Contract.



C

C

Schedule 30 – Preliminary Design

Refer to clauses 6A, 12.6, 39 and 48 of the GC21 General Conditions of Contract.

C

C

Schedule 31 – Works Authorisation Deed

Refer to clause 6C of the GC21 General Conditions of Contract.

Part A WAD Baseline Conditions

**MAJOR
WORKS AUTHORISATION DEED –
PRIVATE FINANCING &
CONSTRUCTION**

Roads and Maritime Services
("RMS")

The party identified in Item 1 of the Schedule
("Developer")

[This is a Legal Branch precedent document which must only be modified with the approval
of the, Environment, Planning and Property Law Legal Counsel]

Contents

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	5
2.	ENVIRONMENTAL APPROVALS	6
2.1	Acknowledgements	6
2.2	Environmental Assessment of Works	6
2.3	Notification of Determination	6
3.	RMS AUTHORISATION UNDER ROADS ACT	7
4.	SECURITY	7
4.1	Purpose	7
4.2	Increase in Approved Security	7
4.3	Security for Defects Liability	8
5.	NATURE OF CONTRACT	8
5.1	General	8
5.2	All risks	8
6.	PROJECT VERIFIER	8
6.1	Project Verifier Selection	8
6.2	Project Verifier Appointment	9
7.	DESIGN	9
7.1	Design Obligations	9
7.2	Review Process	9
7.3	RMS not liable for checking	10
7.4	Obligations unaffected	10
8.	COMMENCEMENT OF THE WORKS	11
8.1	Preconditions to commencement	11
8.2	Appointment of Contractor	11
8.3	Principal contractor	12
8.4	Safety audits and surveillance	15
9.	CONSTRUCTION	16
9.1	Carrying out the Works	16
9.2	Testing	18
9.3	Defects rectification	18
10.	MODIFICATIONS	18
10.1	Modifications Only by Agreement	18
10.2	Effect on Estimated Cost of the Works	18
11.	PRACTICAL COMPLETION	18
11.1	Developer to Notify	18
11.2	RMS to Inspect and Give Notice	19
11.3	Unilateral Issue of Practical Completion Notice	19
11.4	Take Over Upon Practical Completion	19
11.5	Effect of Notice of Practical Completion	20

11.6	As Builts	20
11.7	Intellectual Property Warranty and Indemnity	20
11.8	Moral Rights	20
11.9	Dedication of Land	21
11.10	Traffic signal works	21
12.	PRACTICAL COMPLETION CLAIM AND FINAL COMPLETION CLAIM	21
12.1	Claims	21
12.2	Release after Practical Completion	21
12.3	Final Claim and Notice	22
12.4	Release after Final Claim and Notice	22
12.5	Final Certificate and Release of Approved Security	22
12.6	Right of Set-Off	23
12.7	Limitation	23
13.	RMS COSTS	23
13.1	Developer liable to pay	23
13.2	Invoice	24
13.3	Payment	24
13.4	Interest	24
13.5	Deferral of capitalised maintenance costs	25
14.	LIABILITY AND INDEMNITY	25
14.1	Indemnity	25
14.2	No limitation	26
14.3	RMS may remedy	26
15.	INSURANCE	26
15.1	Effect and maintain	26
15.2	Proof	26
15.3	RMS may effect insurances	26
16.	TERMINATION	27
16.1	Default by Developer	27
16.2	Take over the Works	28
16.3	Termination of Contract	28
16.4	Adjustment of costs on completion	28
16.5	No release	28
17.	AUTHORISED REPRESENTATIVES	28
17.1	Representatives to Perform Functions	28
17.2	Developer's Project Manager	28
17.3	Communications	29
17.4	Substitution	29
18.	DISPUTE RESOLUTION	29
18.1	Notice of Dispute	29
18.2	Response to Notice	29
18.3	Negotiation	29
18.4	Further Notice if not Settled	29
18.5	Reference to Expert	29
18.6	Rules	30
18.7	Assistance	30
18.8	Expert not an Arbitrator	30
18.9	Mediation	30
18.10	Litigation	31
18.11	Continue to Perform obligations	31

19.	GENERAL	31
19.1	No Representations by RMS	31
19.2	No Restriction on Rights	31
19.3	Notices	32
19.4	Assignment	32
19.5	Waiver	32
19.6	Joint and Several Liability	32
19.7	Governing Law	32
19.8	Stamp duty	33
19.9	Prior agreements superseded	33
19.10	Modification of Deed	33
19.11	Media releases and enquiries	33
19.12	Disclosure by RMS	33
19.13	Proportionate liability	33
20.	GST	34
20.1	Interpretation	34
20.2	Calculation of GST	34
20.3	GST invoices	34

ATTACHMENT A - PROJECT REQUIREMENTS

ATTACHMENT B - DESCRIPTION OF WORKS

ATTACHMENT C - INSURANCE

**ATTACHMENT D - STATUTORY DECLARATION AND SUBCONTRACTOR STATEMENT
REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION**

ATTACHMENT E – LAND TO BE DEDICATED

ATTACHMENT F – DEED OF APPOINTMENT OF PROJECT VERIFIER

Works Authorisation Deed - Private Financing and Construction

Parties

RMS **Roads and Maritime Services**
ABN 76 236 371 088
a NSW Government agency and corporation incorporated under the
Transport Administration Act 1988 (NSW) of Level 9, 101 Miller Street,
North Sydney NSW 2060

Developer **The party identified in Item 1 of the Schedule**

Background

1. RMS is the decision making authority under the Act in relation to the Works and has the statutory right to undertake the Works or authorise the Works to be carried out.
2. The Developer has agreed to finance, design and construct the Works on the terms of this Deed.
3. RMS authorises the Developer to carry out the Works subject to the terms of this Deed.

Deed

1. **Definitions and interpretation**

1.1 **Definitions**

In this document:

'**Act**' means the *Roads Act 1993* (NSW);

'**Amended Design Document**' has the meaning given to that expression in **clause 7.2**;

'**Approval**' means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by Law, including by any RMS condition or approval, including those under this Deed, required for the commencement, execution or completion of the Works;

'**Approved Security**' means an unconditional undertaking or certificate in a form acceptable to RMS and given by a bank or other financial institution acceptable to RMS;

'**As-Built Drawings**' means the Design Documents which are the final as-executed drawings of the Works and which are endorsed with a certificate by the Project Verifier, stating that the Works as constructed comply with all Approvals, Legislative Requirements and the requirements of this Deed;

'Authority' means a Commonwealth, State or local government department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function;

'Business Day' means a day other than a Saturday, Sunday or public holiday in NSW and specifically excluding 27, 28, 29, 30 and 31 December;

'Concept Proposal' means drawings and specifications containing sufficient information to enable RMS to make the determination referred to in **clause 2.1(a)**;

'Construction Program' means a program in logic linked critical path format showing the order of progress of the Works, to be prepared by the Developer and provided to RMS under **clause 8.1(e)**;

'Date of Practical Completion' means the date of Practical Completion set out in a Notice of Practical Completion;

'Deed of Appointment of Project Verifier' means the deed in the form of **Attachment F** between the Developer, RMS and the Project Verifier;

'Defects Liability Period' means the period stated in **Item 3** of the **Schedule**;

'Design Document' means:

- (a) a drawing, specification, construction document, design calculation, software, sample, model, pattern and the like required by this Deed or created for the construction, identification, modification, repair or maintenance of the Works;
- (b) a schedule setting out particulars of all notices, tests, hold points and materials as required by the individual sections of the Project Requirements, identifying all notification periods; and
- (c) any geotechnical report, data or investigation relating to the Works;

'Design Obligations' means all tasks necessary to design and specify the Works, including preparation and certification of the Design Documents and, if the Project Requirements include any preliminary design or specification, developing that preliminary design or specification;

'Detailed Proposal' means a complete package of Design Documents that the Developer proposes to issue or use for construction of the Works;

'Developer's Project Manager' means the person appointed by the Developer under **clause 17.2(a)**;

'Environmental Management Plan' means a detailed plan setting out measures to manage and control the environmental impact of construction of the Works and so as to achieve compliance with this Deed;

'Estimated Cost of the Works' means the cost estimate at the date of this Deed for completing the Works and satisfying all of the Developer's obligations under this Deed (including payment of RMS Costs), as specified in **Item 2** of the **Schedule**;

'EP&A Act' means the *Environmental Planning and Assessment Act 1979* (NSW);

'Inspection and Testing Plan' means a detailed plan setting out all testing and conformance data necessary to demonstrate conformance of the Works with the Project Requirements and Design Documents;

'Intellectual Property Rights' means all industrial and intellectual property rights of any kind including but not limited to copyright, trade mark, design, patent, semi-conductor or circuit layout rights, trade, business or company names or other proprietary rights, or any rights prior to registration of such rights;

'Law' includes:

- (a) Legislative Requirements; and
- (b) common law;

'Legislative Requirements' include:

- (a) an act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of New South Wales;
- (b) Approval of an Authority (including any condition or requirement under an Approval); and
- (c) any requirement to pay fees and charges in connection with paragraphs (a) and (b);

'Moral Rights' means each right defined as a 'moral right' in Part IX of the *Copyright Act 1968*;

'Notice of Practical Completion' means a notice under **clause 11.2(b)** by RMS stating that Practical Completion of the Works has been achieved;

'Notifiable Incident' has the meaning given to the term "notifiable incident" under the WHS Laws;

'Practical Completion' means that stage in the execution of the Works under this Deed when:

- (a) the Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation or handover to a relevant Authority, as the case may be, except for minor omissions and minor defects which:
 - (i) have been so identified on a list issued to the Developer by RMS,
 - (ii) do not impede use of the Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (iii) will not prejudice the convenient and safe use of the Works during rectification; and
 - (iv) RMS Representative determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;

- (b) the Inspection and Testing Plan has been complied with and any other tests necessary to be carried out and passed before the Works, or a part thereof, is used and occupied by the public or handed over to a relevant Authority have been carried and passed and all test results and conformance data identified in the Inspection and Testing Plan has been provided to RMS;
- (c) all relevant Legislative Requirements in respect of the Works have been carried out or satisfied;
- (d) all documents, certifications and information required under the Deed which, in the opinion of RMS, are essential for the use, operation and maintenance of the Works have been supplied, including all shop drawings and draft As-Built Drawings, all original manufacturers' or suppliers' warranties required by the Deed, all Approvals required to be obtained have been obtained from relevant Authorities and all other material provided as requested by RMS; and
- (e) with the approval of RMS, the Developer has commissioned into operation the Works including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the satisfaction of RMS that the commissioning has been successful;

'Principal Contractor' has the meaning given to the term 'principal contractor' in the WHS Laws;

'Product Quality Summary' means a summary of product quality records which:

- (a) indicates the lots or components or both, of the Works which have achieved full conformance with the requirements of this Deed; and
- (b) demonstrates how that full conformance was achieved;

'Project Requirements' mean the requirements, including standard specifications, set out or identified in **Attachment A**;

'Project Verifier' means the person appointed by the Developer in accordance with **clause 6**.

'Project Verifier Services' means the services set out in **Schedule 2** of the Deed of Appointment of Project Verifier.

'Quality Plan' means a detailed plan setting out the quality control measures to be implemented to ensure construction of the Works satisfies the requirements of this Deed;

'REF' means a review of environmental factors required to assist the determining authority in discharging its obligations under Part 5 of the EP&A Act;

'Road' means the road identified in **Item 5** of the **Schedule**;

'RMS Costs' mean costs and expenses reasonably incurred, or which will or may reasonably be incurred, by RMS in connection with this Deed, as further described (without limitation) in **clause 13**;

'RMS Preliminary Costs' means that part of RMS Costs described under **clauses 13.1(a)** and **13.1(b)**;

'RMS Representative' means the authorised representative of RMS stated in Item 7 of the Schedule, or any replacement advised by RMS in writing from time to time;

'Traffic Control Plan' means a detailed plan in accordance with RMS' *'Traffic Control at Work Sites Manual'*;

'Traffic Management Plan' means a detailed plan indicating how the Works and traffic will be managed during construction of the Works so as to minimise traffic disruption and achieve public safety and compliance with this Deed;

'WHS Laws' means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW); and

'Works' mean the works described in **Attachment B**, as modified following any assessment or determination under **clause 2** or **clause 7** or any other modification agreed in writing between the parties, to be designed and constructed in accordance with the Deed.

1.2 Interpretation

- (a) clause headings are for convenience only and will be ignored in the interpretation of the Deed;
- (b) references to a party include the successors and permitted assigns of that party;
- (c) words importing the singular include the plural and words importing the plural include the singular;
- (d) words importing a person include a corporation, firm or body corporate;
- (e) nothing contained in the Deed will be deemed or construed as creating the relationship of partnership or agency;
- (f) references to a month mean a calendar month;
- (g) references to any document include any permitted amendment, supplement to or replacement or novation of the document;
- (h) references to any legislation or to any section or provision of any legislation includes any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision;
- (i) no waiver of any breach of the Deed or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach;
- (j) other grammatical forms of defined words or expressions have corresponding meanings;

- (k) 'including' and similar expressions are not words of limitation;
- (l) documents which are hyperlinked to the Deed do not form part of the Deed; and
- (m) hyperlinks are included for ease of reference only and may become lost or be inaccurate.

2. Environmental Approvals

2.1 Acknowledgements

The parties acknowledge and agree that:

- (a) the Works may be assessed by RMS as determining authority under Part 5 of the EP&A Act and that assessment (if any) will result in a determination that, for the purposes of the EP&A Act, either:
 - (i) the Works may not proceed; or
 - (ii) the Works may proceed, in which case a relevant Approval will be issued; and
- (b) an Approval contemplated under **clause 2.1(a)(ii)** may:
 - (i) modify the Works;
 - (ii) impose conditions on the Works; or
 - (iii) do both things referred to in **clauses 2.1(b)(i) and (ii)**.

2.2 Environmental Assessment of Works

- (a) The Developer must within the earliest to expire of:
 - (i) a reasonable time after the date of this Deed; and
 - (ii) 20 Business Days of receipt of a notice from RMS,
procure and provide to RMS a draft Concept Proposal and a draft REF for the Works.
- (b) The Developer must promptly provide to RMS such further information and all reasonable assistance as RMS may reasonably require in order to carry out its responsibilities under Part 5 of the EP&A Act and, in the absence of the provision of such information within 20 Business Days of RMS' request in writing for the same to the Developer, RMS may in its discretion either suspend its determination process or determine, for the purposes of the EP&A Act, that the whole or any part of the Works should not proceed.
- (c) Subject to the Developer's compliance with **clauses 2.2(a) and 2.2(b)**, RMS will duly consider the environmental impacts of the Works and otherwise comply with

the requirements of Part 5 of the EP&A Act and will make a determination under that Part.

2.3 Notification of Determination

- (a) RMS must within 5 Business Days of making a determination under Part 5 of the EP&A Act provide a copy of that determination to the Developer.
- (b) A determination under this clause that the Works may proceed for the purposes of the EP&A Act does not constitute any other Approval that may be required to be obtained from RMS or any other Authority, person or body under this Deed or at Law, and any condition on any such determination does not limit any other power or discretion of RMS under this Deed or at Law.
- (c) Without limiting paragraph (b), the Developer must ensure that the draft Detailed Proposal under and prepared in accordance with **clause 7** is acceptable to RMS, and must also satisfy the matters referred to in **clause 8**.
- (d) In the event that the determination made under Part 5 of the EP&A Act is that the Works should not proceed, RMS must advise the Developer of the reasons for that determination and the Developer may in its discretion submit an amended draft Concept Proposal and an amended draft REF for consideration and determination by RMS and the provisions of this **clause 2** will apply to that amended draft Concept Proposal and amended draft REF.

