

Central Barangaroo Development Agreement

Contract register disclosure version

Part 2 of 2

Prepared 19 January 2018

23.5 Approval of CPW by Authority

- (a) Within 20 Business Days after receiving a Formal Notice under clause 23.2(a)(ii), the Authority may:
 - (i) approve the proposed CPW;
 - (ii) request additional information to assist the Authority in reviewing the proposed CPW; or
 - (iii) if the Authority reasonably considers that the proposed CPW does not satisfy the requirements set out in clause 23.3, direct the Developer to amend the proposed CPW in any way necessary in order to comply with those requirements.
- (b) If the Authority makes a request for additional information pursuant to clause 23.5(a)(ii), the Developer must provide to the Authority any additional information as soon as reasonably practicable following such request.
- (c) If the Authority directs the Developer to amend the proposed CPW pursuant to clause 23.5(a)(iii), the Developer must either:
 - (i) make any amendments to the proposed CPW as soon as reasonably practicable after such request and resubmit the updated proposed CPW to the Authority in accordance with clause 23.5(a)(iii); or
 - (ii) give a Formal Notice to the Authority setting out the reasons why any specific amendments directed by the Authority:
 - A. are not necessary in order to ensure that the Developer satisfies the Sustainability Obligations; and
 - B. would, if incorporated into the CPW, result in a material adverse effect on:
 - 1) the Developer's ability to comply with the Sustainability Obligations; or
 - 2) the carrying out or use and occupation of the Developer's Project,

and (where appropriate) provide alternative proposals to address any issues in connection with the directions made by the Authority.
- (d) If the Developer gives a Formal Notice in accordance with clause 23.5(c)(ii), the Authority will act reasonably to consider the matters raised by the Developer and may:
 - (i) confirm its original directions to the Developer in relation to updating the CPW;
 - (ii) provide revised directions to the Developer in relation to updating the CPW; or
 - (iii) refer the matter for resolution as a dispute pursuant to clause 48.
- (e) If the Authority gives a direction to the Developer pursuant to clause 23.5(d)(i) or 23.5(d)(ii), the Developer must within 10 Business Days of such direction, either:

- (i) update the CPW to comply with the Authority's directions and submit the revised CPW to the Authority pursuant to clause 23.2(a)(ii) for approval; or
 - (ii) refer the matter for resolution as a dispute pursuant to clause 48.
- (f) Provided that the Developer has complied with its other obligations pursuant to this clause 23, the Authority must give or refuse its approval to a proposed CPW as soon as reasonably practicable after the later of the date the Authority receives the Formal Notice and a copy of the proposed CPW under clauses 23.2(a)(ii) or 23.5(e), as applicable, together with:
 - (i) any further information requested by the Authority; and
 - (ii) a certificate from the Lead Sustainability Consultant certifying that the proposed CPW:
 - A. incorporates any amendments as directed by the Authority pursuant to clause 23.5(a); and
 - B. in all respects complies with the requirements of this clause 23.
- (g) Subject to the Developer providing each of the necessary items in clause 23.5(c), the Authority must not unreasonably withhold its consent to a proposed CPW. The parties acknowledge and agree that it will be unreasonable for the Authority to withhold consent to the CPW on the basis that it does not include matters which:
 - (i) are not necessary to comply with the Sustainability Obligations;
 - (ii) are not necessary for the CPW to comply with the requirements of this clause 23; and
 - (iii) will have a material adverse effect on the carrying out or use and occupation of the Developer's Project including without limitation adverse impacts on:
 - A. construction timing and pricing;
 - B. the completed value of any part of the Developer's Project; and
 - C. the use and enjoyment of the relevant Premises under a Lease for its intended use.
- (h) Once the draft CPW is approved by the Authority, that plan will be treated as the CPW for the purposes of this Agreement (subject to any revisions or updates required in accordance with this Agreement).

23.6 Satisfying the Carbon Neutral Obligations

- (a) The Developer must comply with its specific Sustainability Obligations under this clause 23 and cannot elect to purchase Carbon Neutral Instruments in lieu of the performance of those obligations, except as provided for in this clause 23.6.
- (b) Without limiting the Developer's obligations generally, for the purposes of satisfying the Carbon Neutral Obligations, the Developer must ensure that each Lease contains covenants:

- (i) requiring that the Tenant reports such data as required by the Authority to enable the determination of the annual operational Greenhouse Gas Emissions of the building and its occupiers;
 - (ii) requiring that the Tenant must, on request from the Authority, provide any additional information as is reasonably required to substantiate such data reported by the Tenant;
 - (iii) requiring that the Tenant accepts the Carbon Limit Threshold in respect of their Lease;
 - (iv) providing a mechanism to adjust the Carbon Limit Threshold to compensate future decarbonisation of the electricity supplied to the Tenant;
 - (v) requiring that the Tenant must pay to the Authority (as landlord) such amounts each year as necessary to fund the purchase of Carbon Neutral Instruments sufficient to offset any Greenhouse Gas Emission in excess of the Carbon Limit Threshold for the relevant Premises (assuming that such Carbon Neutral Instruments will be acquired at a cost of not more than [REDACTED]);
 - (vi) requiring that the Tenant employs an Approved Waste Operator for handling and disposal for all waste.
- (c) For the purposes of satisfying the Carbon Neutral Obligations, the Developer:
- (i) must do all things reasonably necessary to reduce the potential need to acquire and voluntarily retire Carbon Neutral Instruments; and
 - (ii) acknowledges and agrees that the Authority may, at its discretion, allocate a portion of the Estate Levy to contribute towards the achievement of the Carbon Neutral Obligations for the annual Greenhouse Gas Emissions below the Carbon Limit Threshold (which as at the date of this Agreement is intended to be not greater than [REDACTED]).

23.7 Failure to comply with CPW

- (a) If at any time there is non-compliance or non-implementation of the CPW by the Developer:
 - (i) the Authority may by notice in writing require the Developer to prepare a cure plan to address that non-compliance or non-implementation; and
 - (ii) the Developer must within 20 Business Days after receipt of the notice given under clause 23.7(a)(i), prepare a cure plan and lodge that plan with the Authority for its approval.
- (b) If the Developer fails to comply with its obligations under the CPW (or otherwise fails to comply with any cure plan that has been implemented by the Developer (and approved by the Authority) in connection with the CPW), the Authority (and the Authority's Employees and Agents) may, after having given 60 Business Days' prior notice to the Developer:
 - (i) do anything which should have been done by the Developer under the CPW but which has not been done, or which the Authority reasonably considers has not been done properly; and

- (ii) enter and remain on Central Barangaroo for so long as it is reasonably necessary for that purpose,

and in doing so, the Authority must use its reasonable endeavours not to interfere with the parts of Central Barangaroo not required by the Authority to carry out the Works which have not been done or have not been done properly under this clause 23.7(b).

- (c) The Authority's rights under clause 23.7(b) are in addition to any other remedies of the Authority for the Developer's non-compliance (including clause 23.8). The Developer must pay to the Authority on demand a sum equal to all Costs, Loss, and liabilities reasonably incurred or suffered by the Authority in taking action pursuant to clause 23.7(b).
- (d) The parties acknowledge and agree that the Developer's obligations under the CPW for the purpose of this clause do not include any obligation in connection with the use or operation of a Block beyond that which is expressly included in the Sustainability Obligations.

23.8 Independent Sustainability Ratings

- (a) The Developer has committed to achieving the Independent Sustainability Ratings for each Block as set out in Annexure DDD by the Rating Deadline set out in Annexure DDD.
- (b) The parties acknowledge that:
 - (i) the ratings referred to in clause 23.8(a) are based on the most up to date version of the relevant rating tools as at the date of this Agreement (**Existing Rating Tools**);
 - (ii) the Developer must at its own cost procure registration and certification of the Developer's Project (or each part of the Developer's Project as appropriate) against the Existing Rating Tools;
 - (iii) if an Existing Rating Tool is subsequently superseded by the publication of a revised rating schemes or applicable accreditation system (**New Rating Tool**), to the extent that the Developer has not already procured registration and certification of the Developer's Project (or any part of the Developer's Project as appropriate) against the Existing Rating Tool, the Developer must, at its own Cost, procure registration and certification of the relevant Component in accordance with the New Rating Tool;
 - (iv) if the Developer reasonably considers that it cannot procure registration or certification of the Developer's Project under a New Rating Tool or that registration and certification under the New Rating tool would have a material and adverse effect on the carrying out, or use and occupation of the Developer's Project or any part thereof including without limitation material adverse impacts on:
 - A. construction timing and pricing;
 - B. the completed value of any part of the Developer's Project; and
 - C. the use and enjoyment of the Premises under a Lease for its intended use,

the Developer may give a Formal Notice to the Authority including relevant information demonstrating the material adverse impact referred

to above and requesting that the Authority consents to the Developer procuring registration and certification under the Existing Rating Tool (notwithstanding that it has been superseded by a New Rating Tool);

- (v) if the Developer gives a Formal Notice in accordance with clause 23.8(b)(iv), the Authority may accept or reject the Developer's request acting reasonably and:
 - A. if the Authority accepts the Developer's request, the parties will agree in good faith an appropriate expert and form of certification to be issued by that expert to the Authority (to the reasonable satisfaction of the Authority) confirming that the Developer would receive certification under the Existing Rating Tool if it was still applicable and possible to procure; or
 - B. if the Authority does not accept the Developer's request, then the Developer's obligations to procure a rating under the New Rating Tool are unaffected.

23.9 Preparation of Social Sustainability Plan

The Developer must within 90 Business Days after [REDACTED] (and in all circumstances no later than the date on which the Developer submits a Significant Application to the Authority for approval pursuant to clause 9.2):

- (a) procure the preparation of a draft Social Sustainability Plan; and
- (b) give a Formal Notice to the Authority:
 - (i) attaching the proposed Social Sustainability Plan;
 - (ii) attaching the certification given in accordance with clause 23.11;
 - (iii) confirming that the Social Sustainability Plan has been prepared in accordance with the requirements of clause 23.10; and
 - (iv) requesting the Authority's approval of that proposed Social Sustainability Plan.

23.10 Social Sustainability Plan Scope

- (a) The draft Social Sustainability Plan submitted by the Developer under clause 23.9 must:
 - (i) be independently peer reviewed by an appropriate expert approved by the Authority acting reasonably and in good faith;
 - (ii) articulate the Social Outcomes to be achieved for each Block by the relevant Social Study Date;
 - (iii) be consistent with the Final Bid and Public Benefit Cashflow;
 - (iv) include critical milestone dates and activities which must be completed in order to ensure that the Social Outcomes will be achieved;
 - (v) include the proposed consultation arrangements which the Developer will undertake with relevant stakeholders, providers and authorities;
 - (vi) include provisions for the Developer to generally liaise with and provide information to the Authority to ensure that the Authority has sufficient

detail to enable it to monitor the development of and compliance with the Social Sustainability Plan;

- (vii) include requirements for the Developer to keep the Authority informed as to the Developer's progress in achieving the Social Outcomes;
- (viii) incorporate at least the following Social Outcomes and the proposed means to successfully deliver each outcome:

A. the employment and training programmes targeting disadvantaged groups from across Sydney;

B. keeping neighbours informed of key activities during construction and of major events within Central Barangaroo up to the achievement of Project Practical Completion;

C. [REDACTED]

D. [REDACTED]

E. [REDACTED]

F. [REDACTED]

G. [REDACTED]

H. [REDACTED]

[REDACTED]

[REDACTED]

(b) The parties acknowledge and agree that, where the Public Benefit Delivery Cashflow contemplates investment in a particular Social Outcome referred to in paragraphs C to F (both inclusive) of clause 23.10(a)(viii), then:

(i) the Social Sustainability Plan is not intended to impose financial obligations on the Developer in respect of the relevant Social Outcome which exceed what is contemplated in the Public Benefit Delivery Cashflow; and

(ii)

23.11 Certification regarding form of Social Sustainability Plan

Simultaneously with the lodgement of the proposed Social Sustainability Plan with the Authority for its approval, the Developer must also provide to the Authority a report prepared by the Developer (accompanied and supported by a report issued by the Social Outcomes Certifier) which certifies that proper implementation of, and compliance by the Developer with, the Social Sustainability Plan by the Developer in designing, constructing and delivering the Developer's Project the Social Outcomes will be met no later than the relevant Social Study Date (or any other date required under this Agreement as the case may be).

23.12 Approval of Social Sustainability Plan by Authority

(a) Within 20 Business Days after receiving a Formal Notice under clause 23.9, the Authority may:

(i) approve the proposed Social Sustainability Plan;

(ii) request additional information to assist the Authority in reviewing the proposed Social Sustainability Plan; or

(iii) if the Authority reasonably considers that the proposed Social Sustainability Plan does not satisfy the requirements set out in

clause 23.10, direct the Developer to amend the proposed Social Sustainability Plan in any way necessary in order to comply with those requirements.

- (b) If the Authority makes a request for additional information pursuant to clause 23.12(a)(ii), the Developer must provide to the Authority any additional information as soon as reasonably practicable following such request.
- (c) If the Authority directs the Developer to amend the proposed Social Sustainability Plan pursuant to clause 23.12(a)(iii), the Developer must either:
 - (i) make any amendments to the proposed Social Sustainability Plan as soon as reasonably practicable after such request and resubmit the updated proposed Social Sustainability Plan to the Authority in accordance with clause 23.12(a)(iii); or
 - (ii) give a Formal Notice to the Authority setting out the reasons why any specific amendments directed by the Authority:
 - A. are not necessary in order to ensure that the Developer satisfies the Social Outcomes; and
 - B. would, if incorporated into the Social Sustainability Plan, result in a material adverse effect on:
 - 1) the Developer's ability to comply with the Social Outcomes; or
 - 2) the carrying out or use and occupation of the Developer's Project,

and (where appropriate) provide alternative proposals to address any issues in connection with the directions made by the Authority.

- (d) If the Developer gives a Formal Notice in accordance with clause 23.12(c)(ii), the Authority will act reasonably to consider the matters raised by the Developer and may:
 - (i) confirm its original directions to the Developer in relation to updating the Social Sustainability Plan, in which case the Developer must either:
 - A. update the Social Sustainability Plan to comply with the Authority's directions and submit the revised Social Sustainability Plan to the Authority pursuant to clause 23.9 for approval; or
 - B. refer the matter for resolution as a dispute pursuant to clause 48;
 - (ii) provide revised directions to the Developer in relation to updating the Social Sustainability Plan; or
 - (iii) refer the matter for resolution as a dispute pursuant to clause 48.
- (e) If the Authority gives a direction to the Developer pursuant to clause 23.12(d)(i) or clause 23.12(d)(ii), the Developer must within 10 Business Days of such direction, either:

- (i) update the Social Sustainability Plan to comply with the Authority's directions and submit the revised Social Sustainability Plan to the Authority pursuant to clause 23.10 for approval; or
 - (ii) refer the matter for resolution as a dispute pursuant to clause 48.
- (f) Provided that the Developer has complied with its other obligations pursuant to this clause 23, the Authority must give or refuse its approval to a proposed Social Sustainability Plan as soon as reasonably practicable after the Authority receives the Formal Notice and a copy of the proposed Social Sustainability Plan under clauses 23.9 or 23.12(e) as applicable together with:
 - (i) any further information requested by the Authority; and
 - (ii) a certificate from an appropriately qualified third party expert approved by the Authority acting reasonably that the proposed Social Sustainability Plan:
 - A. incorporates any amendments as directed by the Authority pursuant to clause 23.12(a); and
 - B. in all respects complies with the requirements of this clause 23.
- (g) Subject to the Developer providing each of the necessary items in clause 23.12(f), the Authority must not unreasonably withhold its consent to a proposed Social Sustainability Plan. The parties acknowledge and agree that it will be unreasonable for the Authority to withhold consent to the Social Sustainability Plan on the basis that it does not include matters which:
 - (i) are not necessary to deliver with the Social Outcomes;
 - (ii) are not necessary for the Social Sustainability Plan to comply with the requirements of this clause 23; and
 - (iii) will have a material adverse effect on the carrying out or use and occupation of the Developer's Project including without limitation adverse impacts on:
 - A. construction timing and pricing;
 - B. the completed value of any part of the Developer's Project; and
 - C. the use and enjoyment of the relevant Premises under a Lease for its intended use.
- (h) Once the draft Social Sustainability Plan is approved by the Authority, that plan will be treated as the Social Sustainability Plan for the purposes of this Agreement (subject to any revisions or updates required in accordance with this Agreement).

23.13 Failure to achieve Independent Sustainability Ratings

- (a) The Developer must obtain or otherwise procure the achievement of the Independent Sustainability Ratings as soon as practicable after completing:
 - (i) the construction of the relevant Works Component; or
 - (ii) the operational period necessary to enable the relevant Independent Sustainability Rating to be issued as set out in Annexure DDD.

- (b) If the Developer does not obtain an Independent Sustainability Rating by the corresponding Rating Deadline in Annexure DDD, then the Developer must pay liquidated damages at the daily rate specified for the relevant Independent Sustainability Rating from the applicable Rating Deadline until the date on which the relevant Independent Sustainability Rating is obtained.
- (c) The Developer and the Authority acknowledge and agree:
 - (i) that the amounts of liquidated damages specified in Annexure DDD are a genuine pre-estimate of the detriment to the Authority due to the late or non-compliant provision of amenity to the people of New South Wales and visitors to Barangaroo if the Developer has not achieved the Relevant Independent Sustainability Rating on or before the relevant Sustainability Deadline; and
 - (ii) in calculating the amount for liquidated damages the Authority has:
 - A. carefully considered the amount of liquidated damages, relying on the agreement of the Developer and the General Guarantor that it is a genuine pre-estimate of those damages; and
 - B. taken into account the damage which will be suffered by the Authority, the Government and the State of New South Wales if those relevant obligations are not achieved by the relevant date specified in this Agreement.
- (d) The Developer and the Authority agree to irrevocably waive, and forever surrender, give up and release, any right they may have, whether at Law or in equity, to challenge any demand the Authority makes for payment of any such amounts upon the basis that payment of those amounts constitutes a penalty or is invalid or unenforceable for any reason whatever.

23.14 Updates to National Carbon Offset Standard

- (a) The parties acknowledge that as at the date of this Agreement, the draft "National Carbon Offset Standard for Precincts" attached as Annexure XX to this Agreement is anticipated to be replaced by a final version to be published by the Department of the Environment and Energy.
- (b) As soon as is practicable following the publication of the final version of the "National Carbon Offset Standard for Precincts" the parties must meet to discuss and agree in good faith the extent to which any changes to the "National Carbon Offset Standard for Precincts" will be adopted by the parties for the purposes of this Agreement.
- (c) For the purposes of clause 23.14(b), the parties must not adopt any change to the "National Carbon Offset Standard for Precincts" which would result in a reduction to the Sustainability Obligations or the Carbon Neutral Obligations assessed based on the draft version of the "National Carbon Offset Standard for Precincts" attached as Annexure XX to this Agreement.
- (d) If the parties have not reached agreement on the changes to the "National Carbon Offset Standard for Precincts" to be adopted within 90 Business Days of the date of publication of the final version of that document, then:
 - (i) for the purposes of this Agreement, the parties must use the draft version of the "National Carbon Offset Standard for Precincts" attached as Annexure XX to this Agreement; and

- (ii) either party may refer the manner in which the document referred to in clause 23.14(d)(i) is applied to be resolved as a dispute pursuant to clause 48.

24. Urban Art

24.1 Urban Art Contribution

The Developer must pay to the Authority, the Urban Art Contribution in respect of each Block prior to requesting a certificate of Practical Completion in respect of the final Stage within a Block pursuant to clause 34.2 (and as a condition of achieving Stage Practical Completion in respect of the final Stage within a Block).

24.2 Authority's use of Urban Art Contribution

The Authority must spend the Urban Art Contribution on public art and/or cultural development facilities, programs and initiatives within Barangaroo, although the timing and allocation of any such expenditure is at the sole discretion of the Authority.

24.3 Security and Performance Security

For the avoidance of doubt, the Developer's obligations under this clause 24 are included in the General Guaranteed Obligations and the Authority may draw down on the Performance Security to pay any amount of Urban Art Contribution which is due and which has not been paid by the Developer in accordance with clause 24.1.

25. Sydney Metro - general overview and acknowledgements

25.1 NSW Government - Sydney Metro proposal

(a) The parties acknowledge and agree that:

- (i) on 4 June 2015, the NSW Government announced that it proposed to deliver the Sydney Metro which would, if delivered, service Barangaroo (amongst other areas) on or about December 2024; and
- (ii) despite the announcement referred to in clause 25.1(a), it may be that the NSW Government will not proceed to deliver the Sydney Metro on time, within Barangaroo, or at all.

(b) Despite clause 25.1(a), the Authority provides no warranty to the Developer in relation to the Sydney Metro, and in particular provides no warranties:

- (i) that the Sydney Metro will or will not be delivered;
- (ii) in relation to the timing of delivery (if at all) of the Sydney Metro;
- (iii) as to whether the Sydney Metro (if delivered) will service Barangaroo or the frequency or timing of any service to Barangaroo; or
- (iv) in relation to the location of the Sydney Metro railway corridors, tunnels and infrastructure,

and the Developer releases the Authority and the NSW Government from all Claims made in connection with or arising from the above matters.

25.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25.3 Building and the Sydney Metro railway corridor

- (a) The Developer must at its cost:
- (i) before any Works are carried out on Central Barangaroo which may impact the Sydney Metro, notify the Authority of its proposal to conduct the Works;
 - (ii) obtain any consent from TfNSW in relation to the Works required under the *Transport Administration Act 1988* (NSW); and
 - (iii) comply with any notices validly issued by TfNSW to the Authority or the Developer under the *Transport Administration Act 1988* (NSW) in relation to the Works.


- (b) [REDACTED]
- [REDACTED]
- [REDACTED]

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Figure 6

Figure 6 shows two bar charts comparing the percentage of respondents who answered "Yes" or "No" to the question "Do you have a good understanding of what your company's mission statement is?" The first chart compares responses by gender (Male and Female), and the second chart compares responses by age group (18-29, 30-39, 40-49, 50-59, 60+).

The first chart shows that approximately 75% of both Male and Female respondents answered "Yes," while about 25% answered "No." The second chart shows that the percentage of "Yes" answers generally decreases as age increases, starting at around 85% for the 18-29 age group and dropping to about 60% for the 60+ age group.

Table 1

Table 1 displays the percentage of respondents who answered "Yes" or "No" to the question "Do you have a good understanding of what your company's mission statement is?" categorized by gender and age group.