3. RMS authorisation under Roads Act

Provided that RMS has made a determination under **clause 2** that the Works may proceed, or where the Works constitute exempt development under the Infrastructure SEPP, by issuing the authorisation letter referred to in **clause 8.1**, RMS authorises the Works under the Act and, to the extent that any consent is required, consents, pursuant to sections 64, 71, 72 and 87 and 138 of the Act, to the Developer and its authorised employees and contractors carrying out the Works within, over or across the Road and road reserves applicable to the Road in accordance with the Act subject to the terms of this Deed.

4. Security

4.1 Purpose

Before commencing the construction of the Works, the Developer must lodge with RMS the Approved Security for the amount stated in **Item 9** of the Schedule for the purpose of ensuring the due and proper performance of the Developer's obligations under the Deed.

4.2 Increase in Approved Security

- (a) If at any time RMS considers that the amount of the Approved Security then held by RMS is less than the cost of completing the Works and satisfying the other obligations of the Developer under this Deed (including payment of RMS Costs):
 - (i) RMS Representative may revise the amount of the Approved Security required to be provided and give the Developer a written request to increase the security provided under **clause 4.1** by the difference between

the amount of Approved Security then held by RMS and the revised amount of the Approved Security determined by RMS; and

- (ii) the Developer must within 10 Business Days after receiving that request provide RMS with such increased security by lodging a replacement Approved Security or an additional Approved Security so that the total of security held by RMS is for an amount not less than the revised amount of Approved Security referred to in **clause 4.2(a)(i)**.
- (b) The Developer must if requested provide prompt assistance to RMS Representative to allow RMS to review the Estimated Cost of the Works and any changes to it for the purposes of **clause 4.2(a)**.

4.3 Security for Defects Liability

RMS will be entitled to retain the Approved Security as security for rectification of defects during the Defects Liability Period and until such time as the Developer has completed all its obligations under this Deed and RMS is satisfied that it has no further call on, or right to retain, the Approved Security, including under **clause 12.5** and **clause 12.6**.

5. Nature of Contract

5.1 General

The Developer must finance, design and construct the Works where RMS determines under **clause 2** that the Works may proceed, and perform its other obligations under this Deed at its own cost without contribution from RMS.

5.2 All risks

The Developer accepts all risks associated with the obligations in **clause 5.1**, including the risk that the final cost of the Works is more than the Estimated Cost of the Works and the risk of changes to the Works necessary to comply with the Deed and all Approvals.

6. Project Verifier

6.1 Project Verifier Selection

- (a) The Developer must, within such time as is reasonable having regard to the requirements of **clause 6.1(b)**, propose in writing to RMS a person it considers to be a suitably qualified independent consultant engineer to perform the Project Verifier Services, being a person who:
 - (i) is independent of:
 - (A) the Developer,
 - (B) any consultant involved in preparation the Design Documents,
 - (C) the contractor engaged by the Developer to carry out the Works;
 - (ii) is a Chartered Engineer registered with the Institution of Engineers Australia,

- (iii) is familiar with and experienced in using RMS's QA Specifications; and
 - (iv) holds appropriate professional indemnity insurance.
- (b) If RMS:
- (i) agrees to the person proposed, then they must be appointed in accordance with **clause 6.2**; or
 - (ii) does not agree to the person proposed, then RMS and the Developer must negotiate in good faith to agree on a person to be appointed and upon agreement that person must be appointed under **clause 6.2**.
- (c) Any agreement required under this **clause 6.1** must not be unreasonably withheld.

6.2 Project Verifier Appointment

- (a) The Developer must appoint the Project Verifier to undertake the Project Verifier Services:
- (i) on the basis set out in **Attachment F**; and
 - (ii) at the Developer's cost.
- (b) The appointment under paragraph (a) must be made by a date early enough for the Project Verifier to have sufficient time to perform the Project Verifier Services.
- (c) The Developer must provide the Project Verifier with all necessary information and documents and allow the Project Verifier:
- (i) to perform the Project Verifier Services;
 - (ii) to attend any meetings in connection with the Works;
 - (iii) access to any site upon which the Works are carried out; and
 - (iv) to inspect the records of the Developer and its contractors.

7. Design

7.1 Design Obligations

Where RMS determines under **clause 2** that the Works may proceed, the Developer must:

- (a) provide RMS with a draft Detailed Proposal for the Works for consideration and acceptance within the period required by RMS;
- (b) perform the Design Obligations and produce the Design Documents to accord with the Project Requirements and Approvals, including those required by **clause 2**;

- (c) ensure that the Design Obligations are performed, and the Design Documents produced by or on behalf of the Developer are produced, with due skill, care and diligence and by personnel who are suitably qualified and experienced;
- (d) ensure that each Design Document which is a drawing or a specification is endorsed with a certificate from the Project Verifier stating that the Works if constructed in accordance with the Project Requirements and the relevant drawing or specification will comply with all Approvals, Legislative Requirements and requirements of this Deed and will be fit for their intended purposes; and
- (e) ensure that the Design Documents are fit for the construction of the Works and in accordance with the Law, including the WHS Laws.

7.2 Review Process

- (a) The Developer must:
 - (i) submit to RMS for consideration at least four copies of Design Documents produced by or on behalf of the Developer, in a form acceptable to RMS, before they are issued to tenderers or proposed contracting parties and in any event, not less than 21 Business Days before the Works or any part of the Works to which the Design Documents relate is proposed to be commenced, and if the obligations under **clause 2** apply, after satisfaction of those obligations;
 - (ii) where a Design Document submitted by the Developer to RMS is amended after being submitted to RMS ('**Amended Design Document**'), submit four copies of the Amended Design Document to RMS for RMS' consideration; and
 - (iii) submit any Amended Design Document to RMS for consideration no later than 15 Business Days, or such other time as the parties may agree in writing, prior to the date that the Developer proposes that the Works or any part of the Works to which the Amended Design Document relates is proposed to be commenced.
- (b) RMS must notify the Developer within 20 Business Days of receipt of Design Documents under **clause 7.2(a)(i)** whether RMS considers that those Design Documents comply with the Project Requirements and the Approvals and are acceptable to RMS. If RMS considers that those Design Documents do not comply with the Project Requirements and the Approvals and are not acceptable to RMS, RMS must so advise the Developer and give reasons.
- (c) If RMS receives any Amended Design Documents, RMS must notify the Developer by the later of:
 - (i) the expiry of the period in **clause 7.2(b)**; and
 - (ii) 10 Business Days of receipt of those Amended Design Documents,
 whether RMS considers that the Amended Design Documents complies with the Project Requirements and the Approvals and are acceptable to RMS.

If RMS considers that any Amended Design Document does not comply with the Project Requirements and the Approvals and is not acceptable to RMS, RMS must so advise the Developer and give reasons.

7.3 RMS not liable for checking

RMS is not responsible or liable for checking or not checking Design Documents (including Amended Design Documents) for errors, omissions or compliance with the Project Requirements, the Approvals or the Deed even if the Design Documents are acceptable to RMS.

7.4 Obligations unaffected

The Developer acknowledges that the obligations in **clause 7.1** and the Design Obligations will remain unaffected despite:

- (a) the Developer carrying out preliminary design or specification work which may be included in the Project Requirements;
- (b) any receipt, review, acceptance or approval of, or comment or direction on a Design Document (including an Amended Design Document) by RMS;
- (c) any information given by RMS to the Developer; or
- (d) any change to the Works necessary to comply with the requirements under the Deed (including the Project Requirements or any Approval).

8. Commencement of the Works

8.1 Preconditions to commencement

The Developer must not commence construction of the Works or any part of the Works until it has:

- (a) obtained all Approvals necessary to start construction of the Works, including those required under **clause 2** and the issue of an authorisation letter, including a road occupancy approval, from RMS;
- (b) obtained the relevant notices from RMS under **clause 7.2** that RMS considers that the Design Documents and Amended Design Documents (as the case may be) comply with the Project Requirements and the Approvals and are acceptable to RMS;
- (c) obtained written confirmation from RMS that the Developer has complied with any other conditions required by RMS, including a condition that the Developer has provided to RMS an Environmental Management Plan, Quality Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan together with certifications from the Project Verifier stating that each of the plans complies with the Project Requirements, the Approvals and the Deed and is suitable for its intended purpose;

- (d) provided the requisite Approved Security to RMS in accordance with clause 4 and anything else required to be provided under the Deed prior to commencement of the Works;
- (e) provided to RMS a Construction Program, which RMS has confirmed in writing is acceptable to RMS;
- (f) given to RMS Representative at least 10 Business Days written notice of the Developer's intention to start construction; and
- (g) given to RMS Representative documentary evidence of payment to the Long Service Corporation established under the *Long Service Corporation Act 2010* (NSW) or that body's agent, the amount of any long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) in respect of the Works.

RMS may delay in issuing an authorisation letter for the commencement of the Works if any of the requirements under the Deed have not been satisfied or the Works will coincide with other works, road occupancies or peak traffic flows which RMS considers will cause undue disruption to traffic.

8.2 Appointment of Contractor

The Developer must ensure that:

- (a) traffic signal works are only constructed or reconstructed by a contractor that, at the time of engagement, is prequalified for those works under RMS' Prequalification Scheme for Traffic Signal Contractors current at that time, unless otherwise agreed in writing by RMS;
- (b) to the extent requested by RMS, other work is constructed by a contractor that, at the time of engagement, is prequalified at a level and category appropriate for that work under the National Prequalification System for Civil (Road and Bridge) Construction Contracts or RMS' Registration Scheme or Prequalification Scheme for Construction Industry Contractors (or such other prequalification scheme as determined by RMS);
- (c) such contractors are suitably experienced in constructing similar works;
- (d) the Developer and such contractors comply with the NSW Government Code of Practice for the Construction Industry and associated Implementation Guidelines;
- (e) the names of proposed contractors and subcontractors are submitted to RMS for prior written acceptance and prior to submitting those names, the Developer warrants that it has satisfied itself that any such principal contractors, contractors, consultants or persons engaged by it for the purposes of carrying out an activity in relation to the Works has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the relevant work and comply with its obligations under the WHS Laws;
- (f) in the case of work constructed by a non-prequalified contractor, the work is not commenced until RMS has given its prior written acceptance to the use of the contractor pursuant to clause 8.2(e) (which acceptance may be given or withheld in RMS' absolute discretion);

- (g) all requisite insurances have been effected by the proposed contractor; and
- (h) the proposed contractor is engaged by the Developer under terms and conditions that ensure the contractor will satisfy the Developer's obligations to RMS under the Deed.

8.3 Principal contractor

- (a) In this **clause 8.3**, "workplace", "construction project", "construction work" and "person conducting a business or undertaking" ("PCBU") have the same meanings assigned to those terms in the WHS Laws.
- (b) As part of any authorisation of, or consent to, the Works under **clause 3**, RMS authorises the Developer to exercise such authority and management and control of the workplace in connection with the Works as is necessary to enable the Developer to discharge the responsibilities imposed on a Principal Contractor for the Works under the WHS Laws.
- (c) Without limiting any other provision of this Deed, the Developer acknowledges and agrees that:
 - (i) it is the PCBU that commissions the construction work and the construction project in connection with the Works for the purposes of the WHS Laws;
 - (ii) it has management and control of the workplace in connection with the Works for the purposes of the WHS Laws;
 - (iii) it is the Principal Contractor in connection with the Works unless the Developer engages another PCBU as the Principal Contractor for the Works; and
 - (iv) it has sufficient authority and management and control of the workplace in connection with the Works to comply with its obligations as Principal Contractor, or to enable another PCBU it engages as Principal Contractor to comply with their respective obligations under the WHS Laws.
- (d) Without limiting the Developer's obligations under any other provision of this Deed, the Developer:
 - (i) must at all relevant times exercise and fulfil its functions and obligations in relation to work, health and safety under the WHS Laws and this Deed in connection with the Works, including as Principal Contractor;
 - (ii) if the Developer engages a PCBU as Principal Contractor, must:
 - A. require the Principal Contractor to comply with the obligations imposed on the Developer in relation to work, health and safety under this Deed; and
 - B. ensure that the Principal Contractor fulfils its functions and obligations in relation to work, health and safety under the WHS Laws and this Deed;

(iii) must not:

A. carry out; or

B. permit any other PCBU engaged by, or under the control or direction of, the Developer to carry out,

any construction work unless the Developer, or a PCBU engaged by the Developer, is exercising and fulfilling the functions and obligations of Principal Contractor under the WHS Laws in respect of all construction work carried out under this Deed.

(e) Without limiting any other provision of this Deed, the Developer:

(i) must itself comply with its, and ensure that all its employees, contractors and agents engaged in connection with the Works comply with their, respective obligations under the WHS Laws and under any plan relating to work health and safety, including as Principal Contractor;

(ii) is responsible for all costs associated with performing the role of Principal Contractor;

(iii) must comply with any direction on safety issued by a relevant Authority;

(iv) must immediately notify RMS of any Notifiable Incident in connection with the carrying out of the Works or which occurs at the workplace (which notification shall not reduce or otherwise affect any obligation of the Developer under the WHS Laws) and must (if required by RMS) assist RMS to promptly investigate and monitor the Notifiable Incident with a view to managing risks and any potential or actual claims against RMS;

(v) must provide to RMS all notices and correspondence concerning work health and safety in connection with the Works within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence;

(vi) to the extent not prohibited by Law, must indemnify RMS against any damage, cost, expense, loss or liability suffered or incurred by RMS arising out of or in connection with:

A. any failure of the Developer, or a PCBU engaged by the Developer, to exercise or fulfil the functions and obligations of the Principal Contractor under the WHS Laws or under this Deed; and

B. any work health and safety claims in connection with the Works or the Developer's workplace except to the extent that they are directly caused by a wrongful, negligent or unlawful act or default of RMS or its employees, contractors or agents (excluding the Developer and its contractors);

(vii) must ensure that it, and its employees, contractors and agents engaged in connection with the construction work, carry out the Works in a manner

which ensures that RMS does not breach any obligations that RMS may have under the WHS Laws;

- (viii) must carry out the Works safely so as to protect persons and property and the environment;
 - (ix) must have a corporate work health and safety management system which complies with the WHS Laws and is otherwise in accordance with the NSW Government Occupational Health & Safety Management Systems Guidelines;
 - (x) must display signs that are clearly visible from outside the workplace in connection with the Works identifying the Developer (or the relevant PCBU engaged by the Developer) as the Principal Contractor and stating the contact telephone numbers of the Principal Contractor (including an after hours emergency telephone number); and
 - (xi) must, on request by RMS, provide information to RMS in relation to its compliance with its health and safety obligations under this Deed or the WHS Laws.
- (f) If RMS Representative considers there has been, or is likely to be, a breach of the WHS Laws arising out of or in connection with the Works, or that there is a risk of injury to people or damage to property or the environment arising out of or in connection with the Works:
- (i) RMS Representative may direct the Developer to cease work immediately and the Developer must, at its cost, comply with any such direction;
 - (ii) RMS will be entitled to exercise any of the rights under **clauses 16.1(k), 16.1(l) or 16.2** without notice and without prejudice to any other right of RMS; and
 - (iii) if RMS considers that there has been a failure by the Developer, or any PCBU engaged by the Developer as Principal Contractor, to comply with the WHS Laws or a breach of this **clause 8.3**, RMS may also, in its absolute discretion:
 - A. treat the failure or breach as a material breach under **clause 16.1(i)**; or
 - B. proceed to give a notice under **clause 16.1(m)** terminating the Deed immediately, without requesting the Developer to remedy the failure or breach, and the provisions of **clause 16** will otherwise apply to that termination.
- (g) If RMS exercises any of its rights to take over or complete the whole or any part of the Works under **clauses 16.1(k), 16.1(l) or 16.2**:
- (i) RMS will have management and control of the part of workplace in connection with that part of the Works;

- (ii) RMS will be the PCBU that commissions the construction work in connection with that part of the Works; and
- (iii) RMS will be the Principal Contractor, or will engage another PCBU as Principal Contractor for that part of the Works.