Category	Gender/Age Group	Yes (%)	No (%)
Gender	Male	75%	25%
	Female	75%	25%
Age Group	18-29	85%	15%
	30-39	80%	20%
	40-49	75%	25%
	50-59	70%	30%
	60+	60%	40%



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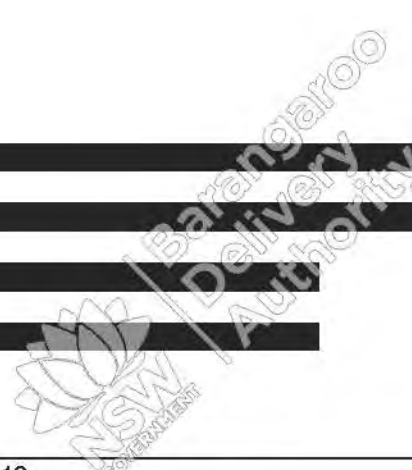
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Figure 6





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Figure 6



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26. Infrastructure

26.1 Developer's acknowledgements in relation to External Infrastructure

The Developer:

- (a) acknowledges and agrees that it has relied on its own investigations of the plans and specifications in relation to the External Infrastructure; and
- (b) warrants that subject to clause 26.2 the External Infrastructure, including its location, capacity and quality, will be adequate for the Developer's Project.

26.2 Developer's obligations in relation to External Infrastructure

If the Developer requires any additional infrastructure or infrastructure of a higher specification than that which is provided for by the External Infrastructure it must provide that infrastructure at its own cost and expense and warrants that such additional infrastructure will be adequate for the Developer's Project.

26.3 Developer's obligations in relation to Internal Infrastructure

The Developer:

- (a) must ensure that all of the Internal Infrastructure necessary for each Stage of the Developer's Project is completed in accordance with a plan detailing the location and specification of the Infrastructure completed in accordance with clause 26.4 on or before each relevant Date for Stage Practical Completion; and
- (b) is responsible for all costs and expenses relating to the Developer's obligations under clause 26.3(a).

26.4 Co-ordination of Internal Infrastructure

- (a) In respect of each Stage, and prior to requesting a Construction Licence for that Stage, the Developer must give a Formal Notice to the Authority:
 - (i) attaching the Developer's proposed plan for the provision of Internal Infrastructure including interfaces with, access to and the use of External Infrastructure; and
 - (ii) requesting the Authority's approval of the proposed plan for the purposes of this clause 26.4.
- (b) The Authority may (but is not required to) review and comment on the integration, compatibility and co-ordination of the Internal Infrastructure (as indicated in the Developer's plan) with the External Infrastructure and any other infrastructure or Services servicing all or part of Barangaroo and the land immediately adjoining Barangaroo.
- (c) The Developer must amend the proposed plan taking into account the comments of the Authority under clause 26.4(b). The amended proposed plan must be resubmitted to the Authority under clause 26.4(a) and the processes under clause 26.4(b) and this clause 26.4(c) will continue to apply until such time as the Authority confirms the proposed plan is complete.
- (d) In addition to the obligations of the Developer under clause 26.3, the Developer must integrate, co-ordinate and ensure the compatibility of the Internal Infrastructure with the External Infrastructure and any other infrastructure or Services servicing any part of Barangaroo and the land immediately adjoining Barangaroo.
- (e) The Developer is solely responsible for:
 - (i) the cost of installing and maintaining the Internal Infrastructure;
 - (ii) the cost of all headworks charges, including the costs of and provision of the water supply works, wastewater works and stormwater drainage works required for the Internal Infrastructure;
 - (iii) the cost of installing and maintaining all connections to the External Infrastructure;
 - (iv) the cost of any related charges; and
 - (v) the co-ordination and integration of the Internal Infrastructure with other adjoining development projects or completed developments.
- (f) The Developer releases and indemnifies the Authority and the State in relation to any Loss, Costs, liability or damage relating to the Internal Infrastructure or any other infrastructure or Services to the extent caused or contributed to by the Developer or any person acting through or under the Developer.
- (g) The Authority makes no warranty and bears no responsibility in relation to:
 - (i) the integration, co-ordination or compatibility of the Internal Infrastructure with the External Infrastructure or any other infrastructure or Services servicing Barangaroo (or any combination of these);
 - (ii) the quality or standard of workmanship of the External Infrastructure or any other infrastructure or Services servicing Barangaroo;

- (iii) the adequacy or completeness of the External Infrastructure; or
- (iv) the adequacy or completeness of the External Infrastructure or any other infrastructure or Services servicing Barangaroo,

and will not be responsible for any Loss, Costs, liability or damage suffered by the Developer or any other person and will not provide any Compensation to the Developer, relating to all or any of the matters referred to in this clause.

- (h) The Developer must ensure that following the construction of the Internal Infrastructure:
 - (i) each Lease includes all necessary covenants; and
 - (ii) all Tenants are required to enter into appropriate building management statements or strata management statements,
 to provide that the Tenants are responsible (either directly under the Lease or through the building management statement or strata management statement) for all costs and liabilities in connection with maintaining, repairing and replacing all Internal Infrastructure within the relevant Stage in which any Premises are located and that the Authority bears no responsibility for these costs or liabilities.

26.5 Access for the Authority

- (a) The Developer must give the Authority and any relevant Government Agency and their respective Employees and Agents reasonable access, during normal working hours and upon the provision of reasonable prior notice to the Developer, to any part of a Central Barangaroo in respect of which a Construction Licence has been granted, for the purpose of upgrading, maintaining, inspecting or providing (or any or all of these) the External Infrastructure.
- (b) Without affecting the generality of clause 26.5(a), the Developer must:
 - (i) permit the execution of work on any Stage by a person referred to in clause 26.5(a);
 - (ii) where reasonably possible co-operate with a person referred to in clause 26.5(a) and co-ordinate the Developer's activities with their work;
 - (iii) not in any way obstruct or impede the development or provision of the External Infrastructure; and
 - (iv) minimise the effect of carrying out the Works on the development or provision of the External Infrastructure.

27. Relocation of Third Party Services

27.1 Relocation works

The Developer must at its cost:

- (a) make enquiries as to the location of any Third Party Services located above or below the surface of Central Barangaroo;
- (b) notify the relevant owner, user and/or person responsible for a Third Party Service (**Service Third Party**) if any Third Party Services are located above or below the surface of Central Barangaroo; and

- (c) liaise with the Service Third Party regarding potential relocation or protection of those Third Party Services.

27.2 Easements

The Authority will, if required by a Service Third Party as a result of the Developer's Project:

- (a) grant a formal registered easement in favour of the Service Third Party or other appropriate person;
- (b) agree to the Service Third Party or other appropriate person taking the benefit of any statutory access power or statutory easement to which it may be entitled; or
- (c) grant an irrevocable licence in favour of the Service Third Party or other appropriate person, on terms and conditions which ensure the continued and uninterrupted use of, access, maintenance and repair by the Service Third Party or the public to those Service Third Party Services.

27.3 No Compensation

The Developer acknowledges that no Compensation or other payment will be payable by the Third Party, the State, the Authority or any other person in relation to any matter arising out of clause 27.2.

28. Project Co-ordination Group

28.1 Project Co-ordination Group

The Developer must ensure that a group (**Project Co-ordination Group**) is established at the commencement of the Developer's Project which will comprise:

- (a) a representative of the Authority;
- (b) a senior management representative of the Developer;
- (c) a representative of TfNSW (if required); and
- (d) any other person reasonably required by the Developer or the Authority.

28.2 Project Co-ordination Group functions

The functions of the Project Co-ordination Group include:

- (a) reviewing the progress of the Works in relation to the Works Programme and the performance of the Developer;
- (b) reviewing the quality of work and any remedial measures required; and
- (c) facilitate discussion between the parties, on a without prejudice basis, to address any potential issues, concerns, disputes or delays which may arise under this Agreement.

28.3 Project Co-ordination Group meetings

- (a) The Project Co-ordination Group must meet on a monthly basis and at any other agreed times;
- (b) Each of the Developer and the Authority must procure that its representatives attend meetings of the Project Co-ordination Group.

- (c) The Developer must:
- (i) meet all costs of its personnel and involvement in the Project Co-ordination Group;
 - (ii) convene and chair all meetings of the Project Co-ordination Group; and
 - (iii) provide minutes of the meetings to the Authority.

28.4 Developer's reporting and related obligations

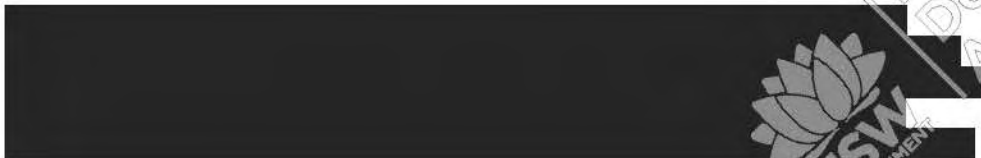
The Developer must:

- (a) at least 10 Business Days prior to each meeting of the Project Co-ordination Group, provide a written report to the Authority, in a form approved by the Authority, setting out:
- (i) the progress and status of design and construction of the Developer's Project;
 - (ii) details of any activities which are behind the progress anticipated in the Works Programme;
 - (iii) any foreseen delays to future activities on the Works Programme whether or not such delays have been caused by a Force Majeure Event;
 - (iv) the likely effect on the Works Programme of any actual or foreseen delays whether or not such delays have been caused by a Force Majeure Event;
 - (v) current claims for extensions of time, including details of dates submitted, dates approved and any other relevant details;
 - (vi) the status of all activities on which work is being undertaken;
 - (vii) details of all consultants currently employed or proposed to be employed by the Developer or otherwise in connection with the Works;
 - (viii) details of daily staff levels of the Developer, all subcontractors and all consultants employed on Central Barangaroo;
 - (ix) evidence of compliance with the Developer's quality assurance program;
 - (x) expenditure against forecast cash flows and budget;
 - (xi) industrial relations issues affecting or which may affect the Works;
 - (xii) strategies implemented or proposed to overcome problems, including corrective action statements for catching up lost time or avoiding potential delays;
 - (xiii) liaison with any Government Agency;
 - (xiv) cash flow statements showing the receipt of funds, disposition of those funds and estimated cost to complete the Developer's Project or relevant Stage of the Developer's Project (if requested by the Authority);
 - (xv) the status of any disputes that may have arisen in connection with the Works; and

- (xvi) any other matter required by the Authority;
- (b) provide to the Authority within a reasonable time of being requested to do so, any information in connection with the Works which the Authority reasonably requires;
- (c) advise the Authority (in writing if the Authority requires) of suitable courses of action in relation to matters raised in Project Co-ordination Group meetings; and
- (d) establish and maintain any records and registers which the Authority reasonably requires.

29. Builder, Independent Certifier and Quantity Surveyor

29.1 Appointment of Builder

- (a) The Developer must not appoint any person as a Builder (other than the entities referred to in paragraphs (a), (b) and (c) of the definition of Builder) without the prior approval of the Authority, which approval must not be unreasonably withheld or delayed if the Developer has demonstrated that the proposed replacement builder has the capacity, financial resources, experience and expertise to comply with all the builder's obligations under the proposed Building Contract.
- (b) The Developer warrants to the Authority that the Builder (including those referred to in paragraphs (a), (b) and (c) of the definition of Builder) will be a person that the Developer is satisfied, after due enquiry and acting reasonably, has the capacity, financial resources, experience and expertise to comply with all the Builder's obligations under the relevant proposed Building Contract in relation to the carrying out of that part of the Works the subject of the relevant Works Component.
- (c) 
- (d) The Authority acknowledges and agrees that Aqualand B Holding Pty Limited is entitled to appoint its own builder being Grocon Constructors (NSW) Pty Limited to undertake the Residential Component in accordance with this Agreement and the Residential Implementation Agreement and that such builder is approved for the purposes of carrying out those Work.
- (e) The Developer acknowledges that despite the arrangements referred to in this clause and the different parties referred to in the definition of Builder who will be entering into Building Contracts, the Developer remains liable to the Authority for the Works on the terms set out in this Agreement.