8.4 Safety audits and surveillance

- (a) RMS may itself, or have a third party, conduct a safety audit or surveillance, or require the Developer to conduct audits from time to time, of the Developer's compliance with its health and safety obligations under:
 - (i) this Deed; and
 - (ii) all WHS Laws, ('WHS Obligations').
- (b) The Developer must comply with all requirements of a party undertaking an audit or surveillance under this clause 8.4, including giving reasonable access to all documents necessary to conduct the audit or surveillance, and access to the workplace.
- (c) If the Developer is required to conduct an audit under this clause, it must do so within the time reasonably required by RMS and promptly report to RMS in writing on the outcome of the audit.
- (d) Any corrective work or action which an audit or surveillance identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by the Developer at its expense and within a reasonable time, given the nature of the departure.

9. Construction

9.1 Carrying out the Works

The Developer must, in undertaking the Works, ensure that:

- (a) the Project Requirements are complied with at all times;
- (b) the Works are carried out in accordance with the Design Documents and Amended Design Documents (as the case may be) which RMS has notified the Developer are acceptable to RMS pursuant to clause 7;
- (c) the Works are carried out in compliance with:
 - (i) all Legislative Requirements affecting the Works, including environmental, workers' compensation legislation and work health and safety legislation;
 - (ii) all requirements of other relevant Authorities;
 - (iii) the conditions of all Approvals for the Works; and

- (iv) the Quality Plan, Environmental Management Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan;
- (d) any direction (including a direction to immediately stop work) and additional requirement of RMS given from time to time, relating to either:
 - (i) traffic safety and convenience, or
 - (ii) quality of work,
 are complied with;
- (e) it promptly notifies RMS if a 'pollution incident' occurs within the meaning of the *Protection of the Environment Operations Act 1997* (NSW) in connection with the Works;
- (f) in addition to any actions taken in accordance with paragraph (e), do whatever is necessary, or RMS reasonably requires, to remediate any contamination or pollution at the site of the Works that:
 - (i) occurred before the date of the Deed and was disturbed by the Developer; or
 - (ii) first occurred or was first caused by the Developer on or after the date of the Deed;
- (g) water, debris or silt is prevented from collecting in or adjacent to the Works as a result of any activity associated with the Works;
- (h) it does not disturb traffic flow at the site of the Works, except in accordance with the Traffic Management Plan or with the prior approval of RMS Representative;
- (i) RMS is kept fully informed of progress and of any event that may affect traffic movements or other activities within or adjacent to the Works;
- (j) all safety devices, traffic control, barricades, signs and warnings required by RMS or which are necessary or desirable for the protection of people or property are provided;
- (k) people authorised by RMS are freely allowed to inspect the Works and access all information and records relating to the Works, including traffic control arrangements and test and survey results;
- (l) noise, vibration and dust is minimised or avoided;
- (m) no explosives are used in relation to any part of the Works without the prior written approval of RMS;
- (n) delay to RMS in providing the completed Works to the public to RMS' satisfaction is minimised;

- (o) the Works are carried out expeditiously and proceed continuously until Practical Completion in accordance with the Construction Program accepted by RMS prior to commencement of construction of the Works under **clause 8.1(e)**;
- (p) at all times it acts in a lawful manner in the performance of the Works;
- (q) the safety and welfare of all people, including members of the public and road users, who may be affected by the Works or the Developer's undertaking of the Works are maintained;
- (r) it fully co-operates and liaises with RMS and its contractors, employees and agents working in the vicinity of the Works;
- (s) it carefully coordinates and interfaces the Works with any works being carried out by RMS or another Authority and their contractors, employees and agents;
- (t) it carries out the Works so as to avoid interference with or disruption to or delay of the work of RMS or another Authority and their contractors, employees and agents;
- (u) it monitors the progress of work being performed by RMS, another Authority and their contractors, employees and agents and notifies RMS of any interface or sequence activities which may affect the commencement, progress or completion of any aspect of the Works;
- (v) all subcontractors and workers engaged by the Developer on the Works are fully paid money properly due and payable to them in connection with the Works under relevant awards, contracts and enterprise agreements; and
- (w) RMS is provided with any additional information and material relevant to the performance of the Developer's obligations under this **clause 9.1**, if requested in writing by RMS Representative, including information relating to traffic control, records, test, survey results for the Works and any other relevant information held or received by the Developer from time to time.

9.2 Testing

The Developer must carry out all necessary tests on the Works as required by the Deed and comply with the Inspection and Testing Plan. The Developer must give RMS and the Project Verifier at least 3 Business Days prior written notice of the date, time and location of any testing to be undertaken to allow an RMS Representative and the Project Verifier to attend. All testing required pursuant to this Deed will be carried out at the Developer's cost.

9.3 Defects rectification

The Developer must promptly and in any event within the time frame referred to in **clause 11.2(b)(iii)** rectify defects or other non conforming work which become apparent during construction of the Works or before the end of the Defects Liability Period in accordance with the requirements of the Deed.

10. Modifications

10.1 Modifications Only by Agreement

The Developer must not make any modification to the Works unless it has first obtained:

- (a) the prior written agreement of RMS Representative; and
- (b) all Approvals required to carry out the Works as modified.

10.2 Effect on Estimated Cost of the Works

For the purposes of **clause 4.2**, the estimated value of a modification may be taken into account by RMS Representative in revising the Estimated Cost of the Works and the amount of Approved Security required.

11. Practical Completion

11.1 Developer to Notify

The Developer must:

- (a) give RMS written notice not less than 20 Business Days, unless **Item 8** of the **Schedule** states otherwise, before it anticipates achieving Practical Completion of the Works; and
- (b) provide notice to RMS when it considers Practical Completion has been achieved, such notice to include the following details in relation to each item of the Works:
 - (i) any defects identified to date;
 - (ii) reports on preliminary commissioning of the services and installations;
 - (iii) compliance with the Inspection and Testing Plan and the provision of all required test results and conformance data;
 - (iv) Approvals; and
 - (v) a certificate from the Project Verifier that the item of the Works complies with all requirements of this Deed and is fit for occupation and use.

11.2 RMS to Inspect and Give Notice

RMS must:

- (a) promptly, and in any event no later than 5 Business Days after receiving the Developer's written notice under **clause 11.1(b)** or a notice under the final paragraph of this **clause 11.2** (as the case may be), inspect the Works; and
- (b) if satisfied that Practical Completion has been achieved, issue a notice to the Developer:
 - (i) stating the date upon which RMS determines Practical Completion was achieved;

- (ii) containing a list of any minor defects and minor omissions of the type described in paragraph (a) of the definition of 'Practical Completion' in **clause 1.1**; and
- (iii) stating the time frame within which those defects and omissions identified must be rectified; or
- (c) if not satisfied that Practical Completion has been achieved, issue a notice to the Developer containing a comprehensive list of all items that RMS considers necessary to be completed to achieve Practical Completion.

If RMS issues a notice under **clause 11.2(c)** the Developer must proceed to bring the Works to Practical Completion and thereafter when it considers it has achieved Practical Completion it will give RMS written notice to that effect after which this **clause 11.2** will reapply.

11.3 Unilateral Issue of Practical Completion Notice

If at any time a notice required to be given by the Developer to RMS under either of **clauses 11.1** or **11.2** is not given by the Developer yet RMS is of the opinion that Practical Completion of the Works has been achieved, RMS may issue a Notice of Practical Completion under **clause 11.2(b)** for the Works.

11.4 Take Over Upon Practical Completion

Upon the issue of a Notice of Practical Completion:

- (a) the Developer must hand over the Works to RMS or the relevant Authority as notified by RMS; and
- (b) the Developer must correct all defects and omissions listed in the Notice of Practical Completion as soon as possible after the Date of Practical Completion.

11.5 Effect of Notice of Practical Completion

A Notice of Practical Completion:

- (a) will not constitute approval by RMS of the Developer's performance of its obligations under the Deed;
- (b) will not be taken as an admission or evidence that the Works comply with the Deed or any Approval;
- (c) will not prejudice any rights or powers of RMS; and
- (d) is only issued for the purposes of this Deed and is not a notice of practical completion of the Works as may be required to be issued under the contract entered into with the Developer's contractor to construct the Works.

11.6 As Built

The Developer must ensure that:

- (a) within 20 Business Days of issue of the Notice of Practical Completion RMS is provided with all As-Built Drawings;
- (b) ownership of Intellectual Property Rights in all Design Documents and As-Built Drawings will vest in RMS on or immediately after their creation;
- (c) to the extent that any such Intellectual Property Rights vest in the Developer, the Developer assigns those rights to RMS; and
- (d) to the extent that such Intellectual Property Rights vest in the Developer's contractors, employees or agents, the Developer must procure that those contractors, employees and agents assign those rights to RMS.

The Developer must execute all documents and do all acts and things required by RMS for the purpose of giving effect to this clause.

11.7 Intellectual Property Warranty and Indemnity

The Developer warrants that RMS' use of the Design Documents, including As-Built Drawings, will not infringe the Intellectual Property Rights of any person. The Developer must indemnify RMS, and keep RMS indemnified from and against any loss, costs, expenses, demands or liability, arising out of a claim by a third party against RMS alleging that the Design Documents, including As-Built Drawings, or part of the Design Documents, including As-Built Drawings, infringes any Intellectual Property Rights.

11.8 Moral Rights

The Developer must:

- (a) obtain in writing from its contractors, employees, subcontractors and licensors all necessary, unconditional and irrevocable:
 - (i) consents permitted by applicable Law, to any alterations to, or use of the existing intellectual property or intellectual property created for the purpose of the Works that would otherwise infringe their respective Moral Rights in such intellectual property, whether occurring before or after the consent is given; and
 - (ii) waivers permitted by applicable law of their respective Moral Rights outside Australia,
 for the benefit of RMS;
- (b) provide RMS with copies of each written consent and waiver obtained under this clause, at RMS' request, or within 14 Business Days of the date of this Deed (or within 10 Business Days after engaging a contractor, employee, subcontractor or licensor not engaged at the date of this Deed), whichever occurs first; and
- (c) use its best endeavours to ensure that none of its contractors, employees, subcontractors or licensors institutes, maintains or supports any claim or proceeding for infringement of their Moral Rights by RMS.

11.9 Dedication of Land

If requested by RMS the Developer must:

- (a) grant or procure an easement in favour of RMS or its nominee in relation to any area of land adjacent to or surrounding the Road as identified in the Design Documents or as reasonably required by RMS for purposes reasonably required by RMS; and
- (b) dedicate land owned or to be acquired in connection with the Works by the Developer, as identified in **Item 11** of the **Schedule** or in the Design Documents, that is required by RMS to be dedicated as public road or road reserve for the relevant part of the Works,

without any cost to RMS.

11.10 Traffic signal works

Upon Practical Completion of the Works, title in any traffic signalling plant, equipment, materials or installation that has been incorporated into the Work.

12. Practical Completion Claim and Final Completion Claim

12.1 Claims

Within 45 Business Days after the issue of a Notice of Practical Completion for the Works the Developer must give RMS notice of all liability, cost or expense which the Developer claims from RMS in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred up to the date of issue of the Notice of Practical Completion.

12.2 Release after Practical Completion

After the date for submitting the claim and notice under **clause 12.1** has passed, the Developer releases RMS from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred prior to the Date of Practical Completion of the Works except for any claim included in a claim or notice under **clause 12.1** which is given to RMS within the time required by, and in accordance with the terms of, **clause 12.1**.

12.3 Final Claim and Notice

Within 21 Business Days after the end of the Defects Liability Period for the Works the Developer must give RMS a final claim which must be for the Approved Security held and all other amounts retained by RMS and which must include notice of all liability, cost or expense which the Developer claims from RMS in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred during the Defects Liability Period for the Works.

The final claim and notice must be accompanied by a certificate from the Project Verifier that all design, construction, inspection, repairs, maintenance and monitoring by the Developer has been undertaken in accordance with the requirements of the Deed.

The final claim and notice required under this **clause 12.3** are in addition to the other notices which the Developer must give to RMS under the Deed in order to preserve its entitlements to make any such claims.

12.4 Release after Final Claim and Notice

After the date for submitting the final claim and notice under **clause 12.3** has passed, the Developer releases RMS from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred during the Defects Liability Period for the Works except for any claim included in a final claim or notice under **clause 12.3** which is given to RMS within the time required by, and in accordance with the terms of **clause 12.3**.

12.5 Final Certificate and Release of Approved Security

- (a) RMS must issue a final certificate within 21 Business Days after receipt of the final claim and notice under **clause 12.3** ('Final Certificate') if:
 - (i) the Developer has lodged with RMS a statutory declaration in the form set out in **Attachment D**;
 - (ii) the Developer has procured from each contractor engaged by the Developer to carry out any part of the Works:
 - (A) a statutory declaration that all subcontractors and workers engaged by the contractor have been paid all monies due and payable and received all entitlements accrued; and
 - (B) a written statement in the form approved under Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 175B of the *Workers Compensation Act 1987*, and section 127 of the *Industrial Relation Act 1996*;
 - (iii) the Developer has completed all its obligations under the Deed;
 - (iv) the Defects Liability Period under the Deed has expired;
 - (v) the Developer has provided RMS with a certificate from the Project Verifier as required by **clause 12.3**; and
 - (vi) there are no outstanding claims or disputes between the Developer and RMS.
- (b) The Final Certificate must set out the amount of the Approved Security determined by RMS as the amount finally due from RMS to the Developer less any set-off by RMS under this Deed.
- (c) If the Final Certificate shows money owing from RMS to the Developer, RMS must within 21 Business Days after the date of the Final Certificate:
 - (i) release that money to the Developer; and
 - (ii) release the balance of any other security then held for the Deed.

- (d) If the Final Certificate shows money owing from the Developer to RMS:
- (i) the Developer must pay RMS the amount certified as payable by the Developer within 21 Business Days after the date of the Final Certificate; and
 - (ii) RMS has no obligation to release the Approved Security or any other security held for the Deed until the Developer has paid the money due.

12.6 Right of Set-Off

RMS may withhold, deduct or set-off from moneys to which the Developer is otherwise entitled, or make a demand against any security held by RMS (including the Approved Security), the amount of:

- (a) any debt or other moneys due from the Developer to RMS; and
- (b) any claim to money which RMS may have against the Developer whether for damages or otherwise,

whether under the Deed or otherwise at law relating to the Works.

12.7 Limitation

Moneys which RMS is obliged under this Deed to release to the Developer must not exceed the amount of the balance then available of the Approved Security.

13. RMS Costs

13.1 Developer liable to pay

The Developer is liable to RMS for and must pay RMS Costs, including:

- (a) RMS' costs (internal and external) in reviewing Design Documents and providing Approvals and any other consents, conditions or directions under the Deed;
- (b) RMS' project management costs for co-ordinating activities associated with the Works and liaising with the Developer;
- (c) the cost of surveillance and associated administration of surveillance of the Works;
- (d) legal costs and expenses (on a solicitor and own client basis) associated with the preparation, administration, enforcement and termination of this Deed;
- (e) costs associated with any assessment of the likely environmental impact of the Works required under the EP&A Act, assessment reports, determinations and any environmental impact statement required under the EP&A Act and costs associated with community consultation, participating in a commission of inquiry, complying with other Legislative Requirements, appealing or prosecuting any appeal and any other costs payable to an Authority to discharge obligations under the EP&A Act;
- (f) the replacement cost of any material, equipment, stock or other item used or supplied by RMS;

- (g) the cost of repairs or replacement of any road or associated infrastructure damaged:
 - (i) by the Developer or its employees, contractors or persons under the control of any of them; or
 - (ii) attributed to damage caused by performance by the Developer of its obligations under the Deed,

except to the extent that the repair or replacement is the result of an act or omission for which RMS is liable to the Developer at common law;
- (h) the cost of remedying a breach of this Deed by the Developer;
- (i) costs of emergency or special traffic control measures required by RMS; and
- (j) if specified in **Item 4** of the **Schedule**, the capitalised amount of the estimated maintenance costs of the Works for the period set out in **Item 4**, agreed by the parties and set out in **Item 4**.

13.2 Invoice

Subject to **clause 13.5**, invoices for RMS Costs and interest accrued will be sent by RMS to the Developer upon execution of the Deed and then at not less than four weekly intervals.

An itemised invoice of RMS Costs together with a certification from RMS Representative that RMS Costs incurred are true and accurate is sufficient evidence of RMS Costs unless a clear error has been made.

13.3 Payment

The Developer must pay the estimated amount of RMS Preliminary Costs stated in **Item 10** of the **Schedule** within 10 Business Days of execution of the Deed. The Developer must pay the full amount of each other invoice for RMS Costs within 10 Business Days from the date of the invoice, including any interest payable under **clause 13.4**.

13.4 Interest

The Developer must pay interest on any amount due to RMS under this Deed but not paid at the rate stated in **Item 6** of the **Schedule** from the day the amount became due until the date of payment.

13.5 Deferral of capitalised maintenance costs

Payment of RMS Costs referred to in **clause 13.1(j)** will not be payable by the Developer until Practical Completion.

14. Liability and Indemnity

14.1 Indemnity

The Developer:

- (a) must defend and hold harmless, indemnify and keep indemnified RMS and its employees, officers, agents and contractors from and against all claims, expenses, losses, including consequential losses, damages and costs (including costs on a solicitor and own client basis and whether incurred by or awarded against RMS) that RMS may sustain or incur as a result, whether directly or indirectly, arising out of or in connection with:
 - (i) any breach of this Deed by, or act or omission of, the Developer;
 - (ii) any injury to or death of any person including any injury to or death of the employees, officers, agents and contractors of the Developer or RMS;
 - (iii) damage to or loss of any property, including any damage to or loss of the Works or property of the Developer or RMS; or
 - (iv) performance by the Developer of its obligations under the Deed, including claims by a person who is not a party to this Deed, except to the extent caused or contributed to by the wrongful, negligent or unlawful act or omission of RMS, its contractors, employees and agents; and
- (b) acknowledges that:
 - (i) it, and not RMS, is responsible and liable for the design and carrying out of the Works, management of construction and programming of the Works in compliance with the provisions of this Deed; and
 - (ii) RMS is relying on the advice, skill and judgment of the Developer and its consultants and contractors in:
 - (A) the correctness and suitability of the Design Documents;
 - (B) the performance of the Developer's obligations under this Deed;
 - (C) the carrying out of the Works; and
 - (D) the adequacy of the plant, equipment and materials to be used in the construction of, or incorporated into the Works for the purposes of this Deed.

14.2 No limitation

Without limiting the generality of **clause 14.1(b)(ii)**, the Developer must ensure that:

- (a) the processes and methods to be used for carrying out the Works will be completely suitable for the purposes for which they are required;
- (b) the Works are carried out in accordance with this Deed;
- (c) it will furnish efficient business administration, supervision and an adequate supply of workers and materials and perform its obligations in the best way and in

the most expeditious and economical manner consistent with the best interests of RMS; and

- (d) it will obtain for the benefit of RMS all available product and work warranties from any suppliers, manufacturers, contractors and subcontractors in respect of plant, equipment and materials used in the construction of, or incorporated into the Works or assign such benefit to RMS where the warranty is not in favour of RMS.

14.3 RMS may remedy

The Developer agrees that:

- (a) if it fails to remedy any breach of the Deed within 10 Business Days or as otherwise agreed by the parties, after receiving a notice from RMS requiring the Developer to remedy the breach, RMS may remedy the breach at the cost of the Developer and will be entitled to recover the cost of remedying the breach, including under **clause 12.6**; and
- (b) if remedial, protective or repair work, traffic management or traffic control work is urgently required to prevent loss of or damage to the Works, or to the site of or property adjacent to the Works, or to prevent injury to or death of any person, RMS may undertake that work at the cost of the Developer and will be entitled to recover the cost as a debt due, including under **clause 12.6**. RMS will, if practical, give notice to the Developer of the work urgently required.

15. Insurance

15.1 Effect and maintain

The Developer must ensure that the policies of insurances listed in **Attachment C**, on the terms, for the risks identified and for the periods of time set out in **Attachment C** are effected and maintained.

15.2 Proof

The Developer must provide proof that the policies of insurance required under this Deed have been effected and are current at all times during the periods of insurance stated in **Attachment C**. As proof of compliance the Developer must provide certificates of currency to RMS in the form specified in **Attachment C**.

15.3 RMS may effect insurances

If the Developer does not comply with **clause 15.2**, RMS may, but is not obliged to, effect the relevant insurances and the cost of doing so will be a debt due from the Developer which RMS will be entitled to recover, including under **clause 12.6**.

16. Termination

16.1 Default by Developer

If the Developer:

- (a) without reasonable cause and/or without RMS' prior written approval suspends carrying out of the Works;
- (b) fails to proceed with the Works promptly and diligently;
- (c) fails to lodge the Approved Security under **clause 4.1** or an increase in Approved Security under **clause 4.2**;
- (d) fails to proceed with work in a competent manner;
- (e) fails to use or incorporate materials or work to the standards required by this Deed;
- (f) fails to remedy defects or non-conforming work or loss, damage, default or failure in accordance with this Deed;
- (g) is presumed to be insolvent under an applicable law, including any presumption under section 459C(2) of the *Corporations Act 2001* (Cth), or has proposed or made an arrangement or composition with any or all of its creditors, or application is made to a court for an order, or a resolution is made, for its winding up or which may have the object of or result in its winding up;
- (h) has a judgment debt against it outstanding for more than 7 days;
- (i) commits any material breach of the Deed, or
- (j) has a receiver or liquidator (including provisional) or any official manager, controller or administrator of any of its assets or business appointed;

and fails to remedy such event within 10 Business Days of a written request by RMS to do so, then RMS may, in its absolute discretion and without prejudice to its other rights, by notice in writing to the Developer, do any or all of the following:

- (k) take over the whole or any part of the Works remaining to be completed or in its discretion, carry out other works so that the Road is safe for public use and occupation;
- (l) exclude the Developer and its contractors, employees or agents from performing the Works taken over; or
- (m) terminate the Deed as from the date of the notice, and in that case exercise any of the powers of exclusion conferred by subparagraphs (k) or (l),

without prejudice to its accrued rights under this Deed.

16.2 Take over the Works

If RMS exercises its rights under **clause 16.1**, it may complete the whole or any part of the Works remaining to be completed and may engage contractors, including contractors of the Developer and subcontractors for that purpose. RMS may take possession of and permit other persons to use any materials or equipment to be incorporated into the Works. The Developer shall have no right to any compensation or allowance for any action taken by RMS pursuant to this **clause 16.2**.

16.3 Termination of Contract

If the Deed is terminated under **clause 16.1** or under any other provision of the Deed it will be deemed terminated as from the date when notice of termination in writing under the hand of RMS is served upon the Developer, or upon any official receiver, administrator, trustee in bankruptcy, liquidator, official or provisional liquidator, official manager of the Developer or of the business of the Developer.

On such termination of the Deed, all or any sums of money which may be in the hands of RMS in respect of the Deed and are not then payable to the Developer or any other person under or pursuant to any Law and the whole or part of the Approved Security, including cash lodged or retained for the due and proper performance of the Deed, may be declared by RMS to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in RMS.

On termination of the Deed, all moneys which have been previously paid together with all moneys then payable under or pursuant to any Law or any provision of the Deed to the Developer (to the extent not forfeited under the preceding paragraph) shall be deemed to be in full satisfaction of all claims of the Developer of any kind or description whatsoever under or in respect of the Deed.

16.4 Adjustment of costs on completion

All costs, losses, charges and expenses (including legal costs on a full indemnity basis) incurred by RMS in completing the whole or any part of the Works are a debt due to RMS which may, without limiting other rights, be recovered by RMS by set-off against other moneys due or by demand against the Approved Security at any time.

16.5 No release

Termination by RMS will not release the Developer from liability in respect of any breach of, or non-performance of any obligation pursuant to this Deed.

17. Authorised Representatives

17.1 Representatives to Perform Functions

The authorised representative of the Developer as stated in **Item 1** of the **Schedule** and RMS Representative as stated in **Item 7** of the **Schedule** may perform any function of the Developer and RMS, respectively, under this Deed.

17.2 Developer's Project Manager

The Developer must:

- (a) appoint, for the duration of the Works, a Developer's Project Manager, who is suitably experienced in constructing works similar to the Works; and
- (b) notify RMS of the identity and contact details of the Developer's Project Manager and any change during the course of the Works.

17.3 Communications

A notice or communication given or made by or to an authorised representative of the Developer or to RMS Representative is effective as if it had been given or made by or to the party they represent.

17.4 Substitution

The Developer may substitute an authorised representative after first giving written notice to RMS.

RMS may substitute RMS Representative after first giving written notice to the Developer.

18. Dispute Resolution

18.1 Notice of Dispute

If a party claims that a dispute has arisen under this Deed ('the **Claimant**'), it must give written notice to the other party ('the **Respondent**') stating the matters in dispute and designating as its representative a person to negotiate the dispute (a '**Claim Notice**').

18.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

18.3 Negotiation

The nominated representatives must:-

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

18.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute ('**Dispute Notice**'). If the dispute relates to a technical claim or question in relation to the Works ('**Technical Dispute**'), the Dispute Notice must adequately identify the nature of the Technical Dispute and the date on which the Technical Dispute is alleged to have arisen.

18.5 Reference to Expert

Within 10 Business Days of receiving a Dispute Notice submitted by a party pursuant to **clause 18.4** in relation to a Technical Dispute, the parties shall seek to agree upon and if agreed upon appoint an expert. In the event that the parties cannot agree on an expert to be appointed, the appointment of the expert is to be referred to the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).

For all Technical Disputes, the expert must:

- (a) have reasonable qualifications and practical experience in road and safety matters; and
- (b) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment.

The parties must refer the Technical Dispute to the expert for determination within 5 Business Days of the expert's appointment.

18.6 Rules

The expert must determine the dispute in accordance with RMS' Rules for the Expert Determination Process and the Code of Conduct for an Expert, a copy of which RMS must make available to the Developer on request.

18.7 Assistance

Each party must do all things necessary on its part or required by the expert for the proper conduct of the expert determination.

18.8 Expert not an Arbitrator

In determining the dispute the expert will be acting as an expert and not as an arbitrator.

18.9 Mediation

The parties agree that a dispute which is not a Technical Dispute should be mediated, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this **clause 18.9 ('Mediator')** must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

18.10 Litigation

If the dispute is not finally resolved in accordance with **clauses 18.5 to 18.9**, either party is at liberty to litigate the dispute.

18.11 Continue to Perform obligations

Each party must continue to perform its obligations under this Deed, notwithstanding the existence of a dispute.

19. General

19.1 No Representations by RMS

RMS makes no representation or warranty as to the Works and assumes no duty of care in respect of them or any information provided by RMS.

19.2 No Restriction on Rights

Nothing in this Deed is deemed to:

- (a) prejudice or affect the rights of the public to free passage upon or along the site of the Works;
- (b) authorise any nuisance to or permanent obstruction of the site of the Works or public places;
- (c) confer upon the Developer any right or title to any part of the Works; or
- (d) in any way restrict or limit the powers of RMS or other relevant Authority or fetter RMS in the exercise of its statutory functions and in the event such exercise is undertaken in accordance with all relevant Laws, such exercise cannot and does not constitute a breach of the Deed.

19.3 Notices

- (a) A party notifying or giving notice under the Deed must do so in writing delivered by hand or sent by prepaid registered post or facsimile and the original by post to the other party's representative at the address or facsimile number specified in **Item 1 or Item 7 of the Schedule**.
- (b) A notice given in accordance with **clause 19.3** will be deemed to have been given and received:
 - (i) if delivered, on receipt;
 - (ii) if posted, 3 Business Days after posting; and
 - (iii) if sent by facsimile on confirmation of the correct transmission of the facsimile.
- (c) Any notice received after 5.00pm or on a day not a Business Day shall be deemed to have been received at 9.00am on the next Business Day.

19.4 Assignment

- (a) The Developer must not assign or otherwise transfer or encumber any right, obligation or interest under this Deed without the prior written approval of RMS, such approval not to be unreasonably withheld. Approval is reasonably withheld if, without limiting other reasons that RMS may validly assert under this clause, the proposed assignee or person giving an encumbrance of a right, obligation or interest is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of the Developer and the rights of RMS.
- (b) If the Developer assigns or otherwise transfers its interest in the Works or this Deed, the Developer must at its own cost obtain a covenant by deed from the purchaser or transferee in favour of RMS that the purchaser or transferee will comply with and be bound by the provisions of this Deed.

19.5 Waiver

Failure by a party to compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

19.6 Joint and Several Liability

If the Developer comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Developer.

19.7 Governing Law

This Deed is governed by and will be construed according to the law of New South Wales.

19.8 Stamp duty

The Developer will be liable to pay any stamp duty payable on any transfer or easement required to effect RMS' requirements under the Deed.

19.9 Prior agreements superseded

This Deed:

- (a) wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the Developer and RMS covering or in connection with the matters covered by this Deed (except to the extent expressly incorporated by reference); and
- (b) is the entire agreement between the Developer and RMS in respect of the Works.

19.10 Modification of Deed

No modification or alteration of any provision of this Deed will be valid unless it is in writing and signed by the Developer and RMS.

19.11 Media releases and enquiries

If requested by RMS Representative, the Developer must:

- (a) not issue, publish or authorise any media release or advertisement concerning this Deed, RMS or the Works without obtaining RMS' prior written approval; and
- (b) obtain a similar obligation from its contractors.

19.12 Disclosure by RMS

The Developer acknowledges that RMS may be required by law to disclose the contents of, or certain information concerning, this Deed in accordance with ss 9 or 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act') and the Developer consents to, and releases RMS in respect of, any such disclosure.

If the Developer reasonably believes that any part of this Deed contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Developer should immediately advise RMS in writing, identifying the provisions or information and providing reasons so that RMS may consider seeking to exempt that information or those provisions from disclosure under s 32 of the GIPA Act.

19.13 Proportionate liability

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 19.13(a) it is further agreed that the rights, obligations and liabilities of RMS and the Developer (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

20. GST

20.1 Interpretation

In this clause:-

- (a) the expressions 'adjustment note', 'consideration', 'Goods and Services Tax', 'GST', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*;
- (b) a reference to a payment being made or received includes a reference to consideration other than money being given or received.

20.2 Calculation of GST

- (a) Unless otherwise expressly stated, all prices or other sums payable or payment to be made under or in accordance with the Deed, include an amount for GST.
- (b) No additional amount on account of GST is payable by a party who receives a taxable supply under or in connection with the Deed. All amounts payable reflect the GST-inclusive market value of the taxable supply.
- (c) Any contract entered into by a party to the Deed with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Deed, must include a clause including equivalent terms to this clause 20.2.