29.2 Requirements for Building Contract and Builder's Side Deed

The Developer must ensure that in preparing and negotiating:

- (a) each Building Contract with a proposed Builder, that each contract includes provisions:
 - (i) requiring the Builder to comply with:
 - A. this Agreement to the extent the Building Contract relates to the execution of the Stage;
 - B. the NSW Government's Code of Practice for the Building and Construction Industry; and

- C. the NSW Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry; and
- (ii) prohibiting the Builder from assigning the Building Contract or any payment, right, benefit or interest under it without the consent of the Authority (which consent must not be unreasonably withheld or delayed);
- (iii) where the relevant Building Contract relates to any part of the Public Domain Works, specifying that if the Authority exercises its rights to terminate a Construction Licence pursuant to clause 16.2(b)(ii) in connection with the Public Domain Works the subject of that Building Contract, the scope of the Works under the Building Contract is deleted to the extent of the Public Domain Works or if the entire scope of works under that Building Contract is the Public Domain Works that Building Contract is terminated; and
- (iv) that the Authority has the right to terminate or take a novation of the Building Contract upon termination of this Agreement; and
- (b) each Builder's Side Deed with a proposed Builder, that each side deed is substantially in the form attached as Annexure S.

29.3 Providing information about the Builder and Building Contract

- (a) Before any Building Contract is entered into for a Works Component, the Developer must give a Formal Notice to the Authority:
 - (i) nominating the proposed Builder;
 - (ii) attaching a copy of the proposed Building Contract;
 - (iii) confirming that:
 - A. the nominated Builder, except in the case of Grocon Constructions NSW Pty Limited and Scentre Design and Construction Pty Limited, has the capacity, financial resources, experience and expertise to comply with all the Builder's obligations under the proposed Building Contract;
 - B. the proposed Building Contract includes provisions required in clause 29.2, 29.5 and 29.6;
 - C. the relevant Insurances are in force and that the Authority is named as an insured on those policies as contemplated by clause 33, excluding professional indemnity and workers compensation insurances;
 - D. the Building Contract is not inconsistent with the Developer's obligations under, and the terms of this Agreement; and
 - (iv) where any Works Component includes Works to deliver any part of the Public Domain, attaching a proposed Builder's Side Deed in relation to that Works Component; and
 - (v) requesting the Authority's approval in respect of:
 - A. the appointment of the proposed Builder on the terms of the proposed Building Contract; and

- B. if applicable, the form of the Builder's Side Deed to be entered into in relation to that Building Contract.
- (b) The Authority must, acting reasonably, approve or reject that Building Contract for a Works Component within 10 Business Days after receipt of all of the information required to be provided under clauses 29.3 and 29.4.
- (c) No Building Contract in relation to any part of the Developer's Project is to be entered into without:
 - (i) the approval of the Authority in accordance with this Agreement; and
 - (ii) a Builder's Side Deed being entered into between the Authority, the principal under the proposed Building Contract and the Builder under all the proposed Building Contracts which include any Foreshore Public Domain.

29.4 Approval of Builder and Building Contract by Authority

- (a) Within 30 Business Days of receiving a Formal Notice under clause 29.3, the Authority may:
 - (i) request additional information to assist the Authority in reviewing the draft Building Contract, the suitability of the proposed Builder, (where applicable) the draft Builder's Side Deed or any other matter disclosed in the Formal Notice; and
 - (ii) if the Authority reasonably considers that the draft Building Contract (and the draft Builder's Side Deed) does not satisfy the requirements set out in clause 29.2, direct the Developer to amend the draft Building Contract (and where applicable the draft Builder's Side Deed) in any way necessary in order to comply with those requirements.
- (b) If the Authority makes a request for additional information or directs the Developer to amend the draft Building Contract (and where applicable the draft Builder's Side Deed), the Developer must provide to the Authority any additional information and make any amendments as soon as reasonably practicable after any such request and must resubmit a Formal Notice under clause 29.3.

29.5 Provisions in third party contracts

All contracts entered into by the Developer in connection with the carrying out of the Works must contain provisions which:

- (a) require that, if the Authority exercises a right to terminate the whole or any part of this Agreement, the Developer and the contractor must, at the election of the Authority, promptly execute a deed of novation novating the contract in favour of the Authority (to the extent that it relates to that part of this Agreement which has been terminated); and
- (b) are sufficient to enable the Developer to grant the licence required under clause 40.3.

29.6 Quality assurance systems in third party contracts

The Developer must ensure that all major contractors engaged in respect of each Stage have certified quality assurance systems and have achieved substantial implementation of a quality assurance system conforming to the ISO 9000 or AS 3900 series of standards.

29.7 Developer liable for acts of contractors

The entry into a contract in respect of the Works (or any Stage) does not relieve the Developer from any liability or obligation under this Agreement. The Developer is liable to the Authority for the acts and omissions of any contractor or person engaged by the Developer in connection with the Works.

29.8 Appointment of Independent Certifier

- (a) The Developer must execute the Independent Certifier Deed under which the Independent Certifier will be appointed by the parties in respect of each Works Component, on or before the grant of a Construction Licence in respect of each Works Component and must perform and observe all obligations imposed upon it by the Independent Certifier Deed.
- (b) The Independent Certifier will be selected by the Authority (in consultation with the Developer) from a list of 3 consultants with appropriate professional experience and expertise to fulfil the functions of the Independent Certifier, proposed by the Developer against whom the Authority makes no reasonable objection.
- (c) If the Authority makes a reasonable objection to a consultant proposed by the Developer, the Developer will propose an alternative consultant. This procedure must be repeated twice only. If, after repeating the process twice, the Authority wishes to object to one or more consultants proposed by the Developer:
 - (i) the Authority must short list 3 consultants proposed for the role of the Independent Certifier, against which it has no reasonable objection; and
 - (ii) the Developer must submit a final list of 3 consultants selected (in any combination) from:
 - A. the consultants proposed by the Developer (including any alternative consultants proposed) to whom the Authority has no reasonable objection; or
 - B. the list of consultants proposed by the Authority; and
 - (iii) the Authority must select the party to be appointed as the 'Independent Certifier' from the final list of consultants submitted under clause 29.8(c)(ii).
- (d) The Independent Certifier must be appointed in relation to a Works Component on or before the grant of a Construction Licence.
- (e) If the position of Independent Certifier becomes vacant at any time in relation to any part of Central Barangaroo, clauses 29.8(a), 29.8(b) and 29.8(c) again apply.
- (f) The Independent Certifier must act as an independent certifier to the Authority and the Developer for the purposes of any independent supervision or certification of compliance with the requirements of this Agreement required by any party to this Agreement.

29.9 Appointment of Quantity Surveyor

- (a) The Developer must execute the Quantity Surveyor Deed under which the Quantity Surveyor will be appointed by the parties for the purposes of this Agreement, on or before the first date on which the parties are required to obtain advice from the Quantity Surveyor pursuant to this Agreement and must perform and observe all obligations imposed upon it by the Quantity Surveyor Deed.

- (b) The Quantity Surveyor will be selected by the Authority (in consultation with the Developer) from a list of 3 consultants with appropriate professional experience and expertise to fulfil the functions of the Quantity Surveyor, proposed by the Developer against whom the Authority makes no reasonable objection.
- (c) If the Authority makes a reasonable objection to a consultant proposed by the Developer, the Developer will propose an alternative consultant. This procedure must be repeated twice only. If, after repeating the process twice, the Authority wishes to object to one or more consultants proposed by the Developer:
 - (i) the Authority must short list 3 consultants proposed for the role of the Quantity Surveyor, against which it has no reasonable objection; and
 - (ii) the Developer must submit a final list of 3 consultants selected (in any combination) from:
 - A. the consultants proposed by the Developer (including any alternative consultants proposed) to whom the Authority has no reasonable objection; or
 - B. the list of consultants proposed by the Authority; and
 - (iii) the Authority must select the party to be appointed as the 'Quantity Surveyor' from the final list of consultants submitted under clause 29.9(c)(ii) 29.8(c).
- (d) If the position of Quantity Surveyor becomes vacant at any time in relation to any part of Central Barangaroo, clauses 29.9(a), 29.9(b) and 29.9(c) again apply.
- (e) The Quantity Surveyor must act as an independent expert consultant to the Authority and the Developer for the purposes of any independent advice, assessment or certification of compliance with the requirements of this Agreement required by any party to this Agreement.

30. Workforce

30.1 Independent Contractors and Subcontractors

- (a) The Developer and all Subcontractors are independent contractors and nothing contained in this Agreement will be construed as constituting any relationship with the Authority other than, with respect to the Developer, that of principal and independent contractor, nor will it be construed as creating any relationship whatsoever between the Authority and the Developer's, Builders' and Subcontractors' employees.
- (b) Neither the Developer, the Builders nor any Subcontractors, nor any of their employees, are or will be deemed, by virtue of this Agreement, or any subcontract, to be employees of the Authority.
- (c) The Developer indemnifies, and must procure that any Builders and Subcontractor indemnifies, and at all times holds the Authority fully and effectively indemnified against any and all Claims and Losses arising directly or indirectly out of or in connection with any Claim that the Authority or the State is the employer of the Developer's employees, a Builder's employees or any Subcontractor's employees.
- (d) Without limiting clauses 30.1(a), 30.1(b) or 30.1(c), the Developer is responsible for, and must procure that any Builder or Subcontractor as applicable is responsible for:
 - (i) remuneration and benefits, including performance payments, incentive payments, superannuation contributions, annual leave, sick leave, long

service leave, overtime and penalty rates and provision of accommodation and sustenance;

(ii) work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and

(iii) any payment upon termination of service,

payable to or in respect of any of their employees or contractors, or any Subcontractor's employees or contractors.

(e) If this Agreement prohibits the Developer from doing anything, then:

(i) the Developer must do everything necessary to ensure that the Developer's Employees and Agents do not do that thing; and

(ii) the Developer must not permit, cause or procure any person to do that thing.

30.2 Principal contractor - Developer's Project

(a) Without limiting clause 30.3, for the purposes of Chapter 6 of the *Work Health and Safety Regulation 2011* (NSW), the Developer must:

(i) engage (or procure the engagement of) the relevant Builder as principal contractor in each Building Contract for a relevant Works Component [REDACTED]; and

(ii) ensure all Works are carried out under a Building Contract.

(b) The Developer must authorise the Builder as principal contractor, to manage and control the workplace relevant to the Building Contract and discharge the duties imposed on a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011* (NSW) with respect to the relevant Building Contract.

30.3 Principal contractor - Public Domain Works

(a) In this clause 30.3:

(i) the terms "construction project", "construction work", "principal contractor" and "workplace" have the same meanings given to those terms under the WHS Legislation; and

(ii) for the purposes of the WHS Legislation and this Agreement, the work in respect of the Public Domain Works under this Agreement and the work in respect of the Public Domain Works under any Subcontract is taken to be part of the same "construction project".

(b) Without limiting the Developer's obligations under any other provision of this Agreement:

(i) to the extent that the work under this Agreement or any Subcontract includes construction work in respect of the Public Domain Works, the Authority:

A. engages the Developer as the principal contractor for the work under this Agreement and the Subcontract; and

- B. authorises the Developer to have management and control of each workplace at which the work under this Agreement and the Subcontract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
- (ii) the Developer accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (c) The Developer's engagement and authorisation as a principal contractor pursuant to clause 30.3(b) will continue:
 - (i) subject to clause 30.3(c)(ii), until the date on which Project Practical Completion is reached (unless sooner revoked by the Authority); and
 - (ii) in respect of any rectification work carried out under clause 15.5 that is construction work, during the period any such work is carried out.
- (d) The Developer will:
 - (i) if any Law (including a Law in the state or territory in which the Works are situated or work under this Agreement or a Subcontract is carried out) requires that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - B. a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 30.3(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Authority or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work, health and safety (as the case may be) to the satisfaction of the Authority before the Developer or the Subcontractor (as the case may be) commences such work.
- (e) If requested by the Developer, the Authority will as soon as reasonably practicable following such request, procure that any other contractor, consultant, tradesperson, supplier or other person engaged by the Authority to do work on or about Central Barangaroo executes a deed poll in favour of the Developer and any entity which is

acting as principal contractor in respect of the Developer's Project or a part of the Developer's Project, in a form which is acceptable to the Authority (acting reasonably).

30.4 Work Health and Safety

(a) The Developer must carry out the Works:

- (i) safely and in a manner that does not put the health and safety of persons at risk; and
- (ii) in a manner that protects property,

and if the Authority reasonably considers that there is a risk to the health and safety of people or damage to property arising from the Works, the Authority may direct the Developer to change its manner of working or to cease working.

(b) The Developer must:

(i) in carrying out the Works under this Agreement:

- A. ensure that it complies with all Laws and other requirements of this Agreement for work, health, safety and rehabilitation management;
- B. require all Builders and Subcontractors to comply with their obligations referred to in this Agreement and under the WHS Legislation; and
- C. ensure that it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work, health and safety duty in relation to the same matter;

- (ii) notify the Authority immediately (and in any event, within 2 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Works;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation including the obligations contained therein;
- (iv) provide the written assurances referred to in clause 30.4(b)(iii), together with written assurances from the Developer about the Developer's ongoing compliance with the WHS Legislation, to the Authority;
- (v) provide the Authority with a written report of all work, health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, clauses 30.2 and 30.4) or any other relevant matters as the Authority may reasonably require from time to time;
- (vi) cooperate with all Builders and Subcontractors and the Authority to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (vii) in respect of its work health and safety obligations, exercise a duty of the utmost good faith to the Authority in carrying out the Works to enable the Authority to discharge its duties under the WHS Legislation;

- (viii) ensure that it does not do anything or fail to do anything that would cause the Authority to be in breach of the WHS Legislation; and
 - (ix) require that each Building Contract and Subcontract includes provisions equivalent to clauses 30.3(d) and 30.4.
- (c) Without limiting the Developer's obligations under this Agreement, insofar as the Developer, in carrying out the Works, is:
- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the WHS Act applies;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the WHS Act applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
 - (v) a person conducting a business or undertaking that installs, constructions or commissions plant or structures to whom section 26 of the WHS Act applies,

the Developer must comply with the applicable obligations under the WHS Legislation.

30.5 Work Health and Safety Management Plans

- (a) No less than 20 Business Days before the Developer submits a Formal Notice under clause 12.2, it must give a Formal Notice to the Authority:
 - (i) attaching a copy of the proposed Work Health and Safety Management Plan that the Developer will apply in carrying out the relevant Works Component; and
 - (ii) requesting the Authority's comments on the proposed Work Health and Safety Management Plan (if any).
- (b) The Authority may (but is not obliged to) review the proposed Work Health and Safety Management Plan and may (acting reasonably) make comments with respect to the proposed Work Health and Safety Management Plan. The Developer will take into account (but with no obligation to implement) any such comments made by the Authority.

30.6 Workcover NSW WH&S audit

The Developer must:

- (a) co-operate (and procure that the Builders co-operate) with any Workcover NSW WH&S management system audit process; and
- (b) provide (or procure that the Builders provide) access to the Authority to attend the offices of the Developer to inspect a copy of any Workcover NSW WH&S audit report (at the Developer's election) within 5 Business Days of any such audit report being provided to the Developer or the Builder.

30.7 Compliance

- (a) In addition to its other obligations under this Agreement, the Developer must comply with its obligations as a person conducting a business or undertaking that commissions a construction project under Chapter 6 of the WH&S Regulation and procure that the Builders must:
 - (i) comply with, and ensure that all persons for whom they are responsible or over whom they are capable of exercising control while doing the relevant Works comply with, the Work Health and Safety Management Plan and all statutory obligations of the Developer or the Builders, as the case may be;
 - (ii) comply with any reasonable direction of the Authority given following a perceived breach of the WH&S Regulation or the Work Health and Safety Management Plan; and
 - (iii) provide evidence of any approvals, certificates, authorisations, licences prescribed qualifications or experience or any other information relevant to works health and safety matters;
 - (iv) notifies the Authority as soon as reasonably practicable (and in any event within 12 hours of such matter arising, if the Developer, the Builder or any of their subcontractors is issued with a notice letter or information request from any Government agency which is related to any work health safety or rehabilitation matters arising out of or in any way connected to the works.
- (b) The Developer must procure that the Builders must take all measures required under any Law or by any relevant statutory authority to protect people and property on or adjacent to Central Barangaroo and the relevant Works in connection with the execution of those Works.

30.8 Authority may carry out obligations

If the Developer or any Builder, as the case may be, fails to comply with an obligation under this clause 30, then, without limitation, the Authority may exercise its rights under clause 20.

31. Barangaroo Developers' Forum

31.1 Barangaroo Developers' Forum

- (a) If requested by the Authority, the provisions of this clause 31 apply and the parties must form a group (**Barangaroo Developers' Forum**) comprising a number of the following:
 - (i) a representative of the Authority;
 - (ii) a senior management representative of the Developer;
 - (iii) senior management representatives of the developers of other development projects in Barangaroo; and
 - (iv) any other person reasonably required from time to time by the Authority.
- (b) The Developer must appoint a senior management representative of the Developer to attend any meetings held by the Barangaroo Developer's Forum.

31.2 Barangaroo Developers' Forum functions

The functions of the Barangaroo Developers' Forum include:

- (a) strategic planning and co-ordination of the developments in each of the development projects;
- (b) forming advisory policy for the Authority in relation to minimising the conflict between developments in Barangaroo including, without limitation forming policy on:
 - (i) cultural, civic and community space including museums, art galleries, enterprises, key worker housing, low rent accommodation, artist residences, student accommodation, education and community meeting spaces;
 - (ii) restaurants, entertainment and residential developments in Barangaroo to ensure a range of type, style, standard and mix of facilities, cost, target market and image; and
 - (iii) the co-ordination of developments in Barangaroo in accordance with the Objectives; and
- (c) the management and operation of Barangaroo including:
 - (i) the sustainability of, and within, Barangaroo;
 - (ii) traffic and access issues; and
 - (iii) the co-ordination of common Services;
- (d) marketing and promotion of Barangaroo; and
- (e) any other matter reasonably raised by the Authority or any developer.

31.3 Decisions of Barangaroo Developers' Forum

The Developer and the Authority are not bound by any decision of the Barangaroo Developers' Forum unless it has, in writing agreed to be bound.

31.4 Barangaroo Developers' Forum meetings

- (a) The Barangaroo Developers' Forum will meet whenever reasonably required by the Authority.
- (b) If the Developers' representative attends meetings of the Barangaroo Developers' Forum, the Developer must:
 - (i) meet all costs of its personnel and involvement in the Barangaroo Developers' Forum; and
 - (ii) act in good faith with the Authority when dealing with the Barangaroo Developers' Forum.

31.5 Sensitive disclosure not required

The parties acknowledge and agree that participation in the Barangaroo Developers' Forum does not require any representative in attendance to disclose commercially sensitive information to the other representatives.

32. Reporting obligations of Developer

32.1 Reporting Matters

The Developer acknowledges that it has reporting obligations to the Authority in relation to the following matters:

- (a) expenditure on public space;
- (b) expenditure on site remediation for Stage;
- (c) expenditure on Internal Infrastructure for a Stage;
- (d) expenditure and cash flow statements as required under this Agreement;
- (e) Developer's Project performance - periodic management accounts for Developer;
- (f) expenditure on municipal assets;
- (g) Developer's Project performance - periodic audited accounts;
- (h) changes to the Works Programme;
- (i) changes in sources of funding;
- (j) percentage of Central Barangaroo under development;
- (k) development information as documented in this Agreement;
- (l) design information;
- (m) progress in achieving the Construction Licence Conditions Precedent specified in clause 12.1;
- (n) status of work on Internal Infrastructure;
- (o) status of defect rectification works;
- (p) status of road works and Roads and Maritime Services confirmation of acceptability of those works; and
- (q) [REDACTED]

32.2 Maintenance of Reports

The Developer must establish and maintain thorough, clear and accurate Reports, accounts and records for each Reporting Matter which:

- (a) detail all relevant or pertinent figures and information in relation to the Reporting Matter including any information reasonably requested by the Authority in order to verify, clarify or substantiate the quantum of any payment, the scope of any right or obligations, the accuracy of any estimate, representation or notice of the Developer, or any other fact, matter or thing, under this Agreement; and
- (b) keep in an organised fashion all documents, papers, accounts, plans, diagrams and other written, printed and visual material together with any other thing on which information is stored and from which written, printed or visual material can be produced, relevant to the Reporting Matter.

32.3 Reporting obligation

On the date which is [REDACTED] and every 3 months thereafter until and including the date which is 27 months after the Date of Project Practical Completion, the Developer must:

- (a) give a Formal Notice to the Authority:
 - (i) attaching copies of all Reports; and
 - (ii) certifying to the Authority that all Reports provided are accurate, complete and not misleading; and
- (b) permit the Authority and its representatives to have access to the Reports and any material used in the preparation of those Reports;
- (c) permit the Authority, its representatives or any appropriate third party to audit any Report provided such third party agrees to keep all information confidential; and
- (d) provide any further information or material reasonably requested by the Authority, for the purpose of verifying, clarifying or substantiating the quantum of any payment, the scope of any right or obligation, the accuracy of any estimate, representation or notice of the Developer or any other fact, matter or thing, under this Agreement.

32.4 Data format requirements

- (a) The Developer must comply with any data format requirements of the Authority when submitting any Reports or other material to the Authority for the purposes of this clause 32 including (but not limited to):
 - (i) where possible, providing all drawings, plans and designs in both *.pdf and *.dwg formats;
 - (ii) where possible, providing all financial information in *.xls format;
 - (iii) providing a clear index identifying all attachments to any Report and identifying the part of the Report to which the attachment relates (or otherwise specifying the purpose of inclusion of the material);
 - (iv) where possible, the Building Information Modelling System specified by the Authority or such other data system as is approved by the Authority acting reasonably; and
 - (v) setting out an executive summary of the issues addressed in the Report.
- (b) The Authority may add to, amend or update the data format requirements from time to time by giving written notice to the Developer.

33. Insurance and indemnity

33.1 Risk

- (a) The Developer bears the risk of Costs, Loss, liability or damage to:
 - (i) each Block within Central Barangaroo, from the date on which it accesses that Block; and
 - (ii) the Developer's Project, from the date of this Agreement.

- (b) The Developer must at its own cost promptly and fully compensate the Authority for any Costs, Loss, liability and rectify any damage to Central Barangaroo or any improvements on Central Barangaroo while the Developer is responsible for its care, to the satisfaction of the Authority (except in relation to Costs, Loss, liability or damage solely caused by any negligent act or omission of the Authority, its Employees or Agents).

33.2 Obligation to insure the Works

The Developer must effect insurance to cover the Works, whether completed or in progress:

- (a) against Loss, destruction or damage for the full reinstatement and replacement costs;
- (b) to include:
 - (i) claim contingencies covering removal of debris/demolition costs, professional fees and expediting expenses; and
 - (ii) materials associated with the Works whilst in storage off-site and in transit to Central Barangaroo; and
- (c) in the joint names of the Authority, the Developer, its principal building contractor and all sub-contractors and, where appropriate, TfNSW (together **the Insured**) for their respective rights and interests.