20.3 GST Invoices

The parties agree that:

- (a) RMS will issue a tax invoice for each taxable supply it makes to the Developer without request;
- (b) RMS will issue to the Developer a recipient created tax invoice ('RCTI') for each taxable supply (other than an excluded supply) made by the Developer to RMS under this Deed, and will issue an adjustment note for any adjustment event;
- (c) RMS may serve written notice on the Developer stating which supplies are excluded supplies under this Deed. Unless and until RMS serves such a notice, there are no excluded supplies;
- (d) the Developer must not issue a tax invoice in respect of any supply it makes to RMS, other than for an excluded supply;
- (e) RMS is not required to make a payment for an excluded supply until RMS has received a tax invoice from the Developer for that supply;
- (f) each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs;
- (g) each party acknowledges and warrants that at the time of entering into this Deed, it is registered for GST; and

- (h) RMS will not issue a document that will otherwise be an RCTI, on or after the date when the Developer fails to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

Executed as a deed

Date:

SIGNED, SEALED AND DELIVERED by)
[] in accordance with)
section 127 of the Corporations Act 2001)

.....
Signature of director

.....
Name of director (print)

.....
Signature of director / secretary

.....
Name of director / secretary

SIGNED, SEALED AND DELIVERED by)
ROADS AND MARITIME SERVICES by its)
authorised delegate in the presence of)
)

.....
Witness

.....
Delegate

.....
Name of witness (print)

.....
Name of delegate (print)

Part B WAD Baseline Matrix

- (a) Capitalised terms in this WAD Matrix have the meaning given to them in the WAD unless the context otherwise requires.
- (b) The parties' responsibilities in respect of the WAD have been allocated using the following colour code:

	<i>Principal</i>
	<i>Contractor</i>
	<i>Parties make the acknowledgment</i>

- (c) Each allocation must be read together with the relevant qualification (if any).
- (d) Unless otherwise stated, where the WAD requires the Principal to notify, provide documentation to or consult with RMS (and such obligation has been allocated to the Contractor in this WAD Matrix), this will be read as an obligation on the Contractor to give such notice or documentation directly to RMS with a copy to the Principal (at the same time as when the Contractor provides such a notice or document to RMS).
- (e) Where an obligation is retained by the Principal under this WAD Matrix and the qualification states that the Contractor must provide reasonable assistance in respect of that obligation, the Contractor must provide all reasonable assistance, which may include provision of documentation, information and co-operation and attendance any meetings reasonably requested by the Principal.
- (f) Where, pursuant to the terms of the WAD, the Principal is prohibited from doing anything, the Contractor must not do that thing and must take reasonable steps to ensure that the Contractor's subcontractors and consultants do not do that thing.
- (g) Where the WAD requires the Principal to provide an indemnity and that responsibility is allocated to the Contractor in this WAD Matrix, the Contractor must indemnify the Principal to the extent that the Principal incurs liability in respect of that indemnity to RMS under the WAD.

WAD clause reference	Description	Responsibility	Qualification
2	Environmental Approvals		
2.1	Acknowledgments	Acknowledged	
2.2	Environmental Assessment of Works	Principal	The Contractor must provide reasonable assistance to the Principal
2.3	Notification of determination		
	(a)	Acknowledged	

WAD clause reference		Description	Responsibility	Qualification
	(b)		Acknowledged	
	(c)		Contractor	With regard to clause 8, the parties' responsibilities are as set out in this matrix.
			Principal	
	(d)		Principal	
3		RMS Authorised under Roads Act	Acknowledged	
4		Security	Contractor	Subject to WAD Assumptions
5		Nature of Contract		
5.1		General	Contractor	The Contractor is not required to finance the Works, but the Contractor confirms that its costs of designing and constructing the Works are included in the Contract Price under the Contract.
5.2		All risks	Contractor	Subject to the Contractor's express entitlements under the Contract
6		Project Verifier	Principal	
7		Design		
7.1		Design obligations	Contractor	
7.2		Review Process		
	(a)		Contractor	

WAD clause reference		Description	Responsibility	Qualification
	(b)		Contractor	
	(c)		Acknowledged	
	(d)		Acknowledged	
7.3		RMS not liable for checking	Acknowledged	
7.4		Obligations unaffected	Contractor	
8		Commencement of Works		
8.1		Preconditions to commencement		
	(a)		Contractor	The Contractor must obtain all Approvals other than those which are the responsibility of the Principal under the General Conditions of Contract.
	(b)		Contractor	
	(c)		Contractor	
	(d)		Contractor	
	(e)		Contractor	
	(f)		Contractor	
	(g)		Principal	
	post amble		Acknowledged	
8.2		Appointment of Contractor		
	(a)		Contractor	
	(b)		Contractor	
	(c)		Contractor	
	(d)		Contractor	
	(e)		Contractor	

WAD clause reference		Description	Responsibility	Qualification
	(f)		Contractor	
	(g)		Contractor	
	(h)		Principal	The Contractor must satisfy the Principal's obligations under the WAD as those obligations are allocated to the Contractor under this WAD Matrix
8.3		Principal Contractor		
	(a)		Acknowledged	
	(b)		Acknowledged	
	(c)		Contractor	The Contractor must comply with this clause and acknowledges that the Principal appoints the Contractor as the Principal Contractor for the purpose of the Works.
	(d)		Contractor	
	(e)		Contractor	The Contractor's liability under the indemnity under subclause (vi)(A) shall be reduced to the extent that the Principal has caused or contributed to the damage, cost, expense, loss or liability.
	(f)		Contractor	
	(g)		Acknowledged	
8.4		Safety audits and surveillance		
	(a)		Acknowledged	
	(b)		Contractor	

WAD clause reference		Description	Responsibility	Qualification
	(c)		Contractor	
	(d)		Contractor	
9		Construction	Contractor	The Contractor's obligation to comply with clause 9.1(f) does not limit its rights under clause 37 of the General Conditions of Contract.
10		Defects		
10.1		Modifications only by agreement	Contractor	
10.2		Effect of Estimated Cost of the Works	Acknowledged	
11		Practical Completion		
11.1		Developer to notify		
	(a)		Contractor	
	(b)			
	(i)		Contractor	
	(ii)		Contractor	
	(iii)		Contractor	
	(iv)		Contractor	The Contractor must obtain all Approvals other than those which are the responsibility of the Principal under the General Conditions of Contract.
	(v)		Principal	The Principal shall procure the certificate referred to in subclause 11.1(b)(v) once the Project Verifier provides it.

WAD clause reference		Description	Responsibility	Qualification
	Postamble		Contractor	
11.2		RMS to Inspect and Give Notice		
	(a)		Acknowledged	
	(b)		Acknowledged	
	(i)		Acknowledged	
	(ii)		Acknowledged	
	(iii)		Acknowledged	
	(c)		Acknowledged	
	Postamble		Contractor	
11.3		Unilateral Issue of Practical Completion Notice	Acknowledged	
11.4		Take Over Upon Practical Completion	Contractor	
11.5		Effect of Notice of Practical Completion	Acknowledged	
11.6		As- Builts	Contractor	To the extent Intellectual Property Rights vest in the Principal, the Principal will comply with clause 11.6(c).
11.7		Intellectual Property Warranty	Contractor	
11.8		Intellectual Property Rights	Contractor	
11.9		Dedication of Land	Principal	
11.10		Traffic signal works	Acknowledged	
12		Practical Completion		

WAD clause reference		Description	Responsibility	Qualification
		Claim and Final Completion Claim		
12.1		Claims	Contractor	Within 35 Business Days after the issue of a Notice of Practical Completion for the Works the Contractor must give the Principal notice of all liability, cost or expense which the Contractor claims from the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with the WAD which occurred up to the date of issue of the Notice of Practical Completion.
12.2		Release after Practical Completion	Contractor	After the date for submitting the claim and notice under clause 12.1 has passed, the Contractor releases the Principal from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the WAD which occurred prior to the Date of Practical Completion of the Works except for any claim included in a claim or notice under clause 12.1 which is given to the Principal within the time required by, and in accordance with the terms of, clause 12.1.
12.3		Final Claim and Notice	Contractor	Within 10 Business Days after the end of the Defects Liability Period for the Works

WAD clause reference		Description	Responsibility	Qualification
				<p>the Contractor must give the Principal a final claim which must be for the Approved Security held and all other amounts retained by RMS and which must include notice of all liability, cost or expense which the Contractor claims from the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with the WAD which occurred during the Defects Liability Period for the Works.</p> <p>The final claim and notice must be accompanied by a certificate from the Project Verifier that all design, construction, inspection, repairs, maintenance and monitoring by the Contractor has been undertaken in accordance with the requirements of the WAD.</p>
12.4		Release after Final Claim and Notice	Contractor	<p>After the date for submitting the final claim and notice under clause 12.3 has passed, the Contractor releases the Principal from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the WAD which occurred during the Defects Liability Period for the Works except for</p>

WAD clause reference		Description	Responsibility	Qualification
				any claim included in a final claim or notice under clause 12.3 which is given to the Principal within the time required by, and in accordance with the terms of clause 12.3.
12.5		Final Certificate and Release of Approved Security		
	(a)		Acknowledged	
	(i)		Principal	
	(ii)		Contractor	
	(iii)		Contractor	Each party must complete the obligations which are allocated to them in this WAD Matrix.
			Principal	
	(iv)		Acknowledged	
	(v)		Principal	The Principal shall procure the certificate referred to in subclause 12.5(a)(v) once the Project Verifier provides it.
	(vi)		Acknowledged	
	(b)		Acknowledged	The Final Certificate must set out the amount of the Approved Security determined by RMS as the amount finally due from RMS to the Principal less any set-off by RMS under the WAD.
	(c)		Principal	If the Final Certificate shows money owing from the Principal to the Contractor, the

WAD clause reference		Description	Responsibility	Qualification
				Principal must within 30 Business Days after the date of the Final Certificate: (a) release that money to the Contractor; and (b) release the balance of any other security then held for the WAD.
	(d)		Contractor	If the Final Certificate shows money owing from the Contractor to RMS: (a) The Contractor must pay the Principal the amount certified as payable by the Developer within 15 Business Days after the date of the Final Certificate; and (b) the Principal has no obligation to release the Approved Security or any other security held for the WAD until the Contractor has paid the money due.
12.6		Right of Set-Off	Acknowledged	The Contractor acknowledges that the Principal has equivalent rights to set-off as between

WAD clause reference		Description	Responsibility	Qualification
				the Principal and the Contractor.
12.7		Limitation	Acknowledged	As above.
13		RMS Costs		
13.1		Developer liable to pay		
	(a)		Contractor	Subject to WAD Assumptions.
	(b)		Contractor	Subject to WAD Assumptions.
	(c)		Contractor	Subject to WAD Assumptions.
	(d)		Contractor	Subject to WAD Assumptions.
	(e)		Contractor	Subject to WAD Assumptions.
	(f)		Contractor	
	(g)		Contractor	
	(h)		Contractor	The Contractor shall be liable for the cost of remedying a breach of the WAD by the Contractor.
	(i)		Contractor	
	(j)		Principal	
13.2		Invoice	Acknowledged	
13.3		Payment	Contractor	
13.4		Interest	Contractor	
13.5		Deferral of capitalised maintenance costs	Principal	
14		Liability and Indemnity		

WAD clause reference		Description	Responsibility	Qualification
14.1				
	(a)		Contractor	The Contractor's obligation to defend and hold harmless, indemnify and keep indemnified RMS and its employees, officers, agents and contractors under subclause 14.1(a) shall be reduced proportionately to the extent that the Principal has caused or contributed to the relevant claim, expense, loss, including consequential loss, damage or cost.
	(b)		Contractor	
14.2		No limitation	Contractor	
14.3		RMS may remedy	Contractor	The Principal will have equivalent (and additional) rights to remedy a failure by the Contractor to remedy a breach of its obligations under this WAD Matrix.
15		Insurance	Principal	
16		Termination		
16.1		Default by Developer		
	(a)		Contractor	The Principal shall be responsible if the Principal elects to suspend in absence of breach / default by the Contractor
	(b)		Contractor	
	(c)		Contractor	
	(d)		Contractor	

WAD clause reference		Description	Responsibility	Qualification
	(e)		Contractor	
	(f)		Contractor	
	(g)		Principal	
	(h)		Principal	
	(i)		Contractor	Responsibility will depend on whether the Principal or the Contractor has breached an obligation allocated to them under this WAD Matrix.
			Principal	
	(j)		Principal	
16.2		Take over the Works	Acknowledged	
16.3		Termination of the Contract	Acknowledged	
16.4		Adjustment of costs on completion	Contractor	Any costs incurred by the Principal under clause 16.4 shall be a debt due to the Principal to the extent the termination of the WAD arose out of or in connection with a breach of this WAD Matrix.
16.5		No release	Contractor	Termination of the WAD will not release the Contractor from liability in respect of any breach of, or non-performance of any obligation pursuant to this WAD Matrix.
17		Authorised Representation		
17.1		Representatives to Perform Functions	Acknowledged	

WAD clause reference		Description	Responsibility	Qualification
17.2		Developer's Project Manager	Contractor	
17.3		Communications	Acknowledged	
17.4		Substitution	Acknowledged	
18		Dispute Resolution	Principal	The Contractor must provide reasonable assistance to the Principal in relation to clause 18. Such assistance must be provided at the Contractor's cost where the relevant dispute relates to a breach of the WAD by the Principal which arose out of or in connection with a breach (or alleged breach) by the Contractor of this WAD Matrix. Otherwise, the Principal must pay the Contractor's reasonable costs for such assistance.
19		General	Acknowledged	
20		GST	Acknowledged	

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Schedule 32 – Independent Certifier Deed

Refer to clause 2A of the GC21 General Conditions of Contract.

KING&WOOD
MALLESONS

Independent Certifier's Deed Sydney Fish Market

Dated

Infrastructure New South Wales (ABN 85 031 302 516) ("**Principal**")
Multiplex Constructions Pty Ltd (ABN 70 107 007 527) ("**Contractor**")
WTP Australia Pty Ltd (ABN 69 605 212 182) ("**Independent
Certifier**")

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Contents

Details	139
General terms	141
1 Definitions and interpretation	141
1.1 Definitions	141
1.2 Interpretation	142
1.3 Capitalised terms in the Building Contract	143
2 Appointment of Independent Certifier	143
2.1 Terms of appointment	143
2.2 Consent	143
2.3 Receipt of Agreements	143
3 Relationship	143
3.1 Standard of performance	143
3.2 No conflict of interest	144
3.3 Nature of relationship	144
3.4 Independence	144
3.5 Co-operation and assistance	145
3.6 Information provided to Independent Certifier	145
3.7 Authority to act	146
3.8 Reliance	146
3.9 Certification final and binding	146
3.10 Certification to be consistent between Building Contract and Agreement for Lease	146
3.11 Independent Certifier's powers	146
4 Rights and Obligations of Independent Certifier	147
4.1 Obligations	147
4.2 Obligations changed	147
4.3 Independent Certifier must continue to perform	147
5 Independent Certifier's personnel	147
5.1 Properly qualified	147
5.2 List of personnel	147
5.3 Removal of personnel	147
5.4 Key Individual	148
5.5 Subcontracting	148
6 Notifications	148
7 Fees and expenses	148
7.1 Fees	148
7.2 Claims	148
7.3 Payment	149
8 Representations and Warranties	149
8.1 Representations and Warranties	149
8.2 Reliance on representations and warranties	150
9 Insurance and Indemnity	150
9.1 Liability	150

9.2	Insurances	151
9.3	Indemnity in relation to property/persons	152
9.4	Indemnity in relation to breach	152
10	Default	152
10.1	Certifier Default	152
10.2	Termination by the Independent Certifier	153
10.3	Termination by the Principal Parties	153
10.4	Rights on termination	153
10.5	Appointment of successor	154
10.6	Return of records	154
11	Costs	155
11.1	What the Independent Certifier agrees to pay	155
12	Assignment	155
12.1	Assignment by the Independent Certifier	155
12.2	Assignment by Principal	155
13	Notices	155
14	GST	157
14.1	Interpretation	157
14.2	Reimbursements	157
14.3	Additional amount of GST payable	157
14.4	Variation	157
14.5	Exchange of non-monetary consideration	158
14.6	Indemnities	158
14.7	No merger	158
15	Confidentiality	158
15.1	General obligations	158
15.2	Exceptions	158
15.3	Procure compliance	159
15.4	Disclosure by Authority	159
15.5	Overriding statutory obligations	160
16	General	160
16.1	Prompt performance	160
16.2	Consents	160
16.3	Certificates	160
16.4	Set-off	160
16.5	Partial exercising of rights	160
16.6	No liability for loss	160
16.7	Conflict of interest	160
16.8	Remedies cumulative	161
16.9	Other encumbrances or judgments	161
16.10	Inconsistent law	161
16.11	Supervening legislation	161
16.12	Amendments	161
16.13	Waiver	161
16.14	Further acts and documents	161
16.15	Counterparts	161

16.16	No bias against drafter	162
16.17	Governing law	162
16.18	Jurisdiction	162
16.19	Exclusion of Civil Liability Act 2001 (NSW)	162
17	Dispute resolution	162
17.1	Disputes generally	162
17.2	Notice of Dispute	162
17.3	Executive Negotiation	162
17.4	Conditions precedent to litigation	163
17.5	Continuance of performance	163
17.6	Summary relief	163
17.7	Consolidation of disputes	163
17.8	Survives termination	163
Schedule 1	Obligations of Independent Certifier	165
Signing page		169

Details

Parties	Principal, Contractor and Independent Certifier	
Principal	Name	Infrastructure New South Wales
	ABN	85 031 302 516
	Formed in	Australia
	Address	Level 27, 201 Kent St, Sydney NSW 2000
	Attention	
Contractor	Name	Multiplex Constructions Pty Ltd
	ABN	ABN 70 107 007 527
	Formed in	Australia
	Address	Level 22, 135 King Street, Sydney NSW 2000
	Attention	
Independent Certifier	Name	WTP Australia Pty Ltd
	ABN/ACN/ARBN	69 605 212 182
	Formed in	Australia
	Address	Level 26, 45 Clarence Street, Sydney NSW 2000
	Attention	
Governing law	New South Wales	
Business Day place (s)	Sydney	
Recitals	A	The Principal and the Contractor have entered into the Building Contract.
	B	The Building Contract contemplates that the Independent Certifier will be engaged to carry out the Obligations.
	C	The Independent Certifier has represented to the Principal and the Contractor that it has the experience and expertise in carrying out services equivalent to the Obligations.