33.3 Obligation to insure for public liability

The Developer must effect insurance (in the joint names of the Insured) with a limit of at least the amount set out in Annexure H for any one occurrence, to cover:

- (a) personal injury to, or the death of any person (excluding a person who at the time of the injury or death is defined as a worker of the Insured under any statute relating to workers' or accident compensation insurance); and
- (b) Loss, destruction or damage to any property (other than the Works),

which arises out of or is caused by the execution of the Works.

33.4 Obligation to insure for workers' compensation

The Developer must effect workers' compensation insurance covering:

- (a) any liability, Loss, Claim or proceeding whatsoever, whether arising by virtue of any statute relating to workers' compensation insurance, accident compensation legislation, employer's liability, or at common law, by any person employed by the Developer for the purpose of executing the Works; and
- (b) unless otherwise limited by statute:
 - (i) the insurance will include a condition stating cover extends to indemnify the Authority as principal; and
 - (ii) the liability provided by this insurance must be for an unlimited amount.

33.5 Obligation to insure motor vehicle liabilities

The Developer must effect motor vehicle liability insurance covering liability for personal injury to, or the death of, any person, and for Loss or damage to property, caused by the Developer's ownership and/or any motor vehicle in connection with the Works. Unless otherwise limited by

statute, the liability provided by this insurance must at least be the amount set out in Annexure H for any one occurrence. This insurance must also extend to include a condition stating cover extends to indemnify the Authority as principal.

33.6 Obligation to insure against professional negligence

- (a) The Developer must effect professional indemnity insurance with a limit of indemnity at least the amount set out in Annexure H indemnifying the Developer for a breach of professional duty, whether owed in contract or otherwise, by reason of any act, error or omission by the Developer or its Employees and Agents or consultants which results from the discharge of professional responsibilities assumed for the project under this Agreement.
- (b) The insurance must provide cover from the date the Developer's consultants first commenced their professional activities for the project, and must include cover for breach of trade practices and/or fair trading act, Costs, Loss, defamation and libel and slander, and provide one automatic reinstatement of the limit of indemnity.

33.7 Periods of insurance

The insurances referred to in clauses 33.2, 33.3, 33.4, 33.5 and 33.6 must be:

- (a) in force at the date of occupation or possession of any part of Central Barangaroo by the Developer; and
- (b) maintained effective:
 - (i) in respect of professional indemnity, until seven years after the date on which Project Practical Completion is reached; and
 - (ii) in respect of damage to the Works' public liability, workers' compensation and motor vehicle liability, until the date which is 6 months after the date on which Project Practical Completion is reached.

33.8 Insurers and policies

- (a) The Developer must effect the insurances required under the preceding provisions of this clause 33:
 - (i) on terms and conditions agreed by the Authority and the Developer, or failing such agreement, as are reasonably required by the Authority;
 - (ii) with insurers approved by the Authority;
 - (iii) maintain those insurances in full force and effect for the relevant periods described in clauses 33.6 and 33.7;
 - (iv) deposit with the Authority, from the date on which the relevant insurances are required under this Agreement to be effected, certificates evidencing the currency of the required insurances, and certified copies of the policy documents (except in relation to professional indemnity insurance policies required under clause 33.6 where only certificates of currency of insurance will be required) not later than 60 days thereafter; and
 - (v) for any insurance subject to renewal or extension throughout the term of this Agreement, deposit with the Authority a certificate of currency evidencing the currency of the renewal or extension thereof, not later than ten days after.

- (b) If the Developer fails to comply with clause 33.8(a), the Authority may itself effect any insurance to which such failure relates and the premiums payable will be a debt by the Developer to the Authority.
- (c) The Developer must ensure that each policy of insurance contains a provision requiring the insurer to inform the Authority in writing if a notice of cancellation in respect of the policy has been given to the Developer.
- (d) The Developer must not materially alter any insurance policy throughout the term of this Agreement, unless the prior agreement to do so has been obtained from the Authority.
- (e) The Authority reserves the right to require the Developer to effect additional insurance, from time to time throughout the term of this Agreement where a reasonable requirement to do so can be demonstrated.
- (f) Where requested by the Authority in writing, the Developer must provide written proof of its compliance with its obligations under this clause 33 (except clause 33.10) to the Authority within 10 Business Days after that request is made.

33.9 Cross liability

- (a) Where insurance is effected in joint names, the Developer must ensure the policy provides that all conditions, agreements and endorsements (with the exception of limits of liability or indemnity) operate as if there was a separate policy of insurance, covering each of the Insured.
- (b) The Developer must ensure that each policy provides that:
 - (i) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any of the parties comprising the Insured; and
 - (ii) failure by any Insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other Insured.

33.10 Indemnity

The Developer indemnifies each of the Authority and the State against, and must pay each of the Authority and the State on demand the amount of all Loss, liabilities, Costs or other detriment and expenses (including legal expenses on a full indemnity basis) directly or indirectly arising from or in connection with:

- (a) the execution of the Works or from the performance or non-performance of this Agreement and which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;
- (b) any injury, Loss or damage to any property (real or personal and including existing property on which the Works are being carried out on development projects or development land outside Central Barangaroo which is part of the Developer's Project or to any third parties caused or contributed to by any thing arising out of or connected with the Developer's Project or which is the result of improper behaviour or a breach of the Project Documents by the Developer) and which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;
- (c) any personal injury to or death of any person occurring, in relation to a Block, after the date on which the Authority has provided a Construction Licence to the Developer pursuant to clause 13.2 in relation to that Block and which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;

- (d) any personal injury to or death of any person occurring in relation to a Block whether or not a Construction Licence has been granted in relation to that Block, where the death or injury was caused by a negligent act or omission of the Developer or its Employees and Agents;
- (e) any Pollution Incident arising in connection with the Developer's Project which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;
- (f) the occurrence, cure and attempted cure of any Default Event and which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;
- (g) the administration, enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Agreement or any other Project Document and which is not caused directly by a negligent act or omission of the Authority or its Employees and Agents;
- (h) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement or any other Project Document;
- (i) any claim whatsoever under the *Native Title Act 1993* or a native title law of the State in relation to Central Barangaroo or the Developer's Project; and
- (j) a breach by the Developer of its obligations under this Agreement.

34. Practical completion

34.1 Notice of anticipated Practical Completion of a Works Component

In respect of each Works Component:

- (a) at least 4 months prior to the date which the Developer reasonably anticipates to be the date when Practical Completion of a Works Component will be achieved, the Developer must request the Independent Certifier to assess the likely date on which Practical Completion of that Works Component will be reached; and
- (b) after having made an assessment, the Independent Certifier must give a notice to both the Authority and the Developer, certifying the date on which the Independent Certifier reasonably anticipates that Practical Completion of that Works Component will be reached in respect of that Works Component (**Anticipated Date of Practical Completion**).

34.2 Requesting certificate of Practical Completion of a Works Component

When the Developer is of the opinion that Practical Completion of a Works Component has been reached, the Developer must:

- (a) request the Independent Certifier to issue a certificate confirming that:
 - (i) the Independent Certifier is satisfied that all Works in respect of the relevant Works Component have been carried out in accordance with the Approved Design Documents at the level of the Developed Design Documentation for those Works and where applicable, Tender Documentation and Issued for Construction Drawings, Approvals and the Developer's obligations under this Agreement;
 - (ii) the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any reinstatement and rectification of:

- A. Central Barangaroo (in respect of the relevant Works Component); and
- B. any part of Barangaroo; and
- C. any infrastructure,

required as a result of the Developer carrying out the Works in respect of the relevant Works Component;

- (iii) all compliance reports relevant to the Works in respect of the relevant Works Component have been delivered to the relevant Consent Authority;
- (iv) the Works in respect of the relevant Works Component are fit for purpose and capable of being lawfully used and occupied for their intended purpose with the consent of all relevant public authorities, excluding any further or additional requirement which may be imposed in connection with any further development within the relevant Works Component (including in connection with any fit-out works being undertaken by a tenant or a subtenant of a building within the relevant Works Component) after an interim Occupation Certificate has been issued in relation to each building within the relevant Works Component;
- (v) the Plans of Subdivision have been registered which are relevant for those parts of Central Barangaroo on which the Works in respect of the relevant Works Component have been constructed;
- (vi) that all conditions required to achieve Practical Completion (as relevant to the type of Works Component being carried out) have been reached in respect of the relevant Works Component;
- (vii) a current Sustainability Certificate prepared in respect of the relevant Works Component has been provided to the Independent Certifier which complies with the requirements of this Agreement (insofar as it contains the necessary materials and certifications as required under this Agreement); and
- (viii) measured performance data through the construction phase to the extent relevant to the Sustainability Obligations applicable to the Works Component in the CPW; and

- (b) at the same time give the Authority a copy of that request.

34.3 Independent Certifier to certify Practical Completion

In respect of a Works Component, within 5 Business Days after the receipt of the Developer's request under clause 34.2, the Independent Certifier must give the Developer (with a copy to the Authority at the same time) either:

- (a) a certificate confirming that Practical Completion has been reached in relation to that Works Component; or
- (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for that certificate to be issued.

34.4 Carrying out required work for Practical Completion

On receipt of the detailed list referred to in clause 34.3(b), the Developer must carry out the work referred to in that list and, on completion of that work, request the Independent Certifier

to issue a certificate confirming that Practical Completion has been reached in respect of the relevant Works Component, and clause 34.3, and this clause 34.4 will re-apply until the Independent Certifier issues the Certificate of Practical Completion for the relevant Works Component.

34.5 Notice of Practical Completion

In respect of each Works Component, Practical Completion is deemed to have occurred (and the 'Date of Stage Practical Completion', 'Date of Block Practical Completion', 'Date of Retail Final Completion' or 'Date of Project Practical Completion' as applicable to the relevant Works Component arises) on the day so certified by the Independent Certifier. The Developer must promptly issue to the Authority a Formal Notice from the Developer:

- (a) attaching a certificate issued by the Independent Certifier (pursuant to clause 34.3(a)) confirming that Practical Completion has been reached in respect of that Works Component; and
- (b) confirming that all Works and all obligations of the Developer in respect of that Works Component have been completed in accordance with this Agreement.

34.6 Occupation

The Developer covenants that no Works Component will be occupied or available for human use until the Date of Practical Completion has been reached in respect of that Works Component.

34.7 Documentation

Within a reasonable time after the Date of Practical Completion of a Works Component, the Developer must deliver to the Authority all operating manuals, warranties, guarantees, as built drawings and other documents and information which, in the opinion of the Independent Certifier, are necessary for the use and occupation of the Public Domain Works in relation to that Works Component.

34.8 Final Certificate

The provisions of clauses 34.2 to 34.7 as they apply to Practical Completion of a Works Component apply *mutatis mutandis* to the issue of the Final Certificate in relation to a Works Component as if the reference in those clauses to:

- (a) the Certificate of Practical Completion were a reference to the Final Certificate; and
- (b) the reference to Practical Completion were a reference to Final Completion.

35. Subdivision of Central Barangaroo and Building Management

35.1 Obligation to Subdivide

Before the Date of Practical Completion of a Stage, the Developer must procure a subdivision of Central Barangaroo in accordance with this clause 35.

35.2 Fundamental Requirements

In respect of a Stage, the Developer acknowledges that the Authority requires as a necessary condition of subdividing Central Barangaroo (as applicable to that Stage):

- (a) that a single management body be created to manage and administer the Premises the subject of the relevant Works Component (including without limitation, common

areas or facilities, building use and other standards, cost apportionments for common areas and facilities and insurances);

- (b) (if applicable) the Tenant under the relevant Lease to be granted (if the relevant Put Offer or Call Offer is accepted) (as applicable to the land the subject of that Stage) must become a member of the management body and be bound to comply (for themselves and their tenants) with the document constituting that management body; and
- (c) the document constituting the management body must be registered (or become binding) on or before the Date of Practical Completion of that Stage.

35.3 Satisfaction of Fundamental Requirements

- (a) In respect of a Stage, the Authority and the Developer agree that the Authority's requirements in clause 35.2 will be satisfied by:
 - (i) in the case of strata subdivision of Central Barangaroo or part of it under the Strata Leasehold Act (as applicable to the land the subject of that Stage) for a building which is to be used predominantly for residential purposes - on the registration of the Strata Management Statement; or
 - (ii) in every other case (including, but not limited to a strata subdivision of Central Barangaroo or part of it, which is to be used for a commercial, retail or other non-residential purpose) - on execution and delivery of the Stratum Documents in a form acceptable to the Authority, acting reasonably, including the preparation of appropriately adapted leases (substantially in the form of the Standard Form Stratum Lease) having regard to the strata subdivision.
- (b) The Stratum Documents governing any Stage must contain, inter alia, the principles set out in the BMS Key Principles.

35.4 Notice by Developer

- (a) At least 12 months before the Anticipated Date of Practical Completion of a Stage, the Developer must give a Formal Notice to the Authority, outlining the manner in which Central Barangaroo will be subdivided for that Stage.
- (b) The Developer must, in any Formal Notice given under clause 35.4(a), also notify the Authority, if the Developer proposes to carry out a subdivision option which:
 - (i) relates to a strata subdivision of any part of Central Barangaroo, of the general nature of the strata leasehold scheme the Developer proposes to create;
 - (ii) relates to a stratum subdivision of the whole or any part of Central Barangaroo, of the general nature of the stratum lots to be created and which parts of the improvements they will comprise;
 - (iii) relates to a strata subdivision and a stratum subdivision of the whole or any part of Central Barangaroo, of the general nature of the strata leasehold scheme the Developer proposes to create, the general nature of the stratum lots to be created and which parts of the improvements they will comprise; or
 - (iv) incorporates a lot which contains infrastructure which is proposed to service or be used by other lots within that Stage or other stages but does not contain any part of the Retail Component, Residential Component or Office Component (**Infrastructure Lot**) and setting out

the details of the long term leasehold ownership (noting that the Authority will retain only the reversionary interest in the freehold lot comprising any such Infrastructure Lot being the subject of a long term lease), governance structure and costs allocation in relation to that infrastructure, noting that the Authority is not obliged to accept any obligation to pay any capital or operating costs, in relation to such infrastructure, but noting that the Authority may be required to pay:

- A. usage charges where it is the recipient of services provided by such infrastructure for the purposes of the Public Domain pursuant to a services agreement with a third party; or
- B. a contribution towards outgoings and applicable levies required pursuant to a building management statement or strata management statement (on account of the capital costs associated with the replacement or upgrade of such infrastructure) where the relevant infrastructure is owned as a shared facility under a building management statement or strata management statement and where the Authority is the recipient of services under the building management statement or strata management statement for the precinct.

(c) The Developer must, no later than 60 Business Days after giving a notice under clause 35.4(a), provide the following draft documents to the Authority (if required):

- (i) each Lease (amended as necessary to reflect the nature of the development);
- (ii) By-Law Instrument; and
- (iii) any other document required:
 - A. to enable the Plan of Subdivision to be registered; or
 - B. pursuant to any Law; and
- (iv) details of the ownership (noting that the Authority will not retain ownership of such an Infrastructure Lot), governance structure and costs allocation in relation to that infrastructure, noting that the Authority is not obliged to accept any obligation to pay any capital or operating costs, in relation to such infrastructure, but noting that the Authority may be required to pay:
 - A. usage charges where it is the recipient of services provided by such infrastructure for the purposes of the Public Domain pursuant to a services agreement with a third party; or
 - B. a contribution towards outgoings and applicable levies required pursuant to a building management statement or strata management statement (on account of the capital costs associated with the replacement or upgrade of such infrastructure) where the relevant infrastructure is owned as a shared facility under a building management statement or strata management statement and where the Authority is the recipient of services under the building management statement or strata management statement for the precinct,

the terms of which must be reasonable (having regard to the nature of the development) except to the extent that the provisions of the instrument relate to risk to, or liabilities of, the Authority, and in such instance, those provisions may be determined by the Authority in its sole discretion.

- (d) In relation to any stratum subdivision the Developer must, no later than 5 Business Days after receipt by the Authority of the Developer's notice under clause 35.4(a) provide draft Stratum Documents to the Authority.

35.5 Preparation of Plan

The Developer must:

- (a) engage the Surveyor to prepare any Plan of Subdivision;
- (b) keep the Authority informed as to progress in preparing drafts of a Plan of Subdivision and submit drafts of them (or any documents to be registered with them) on a regular basis with amendments clearly identified;
- (c) consult with the Authority and take into account any comments, suggestions or objections which the Authority may make in respect of the draft plans or documents;
- (d) in consultation with the Authority, prepare, and obtain the Authority's approval (acting reasonably) to:
 - (i) the Strata Documents (with all applicable Leases being based on the documents provided by the Developer to the Authority under clause 35.4(b)(iv)) which must include by laws for the use of improvements for inclusion in the relevant documentation and those of the matters set out in clause 35.5(d)(ii) which are applicable to a strata leasehold scheme; or
 - (ii) in the case of subdivision which will not involve subdivision under the Strata Leasehold Act, but which will involve a stratum subdivision, the Stratum Documents, which, without limitation, must address the following matters:
 - A. management of improvements;
 - B. garbage disposal;
 - C. maintenance of improvements (including the appearance and presentation of the improvements in relation to the interface of the improvements with the Public Domain);
 - D. use and protection of any Public Domain areas;
 - E. signage;
 - F. landscape and architectural standards;
 - G. any modifications and alterations to the relevant buildings; and
 - H. (without in any way limiting the obligations which a Tenant has under any Lease):
 - 1) complying with the CPW;
 - 2) achieving or exceeding the:
 - a) Sustainability Obligations;
 - b) Social Outcomes; and

c) Carbon Neutral Obligations;

- (e) amend the documents provided under clause 35.5(d) as requested by the Authority, acting reasonably, having regard to the nature and effect of the subdivision proposed and the Authority's requirements as set out in the Leases provided under clause 35.4(b)(iv);
- (f) finalise the necessary Plans of Subdivision (and other documents referred to in this clause) having taken into account any reasonable comments, suggestions or objections which the Authority has made;
- (g) at least 2 months before the Anticipated Date of Practical Completion of a Stage, give a Formal Notice to the Authority:
 - (i) attaching drafts of all necessary:
 - A. Plans of Subdivision;
 - B. easement instruments; and
 - C. (where applicable) Strata Documents,
 as applicable to the land the subject of that Stage; and
 - (ii) requesting the Authority's approval of those draft documents, which approval shall not be unreasonably delayed; and
- (h) at least 20 Business Days prior to the Developer submitting the relevant Plans of Subdivision to the Consent Authority for its approval, give a Formal Notice to the Authority:
 - (i) attaching the final draft of the relevant Plans of Subdivision (and other documents provided under clause 35.5(g), amended or updated as necessary taking into account any comments of the Authority), in the identical form as proposed to be lodged with the Consent Authority; and
 - (ii) requesting the Authority's approval to submit those documents to the Consent Authority.

If the Authority does not approve the final drafts of the relevant Plans of Subdivision (or other documents referred to in this clause) within 20 Business Days of receipt of a Formal Notice requesting approval of any such plan or other documents (as applicable), then the matter will be deemed to be a dispute for the purposes of clause 48 and the provisions of that clause will apply.

35.6 Consent to Plans

The Developer must obtain the consent of the Authority to each Plan of Subdivision as set out in clause 35.5. The Authority may withhold its consent (acting reasonably) if:

- (a) the boundaries of the lots described in the relevant draft Plan of Subdivision do not, where appropriate, follow the external vertical planes of the improvements on the Premises;
- (b) the Works are not sufficiently advanced to achieve accurate boundary definitions of the various components of the Premises and the improvements;
- (c) a Plan of Subdivision for strata subdivision under the Strata Leasehold Act is not accompanied by the Strata Documents approved by the Authority;

- (d) a Plan of Subdivision for a stratum subdivision is not accompanied by the Stratum Documents approved by the Authority;
- (e) a Plan of Subdivision is not accompanied by an easement instrument setting out appropriate easements, covenants or restrictions having regard to the nature and effect of the particular subdivision and requirements of the Authority or any Public Authorities;
- (f) the proposed subdivision will not satisfy the requirements of clause 35.3 or the Developer has failed to comply with clause 35.5;
- (g) the Authority is not satisfied, acting reasonably, in relation to the ownership governance or cost allocation arrangement in relation to any Infrastructure Lot; or
- (h) [REDACTED]

35.7 Registration of Plan

If:

- (a) the Developer has complied with this clause 35;
- (b) the relevant Plan of Subdivision has been approved by the Consent Authority; and
- (c) in the case of a strata subdivision, all requirements for Stage Practical Completion of the Works for the relevant Premises (other than registration of the Plan of Subdivision) have been achieved,

the Authority must (at its Cost) promptly produce, at LPI, the certificates of title for the land to be subdivided to enable the Developer to lodge and register that Plan of Subdivision (and other documents referred to in this clause) at LPI.

35.8 Authority's entitlement to grant easements over Central Barangaroo

- (a) The Authority may at any time grant easements and other rights over Central Barangaroo and restrictions on use burdening Central Barangaroo (Encumbrances) provided that:
 - (i) the proposed Encumbrance does not materially and adversely interfere with:
 - A. the Developer's rights or obligations under this Agreement; or
 - B. a potential Tenant's rights under a Lease; or

(ii)

[REDACTED]

[REDACTED]

[REDACTED]

(iii)

the Authority notifies the Developer of its intention to grant the Encumbrance, giving reasonable details of the proposed location and terms of the Encumbrance.

- (b) If the Developer reasonably believes that additional Costs have been or will be incurred or a delay has been or will be occasioned in carrying out a Stage by reason of any such Encumbrance, the Developer may, within 20 Business Days of the Authority's notice, give a Formal Notice to the Authority:
- (i) requesting compensation for the quantified Costs incurred (or reasonably anticipated to be incurred) as a result of the proposed Encumbrance other than in respect of any Encumbrances referred to in clause 35.8(a)(ii)A;
 - (ii) detailing what that the potential impact (in time and/or Costs) is likely to result from that Encumbrance; and
 - (iii) giving sufficient detail for the Authority to assess the reasonableness of the request and the Costs.
- (c) The Authority must within 10 Business Days of receipt of a Formal Notice from the Developer under clause 35.8(b), notify the Developer whether it accepts or disputes the claim. Any such dispute will be resolved in accordance with clause 48.
- (d) Any amount that becomes payable by the Authority to the Developer under this clause 35.8 must be paid by the Authority to the Developer within 15 Business Days of the later of:
- (i) the amount of the Costs being agreed by the Authority or determined pursuant to clause 48; and
 - (ii) the grant of the Encumbrance.
- (e) [REDACTED]
- (f) Subject to clause 35.8(g), the Developer acknowledges it will have no right to make any claims on the Authority or any other person in respect of any Costs, liabilities or damage incurred or suffered by reason of the creation of any Encumbrance other than as set out in the Formal Notice from the Developer under clause 35.8(b).
- (g) Nothing in clause 35.8(e) prevents the Developer from making a further claim against the Authority arising from the Encumbrances, where there is a change to the nature or scope of the Developer's Project after the creation of the Encumbrance which is initiated by the Authority.