- D** The Independent Certifier accepts its appointment and agrees to carry out the Obligations and its other obligations on the terms of this deed.

General terms

1 Definitions and interpretation

1.1 Definitions

In this deed:

Agreement for Lease means the document entitled "Agreement for Lease – Sydney Fish Markets" between the Principal and Sydney Fish Market Pty Ltd dated 19 February 2019.

Building Contract means the document entitled "New Sydney Fish Markets Main Works Contract" between the Principal and Contractor dated [on or about the date of this document].

Business Day means a day on which banks are open for general banking business, not being a Saturday, Sunday or public holiday in Sydney.

Certifier Default means an event so described in clause 10.1(b).

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or obligation to pay other moneys.

Executive Negotiators means:

- (a) for the Principal: Head of Projects, or such representative advised by the Principal in writing from time to time;
- (b) for the Contractor: Bid Manager, or such other senior representative as notified by the Contractor from time to time;
- (c) for the Independent Certifier: State Director, WTP Australia Ltd Pty or such other representative advised by the Independent Certifier in writing from time to time.

Fee means the amounts (inclusive of expenses) specified in clause 1 of Schedule 1.

Key Individual means the person employed by the Independent Certifier that is to make and issue the decisions, certifications and determinations required as part of the exercise of its Obligations, being [REDACTED] State Director WTP Australia Pty Ltd at the date of this deed.

Liability means all losses, economic losses, loss of profits, loss of revenue (including rental revenue), diminution in value, costs, charges, expenses, liabilities, allegations, debts, causes of action, claims, actions, proceedings, suits or demands of any nature howsoever arising and whether present or future, fixed or unascertained, whether actual, contingent or prospective, whether at law, in equity, under statute, in negligence or otherwise, but excluding any losses, economic losses or loss of profits not in connection with the Works.

Obligations means the obligations, services and duties of the Independent Certifier to the Principal Parties under or in connection with this deed including the obligations specified in Schedule 1.

Principal Parties means all the parties to this deed other than the Independent Certifier.

Replacement Certifier means the successor of the Independent Certifier appointed under clause 10.5.

Security Interest means:

- (a) a security interest that is subject to the Personal Property Securities Act 2009 (Cth);
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Works has the meaning given to it in the Building Contract.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation; and

- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Capitalised terms in the Building Contract

Except where a contrary intention is expressed, capitalised terms not defined but used in this deed have the same meaning as in the Building Contract.

2 Appointment of Independent Certifier

2.1 Terms of appointment

- (a) The Principal and the Contractor appoint the Independent Certifier to carry out the Obligations.
- (b) The parties acknowledge that the Principal appointed the Independent Certifier to act as independent certifier for the purposes of the Agreement for Lease in accordance with the Agreement for Lease.
- (c) The Independent Certifier's appointment commences on the date of this deed and terminates on the earlier of when the Independent Certifier has completed all of the Obligations or the termination of this deed in accordance with clause 10.

2.2 Consent

The Independent Certifier accepts its appointment under clause 2.1 and agrees that it will perform the Obligations in accordance with this deed and otherwise do all things contemplated to be done by the Independent Certifier under the Building Contract.

2.3 Receipt of Agreements

The Independent Certifier:

- (a) acknowledges receipt of a copy of the Building Contract; and
- (b) confirms that it has read and will be deemed to have informed itself fully of:
 - (i) the requirements of the Building Contract;
 - (ii) the nature of the work necessary for the performance of the Obligations;
 - (iii) the accuracy and completeness of the description of the Obligations;
 - (iv) the Fees payable to it which are to cover completely the costs of complying with the Obligations; and
 - (v) all matters and things necessary or ancillary to the due and proper performance of the Obligations.

3 Relationship

3.1 Standard of performance

- (a) In performing the Obligations, the Independent Certifier agrees:
 - (i) to comply with all laws;

- (ii) to act in good faith, impartially, diligently, reasonably and with a degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of consultants experienced in the performance of the same or similar services as are required to be performed by the Independent Certifier under this deed; and
- (iii) to perform all its Obligations:
 - (A) within the times specified in the Building Contract and if no time is specified, with all due expedition;
 - (B) in a manner which will not prevent, hinder, delay, disrupt or otherwise interfere with any work or services performed by any person (including the Principal Parties); and
 - (C) in a manner that does not cause or contribute to any Principal Party being in breach of its obligations under the Building Contract.
- (b) The Independent Certifier warrants that it has the capability, expertise and experience to perform the Obligations.

3.2 No conflict of interest

The Independent Certifier acknowledges and warrants that:

- (a) it owes a duty of care and professional responsibility to each Principal Party in connection with the performance of the Obligations;
- (b) each Principal Party is relying on its independence; and
- (c) it has no conflict of interest with respect to the carrying out of the Obligations and that it will not accept any role in relation to the Works other than expressly referred to in this deed.

3.3 Nature of relationship

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of any of the Principal Parties.
- (b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of the Principal Parties.
- (c) The Independent Certifier assumes full responsibility for the acts and omissions of each of its employees and agents.
- (d) No Principal Party is liable for, nor will they be taken to have a liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Certifier under this deed or the Building Contract.

3.4 Independence

- (a) The Principal Parties and the Independent Certifier agree that the Independent Certifier will act independently of all parties in connection with the performance of the Obligations.
- (b) Nothing in this clause 3.4 prevents or places any restriction upon the Independent Certifier receiving written submissions or representations from

the Principal Parties about any certification before or after it is made, provided that:

- (i) a Principal Party must, at the same time that it makes a written submission or representation to the Independent Certifier, provide a copy of such written submission or representation to each other Principal Party; and
 - (ii) the Independent Certifier must give the other Principal Parties an opportunity to also give a written submission or representation on that matter.
- (c) The Principal Parties must not interfere with, obstruct or attempt to influence the Independent Certifier in the performance of any of the Obligations.

3.5 Co-operation and assistance

- (a) The Principal Parties will co-operate with each other and the Independent Certifier and use their reasonable endeavours (without being obliged to pay money other than the Fees payable under clause 7) to assist the Independent Certifier to enable it to satisfy the Obligations.
- (b) Subject to any law or duty of confidentiality and without limiting clause 3.5(a), each Principal Party will provide to the Independent Certifier any information reasonably necessary to enable the Independent Certifier to satisfy the Obligations and agrees to provide the Independent Certifier with any such information within the time required by this deed or the Building Contract.
- (c) The Independent Certifier will:
- (i) co-operate with the Principal Parties and any agent, consultant, contractor or employee of the Principal Parties in relation to the Works;
 - (ii) co-ordinate the performance of the Obligations with the activities being performed by those parties under the Building Contract; and
 - (iii) avoid any unnecessary interference with, disruption or delay to the work to be carried out by the Principal Parties and their respective agents, consultants, contractors or employees.

3.6 Information provided to Independent Certifier

The Independent Certifier is entitled to rely on information provided to it by any of the Principal Parties as being true and correct in all material respects unless:

- (a) such information is:
- (i) manifestly incorrect;
 - (ii) expressly provided on a qualified basis; or
 - (iii) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or
- (b) the relevant Principal Party subsequently informs the Independent Certifier of any change to the information provided to it (provided the Independent Certifier is entitled to rely on the relevant information until they are so informed).

3.7 Authority to act

The Independent Certifier has no authority:

- (a) other than expressly provided in this deed, to give directions to any Principal Party or its officers, employees, contractors, consultants or agents;
- (b) to waive or alter any terms of the Building Contract; or
- (c) to discharge or release a party from any of its obligations under the Building Contract.

3.8 Reliance

The Independent Certifier acknowledges and agrees that:

- (a) it will perform the Obligations in accordance with this deed for the benefit of the Principal Parties and that each Principal Party will be relying on its skill and expertise in the performance of the Obligations as if the Independent Certifier were separately performing them for each Principal Party directly;
- (b) the Principal Parties may suffer loss if the Independent Certifier does not perform the Obligations in accordance with the requirements of this deed; and
- (c) the Principal Parties are entitled to and will rely on its certification in accordance with the provisions of this deed for the purposes of the Building Contract.

3.9 Certification final and binding

The Principal Parties acknowledge and agree that (except where expressly provided in the Building Contract) each of the Early Access Stage Certificate or Certificate of Completion given by the Independent Certifier pursuant to this deed and the Building Contract, in the absence of manifest error of fact or law, is final and binding on the Principal Parties under this deed and the Building Contract.

3.10 Certification to be consistent between Building Contract and Agreement for Lease

The Principal Parties and the Independent Certifier acknowledge and agree that:

- (a) the Independent Certifier has been appointed under this deed and under an appointment to act as independent certifier in relation to the Agreement for Lease, with the intention that where the Independent Certifier is responsible for the same or equivalent matters in relation to the Agreement for Lease and the Building Contract, those matters will be dealt with consistently; and
- (b) where the Independent Certifier makes a determination or issues a certificate in respect of the Agreement for Lease (**Upstream Decision**) which concerns the same or an equivalent issue or subject matter in respect of which the Independent Certifier is required to make a determination or issue a certificate in performing its Obligations under this deed (**Downstream Decision**), the Independent Certifier must, in making the relevant Downstream Decision, act consistently with its Upstream Decision.

3.11 Independent Certifier's powers

The Independent Certifier must, in performing the Obligations:

- (a) act as an expert and not as an arbitrator;

- (b) proceed in such manner as the Independent Certifier thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) take into consideration all documents, information and other written material that the Principal Parties place before the Independent Certifier;
- (d) subject to clause 3.4(b), not be expected or required to obtain or refer to any other documents or information or material but may do so if the Independent Certifier so desires; and
- (e) make a decision in such form as the Independent Certifier considers appropriate stating the Independent Certifier's determination.

4 Rights and Obligations of Independent Certifier

4.1 Obligations

The Independent Certifier must perform each of the Obligations specified in Schedule 1.

4.2 Obligations changed

The Principal and the Contractor may give the Independent Certifier a notice jointly instructing the Independent Certifier:

- (a) to change an Obligation;
- (b) not to carry out an Obligation; or
- (c) to carry out a service that is not listed in Schedule 1 at the date of this deed, to the extent it relates to the Building Contract.

The Independent Certifier must comply with that notice provided that the notice has been signed by or on behalf of both the Principal and the Contractor.

4.3 Independent Certifier must continue to perform

Despite any action by the Principal or the Contractor under clause 4.2, the Independent Certifier must continue to perform the Obligations, as varied under this clause 4.

5 Independent Certifier's personnel

5.1 Properly qualified

The Independent Certifier must at all times provide adequately competent, experienced and qualified personnel to perform the Obligations.

5.2 List of personnel

Upon the request at any time by any Principal Party, the Independent Certifier must promptly provide a list of the personnel which it will use or will be using to perform the Obligations and detailing the qualifications and experience of each person.

5.3 Removal of personnel

If at any time during the term of this deed, a Principal Party considers that the conduct of the Independent Certifier's personnel (including the Key Individual) is prejudicial to the interest of the Works or that the Independent Certifier has not engaged personnel (including the Key Individual) who are sufficiently competent, experienced and qualified to perform the Obligations, that Principal Party may, after consultation with the Independent Certifier, by written notice to the Independent

Certifier require the removal of certain personnel from any involvement in the Works. The Independent Certifier shall within 10 Business Days replace the person named in that notice with the person approved by the Principal Parties.

5.4 Key Individual

- (a) Subject to clause 5.4(b), the Independent Certifier must not terminate the appointment of the Key Individual, or substitute another person for the Key Individual to carry out the Obligations under this deed without the prior written approval of the Principal and the Contractor.
- (b) If the Key Individual resigns or is unable to work due to illness or other circumstances, the Independent Certifier must procure that they are replaced as soon as reasonable practicable and in any event within 10 Business Days. The Principal Parties and the Independent Certifier must agree the identity of the replacement Key Individual in writing. In endeavouring to reach agreement under this clause 5.4, the parties must act reasonably.

5.5 Subcontracting

- (a) The Independent Certifier must not subcontract the performance of any of the Obligations without the prior written consent of the Principal Parties.
- (b) The Independent Certifier remains responsible for the performance of the Obligations in accordance with this deed, notwithstanding any such subcontracting.

6 Notifications

The Independent Certifier agrees to promptly notify the Principal Parties if it becomes aware in the course of performing the Obligations:

- (a) that any matter stated or certificate provided under the Building Contract is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) it considers to be, in the context of the Works or the terms of the Building Contract, of material interest to a Principal Party;
 - (ii) may involve a material breach of the Building Contract; or
 - (iii) may involve a material dispute between any party to the Building Contract or any other person in relation to the Building Contract or the Works.

7 Fees and expenses

7.1 Fees

Subject to and in consideration of the Independent Certifier undertaking the Obligations in accordance with this deed and complying with all of its other obligations under this deed, the Principal and the Contractor each agree to pay 50% of the Fee.

7.2 Claims

Within 5 Business Days after the end of each calendar month and within 5 Business Days after the expiration or termination of this deed, the Independent Certifier shall

submit to each of the Principal and the Contractor a detailed Fee claim, in a form approved by the Principal and the Contractor, showing:

- (a) the total amount previously paid to the Independent Certifier in relation to the Fee;
- (b) the amount claimed by the Independent Certifier for that month or period in relation to the Fee; and
- (c) the amount claimed by the Independent Certifier from:
 - (i) the Principal, which shall be equal to 50% of the total amount claimed in clause 7.2(b); and
 - (ii) the Contractor, which shall be equal to 50% of the total amount claimed in clause 7.2(b),

together with such other information as may be reasonably required by the Principal and the Contractor.

This clause 7.2 survives the expiry or termination of this deed.

7.3 Payment

- (a) Within 15 Business Days after receipt of a claim under clause 7.2:
 - (i) the Principal (in respect of the amount claimed in clause 7.2(c)(i); and
 - (ii) the Contractor (in respect of the amount claimed in clause 7.2(c)(ii)
 - (iii) must assess and pay to the Independent Certifier the amount properly payable to the Independent Certifier for that month or period in respect of the applicable portion of the Fee.
- (b) The Principal or the Contractor may at any time deduct from moneys otherwise due to the Independent Certifier any amount due and payable from the Independent Certifier to the Principal or the Contractor (as applicable) or the amount of any Claim which the Principal or the Contractor (as applicable) may have against the Independent Certifier arising out of or in connection with the Obligations.
- (c) This clause 7.3 survives the expiry or termination of this deed.

8 Representations and Warranties

8.1 Representations and Warranties

The Independent Certifier represents and warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this deed and comply with its obligations under this deed;
- (c) this deed and the transactions under it which involve the Independent Certifier do not contravene its constituent documents (if any) or any law or

obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;

- (d) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with the Obligations and exercise its rights under it, and allow it to be enforced;
- (e) the Obligations are valid and binding and are enforceable against it in accordance with its terms;
- (f) it benefits by entering into this deed;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) unless stated in this deed, it does not enter into this deed as trustee;
- (i) there is no pending or threatened proceeding affecting it or any of its assets before a court, governmental agency, commission or arbitrator except those in which a decision against it would be insignificant;
- (j) it does not have immunity from the jurisdiction of a court or from legal process;
- (k) it has the appropriate qualifications to undertake all of the certification requirements forming part of the Obligations; and
- (l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Obligations possess, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Obligations.

8.2 Reliance on representations and warranties

The Independent Certifier acknowledges that the Principal has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made by the Independent Certifier in clause 8.1 and elsewhere in this deed.

9 Insurance and Indemnity

9.1 Liability

- (a) Subject to clause 9.1(b), the Independent Certifier's liability under this deed and from all claims shall be limited in aggregate to [REDACTED]
- (b) The limitation of liability in clause 9.1(a) does not apply to any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:
 - (i) fraud;
 - (ii) wilful misconduct being any conduct, act or omission done or to be done which results from conscious or intentional indifference to any provision of this deed or the rights or welfare of those who are or may be affected by that conduct, act or omission; or
 - (iii) gross negligence being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been

aware, would result in substantial losses being incurred by the Principal Parties.

9.2 Insurances

- (a) The Independent Certifier must hold and maintain:
 - (i) professional indemnity insurance with:
 - (A) a limit of indemnity of not less than [REDACTED] for any single claim and [REDACTED] in the aggregate (with one automatic reinstatement) for any period of insurance in respect of legal liability arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants; and
 - (B) a deductible in line with WT Australia Pty Ltd Certificates of Currency the conditions of the Insurer's policy terms.
 - (ii) workers compensation insurance in accordance with all applicable statutory requirements;
 - (iii) public liability insurance:
 - (A) endorsed to indemnify the Principal Parties as insureds to the extent that such parties are vicariously liable for the activities of the Independent Certifier;
 - (B) covering, without limitation, the Independent Certifier's liability under clauses 9.3 and 9.4;
 - (C) with a limit of indemnity of not less than [REDACTED] for any single claim; and
 - (iv) such other insurances as may be reasonably required by the Principal Parties.
- (b) The Independent Certifier must ensure that each insurance policy effected and maintained by the Independent Certifier for the purposes of this clause 9 complies with the following requirements:
 - (i) the policy must contain provisions which are standard in the market for insurance of the type covered by the policy; and
 - (ii) the insurers must be reputable, and approved by the Principal Parties (acting reasonably).
- (c) The Independent Certifier must notify the Principal Parties of any event which could affect its insurance cover and immediately notify them if any policy is cancelled, avoided or allowed to lapse.
- (d) The Independent Certifier must provide to the Principal Parties certificates of currency of the insurances effected and maintained by the Independent Certifier for the purposes of this clause 9, at any time and from time to time on request and on renewal of each policy.
- (e) Except in respect of the professional indemnity insurance policy which will be evidenced by a certificate of currency together with a letter from the

Independent Certifier's insurance broker confirming that the professional indemnity insurance policy complies with the requirements in clause 9.2(b), the Independent Certifier must permit the authorised representatives of the Principal Parties to inspect the insurance policies at the Independent Certifier office to enable those authorised representatives to confirm to the Principal Parties that the insurance policies satisfy the requirements of this clause 9.

- (f) The Independent Certifier must keep:
 - (i) the professional indemnity insurance current for a period commencing on the date of this deed and ending on the earlier of the expiry of 7 years after the date it ceases to perform the Obligations or 7 years after the termination of this deed;
 - (ii) the workers compensation insurance current until it ceases to perform the Obligations;
 - (iii) the public liability insurance current until it ceases to perform the Obligations; and
 - (iv) any other insurances current for such time as may reasonably be required by the Principal Parties.
- (g) The requirement to effect and maintain insurance in this clause 9 does not limit the liability or Obligations of the Independent Certifier under this deed.

9.3 Indemnity in relation to property/persons

The Independent Certifier is liable for and indemnifies each of the Principal Parties against any claim or loss which they or their respective related parties may pay, suffer or incur in respect of:

- (a) any damage to or loss of, or loss of use of, property; or
- (b) death or illness of, or injury to, any person,

insofar as the claim or loss arises out of or is connection with the negligent act, error or omission of the Independent Certifier, its employees, agents or consultants. The Independent Certifier's liability under this clause is reduced proportionately to the extent that the claim or loss for which the relevant party seeks to be released or indemnified is caused by the negligent act, error or omission of that party.

9.4 Indemnity in relation to breach

The Independent Certifier is liable for and must indemnify each of the Principal Parties against any claim or loss which they or their respective related parties may pay, suffer or incur in respect of any breach of this deed by the Independent Certifier (including any claim or loss the Principal Parties may have to another party arising from such breach). The Independent Certifier's liability under this clause is reduced proportionately to the extent that the claim or loss for which the relevant party seeks to be released or indemnified is caused by the negligent act, error or omission of that party.

10 Default

10.1 Certifier Default

- (a) The Independent Certifier must ensure that no Certifier Default occurs.
- (b) Each of the following is a Certifier Default:

- (i) the Independent Certifier does not comply with or perform any of the Obligations;
- (ii) the Independent Certifier is Insolvent;
- (iii) distress is levied or a judgment, order or encumbrance is in force or becomes enforceable, against any property of the Independent Certifier for amounts totalling more than **[Note: to be inserted prior to execution]**;
- (iv) a representation or warranty made by or for the Independent Certifier in connection with this deed or the Building Contract is found to have been incorrect or misleading when made;
- (v) the Independent Certifier ceases to carry on its business or a material part of it; or
- (vi) a person is appointed under legislation to manage any part of the affairs of the Independent Certifier.

10.2 Termination by the Independent Certifier

- (a) The Independent Certifier may only suspend the carrying out of the Obligations to the extent permitted by law.
- (b) The Independent Certifier may terminate this deed upon 30 Business Days' notice to the Principal and the Contractor if there are persistent, material breaches of the payment obligations of the Principal or the Contractor under clause 7.3 (disregarding any failure to pay an amount which is the subject of a bona fide dispute) and such breaches are not promptly remedied or cured following receipt of notice in writing (addressed and sent to all parties to this deed) from the Independent Certifier.

10.3 Termination by the Principal Parties

- (a) Subject to clause 10.3(b), if a Certifier Default occurs and the default is not remedied by the Independent Certifier within 5 Business Days of notice of that default being given by the Principal to the Independent Certifier, any of the Principal Parties may terminate the appointment of the Independent Certifier by giving not less than 10 Business Days' notice in writing to the Independent Certifier and each other Principal Party and the Principal Parties' obligations under this deed are terminated.
- (b) A Principal Party may, without giving advance notice, terminate this deed by giving 20 Business Days' prior notice in writing to the Independent Certifier and each other Principal Party if the Independent Certifier is Insolvent.
- (c) If the Building Contract is terminated to the extent that the Obligations are no longer relevant then this deed will also terminate on service of written notice to the Independent Certifier by the Principal.
- (d) Any termination of this deed under clause 10.3(c), does not disturb any existing rights of the parties arising prior to the date of termination.

10.4 Rights on termination

If the appointment of the Independent Certifier is terminated pursuant to:

- (a) clauses 10.3(a) or 10.3(c), the Independent Certifier will only be entitled to payment of all amounts due to it under clause 7, up to and including the date of termination; or

- (b) clause 10.2, then the Independent Certifier will also be entitled to receive from the Principal Parties its reasonable Costs arising from that termination.

10.5 Appointment of successor

- (a) The termination of the appointment of the Independent Certifier under clause 10.3(a) will not be effective until the successor to the Independent Certifier is appointed by the Principal Parties in accordance with this clause 10.5.
- (b) The Principal Parties must, prior to giving the notice of termination under clause 10.3(a), appoint a Replacement Certifier as the successor to the Independent Certifier.
- (c) The Replacement Certifier must:
 - (i) be acceptable to the Principal Parties (acting reasonably);
 - (ii) enter into a deed with the Principal Parties on substantially the same terms and conditions as this deed; and
 - (iii) be a person who is able, in the reasonable opinion of the Principal Parties, to fully and properly perform and satisfy the Obligations.
- (d) The Principal Parties agree to enter into the deed with the Replacement Certifier as contemplated under clause 10.5(c)(ii).
- (e) In the event that the Principal Parties do not agree on the identity of the Replacement Certifier within 10 Business Days of the decision to terminate the appointment of the Independent Certifier, the Replacement Certifier will be determined in accordance with the Issue resolution procedures in clauses 69, 70 and 71 of the Building Contract.

10.6 Return of records

- (a) Within 10 Business Days of the termination of its appointment, the Independent Certifier must:
 - (i) deliver to the Principal or, at the direction of the Principal, to the Replacement Certifier, a copy of the Building Contract, all books, records, plans, specifications and other documents relating to the Obligations or the Works in the possession or control of the Independent Certifier (with the Independent Certifier being entitled to retain copies only for insurance purposes); and
 - (ii) use its reasonable endeavours to ensure the representative of the Independent Certifier, its agents and subcontractors deliver such material to the relevant Principal Party or, at the direction of the relevant Principal Party, to the Replacement Certifier.
- (b) The Independent Certifier may not exercise any lien against any of the documentation referred to in this clause.
- (c) In the event that its appointment is terminated, the Independent Certifier agrees that it will co-operate with and assist the Replacement Certifier to ensure an effective and smooth transition of its duties and Obligations under this deed to the Replacement Certifier.

11 Costs

11.1 What the Independent Certifier agrees to pay

Subject to the Independent Certifier's obligations as stated in this deed, the Independent Certifier agrees to pay or reimburse the Principal Parties on demand for the Principal Parties' costs in making, enforcing and doing anything in connection with this document, including legal costs in accordance with any written agreement as to legal costs or, if no agreement exists, on whichever is the higher of a full indemnity basis or solicitor or own client basis.

12 Assignment

12.1 Assignment by the Independent Certifier

Except as set out in this deed the Independent Certifier may not assign, novate or otherwise transfer or create or allow any Security Interest over any of its rights or obligations under this deed without the prior written consent of each of the Principal Parties (which may be given or withheld at the discretion of each party).

12.2 Assignment by Principal


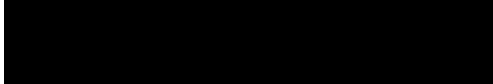
The Independent Certifier acknowledges and agrees that the Principal may at any time assign, novate or otherwise transfer any of its rights or obligations under this deed without the consent of the Independent Certifier. If any rights, powers, obligations or liabilities under the Building Contract are assigned or transferred by the Principal to any person ("**Assignee**"), the Independent Certifier will, upon receipt of a request in writing from the Principal, execute such documents as are reasonably necessary to transfer, assign or novate to the Assignee such rights, powers, obligations or liabilities under this deed as are specified in the request.

13 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Principal

Name: Infrastructure New South Wales
Address: Level 72, 201 Kent St, Sydney NSW 2000
For the attention of: 
Email: 

Contractor

Name: Multiplex Constructions Pty Ltd
Address: Level 22, 135 King Street, Sydney NSW 2000
For the attention of: [REDACTED]
Email: [REDACTED]

Independent Certifier

Name: WTP Australia Pty Ltd ABN 69 605 212 182
Address: Level 26, Clarence Street, Sydney NSW 2000
For the attention of: [REDACTED]
Email: [REDACTED]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be:
 - (i) left at the address set out or referred to in clause 13(b);
 - (ii) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in 13(b); or
 - (iii) sent by email to the address referred to in clause 13(b),
- (e) however, if the intended recipient has notified a changed of contact details then the communication must be to such contact details;
- (f) takes effect from the time they are acknowledged as being received or taken to be received under clause 13(f) (whichever happens first) unless a later time is specified in the communication;
- (g) is taken to be received by the addressee:
 - (i) if sent by post, four Business Days after posting;
 - (ii) if sent through Aconex, at the time and day the direction has been uploaded onto Aconex by the sender;
 - (iii) if delivered by hand, the Business Day of delivery;
 - (iv) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

- (h) If a notice takes effect after 5.00 pm on a day, the notice will be deemed to have been received at 9.00 am on the next Business Day.
- (i) Notwithstanding any other provision of this deed, the parties acknowledge and agree that attachments to notices will be deemed to have been delivered in accordance with this clause 13 if delivered via an electronic file transfer system, providing the covering notice is delivered in accordance with the remainder of this clause 13.

14 GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) In this clause 14, "monetary consideration" means any consideration expressed as an amount of money, "non-monetary consideration" means any consideration that is not monetary consideration, and "non taxable supply" means a supply that is not a taxable supply.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates.

14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (a) any amount payable or consideration to be provided under any provision of this deed (other than this clause 14), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(b).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, 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 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.

- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

14.7 No merger

This clause will not merge on completion or termination of this deed.

15 Confidentiality

15.1 General obligations

The parties must keep confidential and not allow, make or cause any public announcement or other disclosure of or in relation to:

- (a) the Works, the terms of this deed or any associated documents (including any written or oral agreements, negotiations or information in relation to this deed); and
- (b) any documents which are, or information which is, confidential under this deed,

without the prior written consent of the other parties, which consent may be given or withheld, or given with conditions, in the other parties' sole discretion.

15.2 Exceptions

The parties' obligations in clause 15.1 do not apply to a disclosure or announcement to the extent that the disclosure or announcement is:

- (a) required by law;
- (b) required by the listing rules of Australian Stock Exchange Limited;
- (c) necessary for the Principal to perform its obligations under this deed, the Agreement for Lease, the Building Contract or any associated documents;
- (d) made by the Principal to its shareholders, financiers, professional advisers, the Builder and its subcontractors in relation to the Works, the terms of this deed, or any associated documents but only to the extent that those parties need to know that information to perform their services to the Principal or otherwise participate in the Works;
- (e) made by the Principal to the State of NSW or any entity or department of the State of NSW in relation to the impact of the Works;
- (f) where required by government directive applying to the Principal;
- (g) made by the Contractor to its directors, professional advisers and the directors of its shareholders; or
- (h) in accordance with the terms of the Confidentiality Deed Poll.

15.3 Procure compliance

The parties must procure any subcontractors, financiers, or other persons with whom they have an agreement in relation to the Works, the terms of this deed, or any associated documents and their respective employees, agents and subcontractors to:

- (a) comply with the obligations set out in this clause 15; and
- (b) ensure that all contracts or documents to which any one or more of them is a party contain a provision which acknowledges the obligations created by this deed.

15.4 Disclosure by Authority

The parties acknowledge and agree that:

- (a) the Principal may make this deed or other documents relating the Works, the terms of this deed, or any associated documents available to the Auditor-General:
 - (i) in accordance with and to the extent required by the *Public Finance and Audit Act 1983* (NSW); and
 - (ii) so far as possible, on a commercial-in-confidence basis;
- (b) subject to the parties' rights at law, the Principal may publish information concerning the Works, this deed, or any associated documents in accordance with:
 - (i) the NSW Government's Code of Practice for the Building and Construction Industry; and
 - (ii) the NSW Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry; and

- (c) under the *Government Information (Public Access) Act 2009* (NSW) ("**GIPA Act**"), the Principal has obligations to:
- (i) publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing this deed, or any associated documents on the Authority's contract registers; and
 - (ii) release information pursuant to an access application unless the Authority is reasonably satisfied that there is an overriding public interest against disclosure.

15.5 Overriding statutory obligations

The parties, acknowledge and agree that nothing in this clause 15 will limit or otherwise affect the discharge of the Principal's obligations to disclose information in connection with the Works, this deed, the Building Contract or any associated documents as required by any law including the GIPA Act.

16 General

16.1 Prompt performance

If this deed specifies when the Independent Certifier agrees to perform an obligation, the Independent Certifier agrees to perform it by the time specified. The Independent Certifier agrees to perform all other obligations promptly.

16.2 Consents

The Independent Certifier agrees to comply with all conditions in any consent the Principal Parties give in connection with this deed.

16.3 Certificates

The Principal Parties may give the Independent Certifier a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

16.4 Set-off

The Principal Parties may set off any amount due for payment by the Principal Parties to the Independent Certifier against any amount due for payment by the Independent Certifier to the Principal Parties under this document.

16.5 Partial exercising of rights

If the Principal Parties do not exercise a right or remedy fully or at a given time, the Principal Parties may still exercise it later.

16.6 No liability for loss

The Principal Parties are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any negligence or fraud by any Principal Party.

16.7 Conflict of interest

The Principal Parties' rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Principal Parties have a personal interest in their exercise.

16.8 Remedies cumulative

The Principal Parties' rights and remedies under this deed are in addition to other rights and remedies given by law independently of this deed.

16.9 Other encumbrances or judgments

- (a) This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any encumbrance or other right or remedy to which the Principal Parties are entitled; or
 - (ii) a judgment which the Principal Parties obtain against the Independent Certifier in connection with this deed.
- (b) Notwithstanding clause 16.9(a), the Principal Parties may still exercise their rights under this deed as well as under the judgment, the encumbrance or the right or remedy.

16.10 Inconsistent law

To the extent permitted by any law, this deed prevails to the extent it is inconsistent with any law.

16.11 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Independent Certifier in connection with this deed with the result that the Principal Parties' rights, powers or remedies are adversely affected (including by way of delay or postponement) are excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

16.12 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

16.13 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

16.14 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or otherwise reasonably required to give effect to this deed.

16.15 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

16.16 No bias against drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

16.17 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

16.18 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.18(a).

16.19 Exclusion of Civil Liability Act 2001 (NSW)

To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this deed howsoever such rights, obligations or liabilities are sought to be enforced.

17 Dispute resolution

17.1 Disputes generally

Any dispute, difference, controversy or claim ("**Dispute**") directly or indirectly based upon, arising out of, relating to or in connection with this deed (including any questions relating to the existence, validity or termination of this deed), must be resolved in accordance with this clause 17.

17.2 Notice of Dispute

- (a) If any Dispute arises between the parties, any party may, within the time required by clause 17.2(b), give the other party written notice of the Dispute, specifying:
 - (i) the Dispute;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.
- (b) The written notice under clause 17.2(a) must be given to the other party within 20 Business Days after the Dispute arising and despite any other provision in this document, must be served in accordance with clause 13.

17.3 Executive Negotiation

- (a) Where a notice of Dispute is given under clause 17.2, the Dispute must be referred to the relevant Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the notice

of Dispute was given under clause 17.2, commence meetings and negotiations with a view to resolving the Dispute.

(b) If the Executive Negotiators:

- (i) have not resolved the Dispute; or
- (ii) have not reached agreement upon a procedure to resolve the Dispute; or

have not met or undertaken negotiations with a view to resolving the Dispute within 15 Business Days after the date on which the notice of Dispute was given under clause 17.2 (or such longer period of time as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute then the parties may commence court proceedings.

17.4 Conditions precedent to litigation

Subject to clause 17.6, a party must not commence court proceedings in respect of any Dispute unless:

- (a) a Dispute notice has been given in accordance with clause 17.2; and
- (b) the executive negotiation process has been followed in accordance with clause 17.3.

17.5 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this deed.

17.6 Summary relief

Nothing in this clause 17 will prevent a party from commencing proceedings to enforce payment due under this deed or to seek urgent injunctive interlocutory or declaratory relief in respect of a Dispute.

17.7 Consolidation of disputes

- (a) The parties acknowledge and agree that Disputes arising between the Principal, the Contractor and the Independent Certifier in respect of this deed may be concerned with matters which also arise in respect of the respective rights and obligations of the Principal and the Contractor under the Building Contract.
- (b) The parties agree that a Dispute referred to in clause 17.7(a) must be resolved at the same time and to the extent it relates to the Building Contract, under the Issue resolution procedures in clauses 69, 70 and 71 of the Building Contract (which are incorporated into this deed by reference).
- (c) The parties consent to the Independent Certifier participating (including making submissions) in the dispute resolution procedures contemplated by the Building Contract, to the extent that a Dispute referred to in clause 17.7(a) relates to a dispute or potential dispute under the Building Contract.

17.8 Survives termination

This clause 17 survives expiry or termination of this deed.

EXECUTED as a deed

Schedule 1 Obligations of Independent Certifier

1 Obligations

- (a) The Obligations consist of the obligations, functions, duties, services and tasks of the "Independent Certifier" under the Building Contract.
- (b) The functions of the Independent Certifier under the Building Contract include the following in respect of certifying that the Early Access Stage has been reached:

Item	Function	Clause
1	Inspect the Works in respect of the Early Access Stage following a notice from the Contractor specifying that the Early Access Stage will occur in 4 weeks.	64A.4
2	Within 3 Business Days after the Contractor issues a notice referred to in Items 1 above, the Independent Certifier, the Principal and the Contractor must jointly inspect the Works for the purposes of determining whether the Early Access Stage has been reached. The Tenant may also attend the inspection.	64A.5
3	<p>Within 1 Business Day after the inspection referred to in Item 2 above, the Independent Certifier will issue to the Principal and the Contractor:</p> <p>(i) the Early Access Stage Certificate certifying that the Early Access Stage has been achieved, which must include a list of any outstanding Works and Defects in the Works at the Date of Early Access (as that term is defined in the Agreement for Lease); or</p> <p>(ii) an outstanding work list specifying the works which the Independent Certifier considers must be carried out before the Early Access Stage is achieved; or</p> <p>(iii) a written notice stating that the Early Access Stage is so far from being achieved that it is not practicable to issue a notice under paragraph (ii).</p>	64A.6
4	<p>If the Independent Certifier issues an outstanding work list under paragraph (ii) of Item 3 above and the Contractor subsequently notifies the Independent Certifier that the Contractor believes it has completed the work specified in the list, then:</p> <p>(i) within 3 Business Days after the Contractor gives such notice, the Independent Certifier, the Principal and the Contractor must jointly reinspect the Works in respect of the relevant Early Access Stage which inspections may also be attended by the Tenant; and</p> <p>(ii) the Independent Certifier will issue an Early Access Stage Certificate immediately after the Independent Certifier is satisfied that the work specified in the list is complete.</p>	64A.7
5	If the Independent certifier issues a notice under paragraph (iii) of Item 3 above and the Contractor subsequently gives the Independent Certifier a written notice specifying that the Early Access Stage Will	64A.8

Item	Function	Clause
	Occur within 3 Business Days, then the Independent Certifier will inspect the Works in respect of the Early Access Stage with the objective of identifying and advising the Principal and the Contractor of any matters which would prevent the Early Access Stage being achieved and Items 2, 3 and 4 will apply again.	

- (c) The functions of the Independent Certifier under the Building Contract include the following in respect of certifying that Completion has occurred:

Item	Function	Clause
6	Within a reasonable time, and in any event within 10 Business Days, after the Principal's receipt of the Contractor's notice under clause 65.3, carry out a joint inspection of the Works together with the Principal and Contractor.	65.4
7	<p>Within 14 Business Days after the joint inspection, the Independent Certifier must either:</p> <p>(a) if Completion has been achieved, issue a Certificate of Completion in the form set out in Part B of Schedule 23:</p> <p>(i) stating that the Works have achieved Completion; and</p> <p>(ii) subject to clause 65A, stating the Actual Completion Date; or</p> <p>(b) if Completion has not been achieved, notify the Contractor in writing that it considers that the Works has not achieved Completion and identifying any Defects or outstanding works that prevent the Works from achieving Completion.</p>	65.5

- (d) Total Upper Limit Fee: [REDACTED]

2 Hourly Rates

- (a) The following rates will be applicable.

Name	Position	Hourly Rate (excl. GST)

- (b) Hourly rates will be adjusted annually.

3 General

- (a) Where the Independent Certifier is required to determine, assess, decide or certify a matter, the Independent Certifier must:
- (i) take all reasonable and prudent steps and make all reasonable and prudent enquiries to obtain and verify information which is relevant

to, or would reasonably be expected to be relevant to, the determination, assessment, decision or certification;

- (ii) review the Principal's and/or the Contractor's records and documentation (as applicable), and any other relevant information which is reasonably available, as reasonably required by the Independent Certifier to make the determination, assessment, decision or certification in accordance with this deed;
- (iii) consider all relevant information which the Independent Certifier is aware of when making the determination, assessment, decision or certification; and
- (iv) have regard to and be bound by any determination made by a previous Independent Certifier

Unless necessary to perform an Obligation, the Independent Certifier is not, in the performance of the Obligations, obliged to take steps or make enquiries to obtain or verify information in addition to those steps and enquiries required by this clause (a).

(b) The Independent Certifier:

- (i) acts as expert and not as an arbitrator;
- (ii) may accept written evidence in place of oral evidence;
- (iii) is not obliged to conduct a hearing;
- (iv) is obliged to give detailed reasons for the assessment, decision or determination; and
- (v) may rely upon its own expertise.

(c) The Independent Certifier must promptly notify the Principal and Contractor if it reasonably believes that an intrusive or destructive inspection or test is required to enable the Independent Certifier to perform an Obligation in accordance with this deed. The Independent Certifier's notice must include reasonable details of the inspection or test required and the reasons why.

(d) After receipt of the Independent Certifier's notice under clause (c), the Principal may:

- (i) instruct the Independent Certifier to perform the intrusive or destructive inspection or test under clause 3(c) of this Schedule 1; or
- (ii) have the intrusive or destructive inspection or test performed by others and provide the results to the Independent Certifier.

Unless instructed to do so under this deed, the Independent Certifier is not required to perform any intrusive or destructive inspections or tests.

(e) The Fees in this Schedule 1:

- (i) are exclusive of GST;
- (ii) exclude travel, accommodation and related disbursements beyond a radius of 50km from the Sydney CBD; and

(iii) do not include the costs of matters referred to litigation.

Signing page

DATED: _____

Principal

Signed sealed and delivered by

Simon Draper as Chief Executive
Officer of **Infrastructure NSW** pursuant
to the *Infrastructure NSW Act 2011*
(NSW) in the presence of

.....
Signature of witness

.....
Name of witness (block letters)

.....
Signature

.....
Name

Contractor

Executed by Multiplex Constructions)
Pty Ltd ABN 70 107 007 527 Ltd in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Signature of director

.....
Signature of Company secretary

.....
Name (please print)

.....
Name (please print)

Independent Certifier

Executed by WTP Australia Pty Ltd)
ABN 69 605 212 182 in accordance with)
section 127(1) of the *Corporations Act*)
2001 (Cth):)

.....
Signature of director

.....
Signature of Company secretary

.....
Name (please print)

.....
Name (please print)

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Schedule 33 – Infrastructure Skills Legacy Program

Refer to clause 13.17 of the GC21 General Conditions of Contract.

Schedule 34 – COVID-19 Management Plan

Refer to clause 49A of the GC21 General Conditions of Contract.

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Schedule 35 – Early Works Documents

Refer to clause 6.16 of the GC21 General Conditions of Contract.

- (a) Seabed Clearance Report
- (b) Seabed obstructions log (unextracted piles)
- (c) Contamination clearance report/Site Auditor report
- (d) Heritage significant timbers and steel elements report
- (e) Seawall design as-built, design certification and engineer's inspection report
- (f) Record of stakeholder engagement during the course of the *Early Works*
- (g) Certifications including compliance (completion) certificate including Design and certification for the hoarding that the Contractor will be taking over
- (h) Results of any sampling undertaken by the *Early Works Contractor* in accordance with the 'Remediation Action Plan' (as that term is defined in the *Early Works Contract*).
- (i) Survey information of piles not removed (which is to be provided to the Contractor on a progressive basis)
- (j) Post-Stage 1 dilapidation report
- (k) Details of any temporary or permanent protection measures for stormwater culverts and associated details
- (l) Details of environmental controls proposed to remain in place following 'Completion' of the *Early Works*.
- (m) As-built drawings of existing services, any pre-existing conditions that may affect the Works and any new works completed by the *Early Works Contractor* to services, the *Seawall* or other elements of the Site
- (n) Test results of any water testing completed by the *Early Works Contractor*

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Schedule 36 – Construction Management Plan

Refer to clause 36 of the GC21 General Conditions of Contract.

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Attachments

Attachments 1, 2, 2A and 3 do not form part of the Contract.

- Attachment 1 GC21 Start-up Workshop**
- Attachment 2 Performance Evaluation (Example)**
- Attachment 2A Performance Evaluation**
- Attachment 3 Performance Evaluation Record**

Attachment 1 - The GC21 Start-up Workshop

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Attachment 1 is intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Agenda

The agenda should include:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose and, guidelines;
- review of the proposed workshop agenda;
- overview of the Contract;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- identification of key concerns and solutions;
- opportunities for innovation;
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the NSW Government Procurement System for Construction on the ProcurePoint website.

Attachment 2 - Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 1 and 2 provide a structure for evaluation and discussion

Attachment 2 indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds.

They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract. Use Attachment 2A on the next page to develop a Contract-specific Performance Evaluation form

<i>Contract name:</i>	Rating system 5 excellent 4 above expectation 3 meeting expectation 2 below expectation 1 unsatisfactory
<i>Contract number:</i>	
<i>Date:</i>	

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
Communication	<ul style="list-style-type: none"> co-operation between parties duty not to hinder performance early warning evaluation and monitoring 	<input type="checkbox"/>	<input type="checkbox"/>	
Time	<ul style="list-style-type: none"> issues affecting time extensions of time expected completion dates 	<input type="checkbox"/>	<input type="checkbox"/>	
Financial	<ul style="list-style-type: none"> issues affecting the budget extra work payments additional information required 	<input type="checkbox"/>	<input type="checkbox"/>	
Quality	<ul style="list-style-type: none"> quality standards design requirements fitness for purpose, innovation Faults, Defects rectification 	<input type="checkbox"/>	<input type="checkbox"/>	
Safety	<ul style="list-style-type: none"> issues affecting safety on the Site safety outside the Site. safety risks safety equipment 	<input type="checkbox"/>	<input type="checkbox"/>	
Relationships	<ul style="list-style-type: none"> open discussion actions effective working together attendance 	<input type="checkbox"/>	<input type="checkbox"/>	
Environment	<ul style="list-style-type: none"> issues affecting the environment noise and dust issues healthy environment waste management, 	<input type="checkbox"/>	<input type="checkbox"/>	
Contract Relations	<ul style="list-style-type: none"> Subcontractor and Supplier issues workplace relations and Site amenities interaction of workers with others 	<input type="checkbox"/>	<input type="checkbox"/>	

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for items needing improvement.

Attachment 2A - Performance Evaluation

Insert in the form below topics that are important to the Contract.

Contract name:
 Contract number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	

Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for topics needing improvement.

Attachment 3 - Performance Evaluation Record

Insert the Contract-specific topics. Record the participants' ratings for each topic to illustrate trends in the Team's performance.

Contract
 name:
 Contract
 number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Meeting	Number	1	2	3	4	5	6	7	8	9	10	11	12
	Month												
	Year												
TOPIC													
Communication	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
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4													
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Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

Contract name:

Contract number:

Date:

Rating system

5 excellent

4 above expectation

3 meeting expectation

2 below expectation

1 unsatisfactory

Meeting number month year	1	2	3	4	5	6	7	8	9	10	11	12

Deteriorating Performance

Communication	5											
	4											
	3											
	2											
	1											

Steady Performance

Communication	5											
	4											
	3											
	2											
	1											

Improving Performance

Communication	5											
	4											
	3											
	2											
	1											