35.9 Authority's entitlement for easements to benefit the Public Domain

- (a) Despite clause 35.8, the Authority may at any time grant easements and other rights over Central Barangaroo (even where the land burdened will be the subject of a Lease) and restrictions on use burdening Central Barangaroo (**Encumbrances**) where such easements or other rights are reasonably required having regard to plant, equipment and other infrastructure located on Central Barangaroo which is intended to service or provide services to the Public Domain.
- (b) The Developer agrees to pay all costs reasonably incurred by the Authority with respect to the grant of such Encumbrances and to do all things reasonably required by the Authority to facilitate the creation and registration of such Encumbrances and to ensure that the rights of the Tenant any relevant Lease will be subject to that Encumbrance.

- (c) Wherever possible, such Encumbrances will be created and registered prior to the grant of any Leases (pursuant to clauses 37 or 38) on the basis the grant of those Leases will be subject to the Authority's rights under those Encumbrances.
- (d) The Developer agrees to use reasonable endeavours to ensure the need for all Encumbrances is identified and advised in writing to the Authority prior to the grant of any relevant Leases (pursuant to clauses 37 or 38), and do all things reasonably required to ensure those Encumbrances are created and registered prior to the grant of any relevant Lease pursuant to clauses 37 or 38.
- (e) Without prejudice to the terms of any Leases, the Authority and the Developer acknowledge and agree that this clause does not apply after the date on which a Final Certificate has been issued in respect of Foreshore Block South.

35.10 Registration of Easements

The Developer must at the Cost of the Developer co-operate with the Authority and do all things necessary to cause the easements referred to in clauses 35.8 and 35.9 to be registered on the folio of the register for the Premises as soon as reasonably practicable on or before the registration of the relevant Plans of Subdivision.

35.11 Binding Nature of Easements

- (a) Subject to the relevant Call Offer or the Put Offer being accepted, the Developer acknowledges and agrees that the relevant tenant, licensee or occupier will be bound (or will be bound on registration of the easements) by the terms of the easements and any lease, licence or other right of occupation granted by the Developer in respect of the Premises and the improvements must contain an acknowledgment from the tenant, licensee or occupier that it is bound by the terms of the easements to be granted under clauses 35.8 and 35.9 and 35.10.
- (b) The Developer must ensure that the restrictions, stipulations, easements and covenants noted on the folio of the register (as at the date of this Agreement) for Central Barangaroo and the Encumbrances are observed or performed by any person who occupies the Construction Licence area, as if that person were the registered proprietor of that premises. The Developer and any person who occupies the Construction Licence area must not interfere with the Authority's performance of those restrictions, rights, stipulations, easements and covenants as registered proprietor of Central Barangaroo.
- (c) The Developer indemnifies the Authority against any liability or loss arising from, and any costs incurred in connection with, a breach by the Developer of any of the provisions of any such restrictions, stipulations, easements and covenants, except to the extent the liability, loss or costs arises from the reckless or wrongful act of the Authority or the Authority's Employees and Agents.

35.12 Staged Subdivision

If the Developer subdivides part of Central Barangaroo under the Strata Leasehold Act, it must do all things reasonably necessary to ensure that a further subdivision under that Act in relation to Central Barangaroo can be effected, including without limitation procuring from each Owners Corporation created under the Strata Leasehold Act a certificate of support under section 57E(1)(a) of the Strata Leasehold Act for registration of a short form strata management statement as contemplated by approved Form 28 under sections 57A-57F of the Strata Leasehold Act.

35.13 Owners Corporation and Objectives

The Developer must procure that the strata schemes created in relation to buildings erected on Central Barangaroo in accordance with this Agreement are established in a way which is

designed to ensure that the strata scheme is operated and used in a way which is consistent with the Objectives.

36. Early Activation

36.1 Amendment to Early Activation Area

- (a) The Developer may issue a Formal Notice to the Authority requesting the Authority's approval that the Early Activation Area be amended and such notice must set out:
 - (i) the proposed area of the Early Activation Area showing the proposed changes in mark-up; and
 - (ii) the reasons for the changes (including, but not limited to, any issues of safety, ingress and egress in relation to the surrounding areas).
- (b) Within 20 Business Days after receipt of a Formal Notice requesting an amendment to the Early Activation Area, the Authority must, acting reasonably, approve or reject the proposed amendment and give notice to the Developer of its determination. In making its determination the Authority must take into account any issues of safety, ingress and egress in relation to the surrounding areas.
- (c) If the Authority approves an amendment to the Early Activation Area, the amended area so approved is the Early Activation Area for the purposes of this clause 36.

36.2 Configuration and design of Early Activation Area

- (a) The Developer must issue a Formal Notice to the Authority, by the dates specified in clause 36.2(b) specifying details of:
 - (i) the configuration of the proposed tenancies within the Early Activation Area showing the Public Domain Licensed Area and the Building Licensed Area (as defined in the Early Activation Licence) for the relevant Block and indicatively shown in the Early Activation Plan;
 - (ii) the proposed design and scope of the works to be undertaken by the Developer:
 - A. to achieve the Early Activation Standard for the relevant Block; and
 - B. in relation to any fit out works which are required to enable the Early Activation Area to be used for the proposed 'Early Activation Trade';
 - (iii) the proposed 'Early Activation Trade' to be carried out within the Early Activation Area and which must provide for the early activation of the ground plane retail contemplated, as at the date of this Agreement, to consist of any number of retail offers including daily needs and services, food retail, food catering (dine in and take-away), gift, variety merchandise, homewares, financial and other services and fashion apparel and ancillary uses which provide temporary or permanent amenity to Central Barangaroo occupants and visitors; and
 - (iv) the 'Trading Hours' proposed for the tenancies within the Early Activation Area.
- (b) Despite the provisions of this clause 36, the parties acknowledge and agree that:

- (i) in relation to the Early Activation of Block 7, the Developer may accept separate Early Activation Call Offers in relation to the "Block 7 Licensed Area 01" and "Block 7 Licensed Area 02" (both as shown on the Early Activation Plan) in accordance with this clause 36, and in relation to the Early Activation Licences granted in respect of the acceptance of those Early Activation Call Offers, the Developer is not obliged to comply with:

A. clause 36.2(a) in relation to the:

1)



2) "Block 7 Licensed Area 02" (as shown on the Early Activation Plan), until the date that is six months prior to the anticipated date of Stage Practical Completion in respect of Block 7 Stage 4; and

B. the Early Activation Conditions in respect of the Early Activation Licence granted in relation to the:

1)



2) "Block 7 Licensed Area 02", until the date which is 20 Business Days after the Date of Stage Practical Completion in respect of Block 7 Stage 4; and

- (ii) in relation to the Early Activation of Block 6, the Developer may accept an Early Activation Call Offer in relation to the "Block 6 Licensed Area" as shown on the Early Activation Plan in accordance with this clause 36, and in relation to the Early Activation Call Area in Block 6, the Developer is not obliged to comply with:

A. clause 36.2(a) in relation to the "Block 6 Licensed Area" as shown on the Early Activation Plan until the date that is six months prior to the anticipated date of Stage Practical Completion in respect of Block 6 Stage 3; and

B. the Early Activation Conditions in respect of the Early Activation Licence granted in relation to the "Block 6 Licensed Area", until the date which is 20 Business Days after the Date of Stage Practical Completion in respect of Block 6 Stage 3;

- (c) Within 20 Business Days after receipt of a Formal Notice given pursuant to clause 36.2(a), the Authority must, acting reasonably, approve or reject the matters that are the subject of the Formal Notice but only on the basis that any of those matters are inconsistent with the provisions of clause 36.2(a)(iii). For each item the Authority rejects, the Authority must provide reasons and, where possible a suggestion for an alternative that may be acceptable to the Authority.
- (d) Within 5 Business Days after receipt of a notice given pursuant to clause 36.2(c) which rejects one or more items, the Developer must submit a further Formal Notice otherwise in accordance with clause 36.2(a) and amended to take into account the Authority's comments contained in the notice given under clause 36.2(c).
- (e) Within 20 Business Days after receipt of a Formal Notice given pursuant to clause 36.2(d), the Authority must, acting reasonably, approve or reject each item of the matters that are the subject of the Formal Notice. For each item the Authority rejects, the Authority must advise an alternative that would be acceptable to the Authority.
- (f) Within 5 Business Days after receipt of a notice given pursuant to clause 36.2(e) which rejects one or more items, the Developer must either:
 - (i) submit a further Formal Notice otherwise in accordance with clause 36.2(a) amended to adopt the Authority's comments contained in the Formal Notice given under clause 36.2(d), or
 - (ii) submit a notice of dispute in accordance with clause 48.
- (g) Where the Developer does not submit a notice as required by clause 36.2(e), the details set out in clause 36.2(a) inclusive are deemed to have been amended as specified in the Formal Notice given by the Authority under clause 36.2(d).
- (h) No later than one month before each Anticipated Date of Practical Completion in respect of the first Stage in each of Block 6 and Block 7 expected to achieve Stage Practical Completion, the Developer must issue a Formal Notice to the Authority specifying details of the proposed scope of the tenancy fit out for the proposed tenancies in the Early Activation Area for the relevant Block.

36.3 Early Activation Call Offers granted

- (a) In respect of each Early Activation Area, the Authority makes an offer to the Developer to license each Early Activation Area to the Developer on the terms set out in this clause 36.3 and clause 36.4.
- (b) Each Early Activation Call Offer is an irrevocable offer by the Authority to the Developer:
 - (i) to enter into the Early Activation Licence for the relevant Early Activation Area with the Developer (as licensee); and
 - (ii) which may only be accepted by the Developer in accordance with the provisions of this Agreement.
- (c) If the Early Activation Call Offer in respect of an Early Activation Area is not accepted by the expiry of the Early Activation Call Offer Period applicable to that Early Activation Area, that Early Activation Call Offer lapses.

36.4 Accepting the Early Activation Call Offer

The Early Activation Call Offer may be accepted only:

- (a) during the relevant Early Activation Call Offer Period;
- (b) if the Developer is not in breach of any of its obligations:
 - (i) to pay any amounts which have become due and payable under this Agreement including any amounts under clause 5 being:
 - A. the Development Rights Fees;
 - B. the Urban Art Contribution;
 - C. the Developer Contribution; and
 - D. any interest or other amounts payable pursuant to clause 5; or
 - (ii) to provide the Performance Security (and any replacement Performance Security pursuant to clause 14.3); or
 - (iii) to provide all relevant Public Benefit Contributions which are required to be provided in accordance with the Public Benefit Delivery Cashflow as at the date of acceptance of the Early Activation Call Offer;
- (c) if this Agreement has not terminated;
- (d) by delivering to the Authority at the Authority's Solicitors' address a Formal Notice:
 - (i) attaching the Notice of Acceptance of Early Activation Call Offer signed by the Developer;
 - (ii) subject to clause 36.7, attaching the Early Activation Licence in duplicate executed by the Developer and completed by the insertion of:
 - A. the applicable Early Activation Area;
 - B. the commencing date of the Early Activation Licence, being the date of acceptance of the relevant Early Activation Call Offer in accordance with this clause 36.4; and
 - C. such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Early Activation Licence;
 - (iii) a copy of a certificate by the Independent Certifier certifying that Stage Practical Completion has occurred in relation to the Office Component or the Residential Component within the Block of which part of the Early Activation Area forms part;
 - (iv) evidence of insurance (including copies of any insurance policies) as required to be provided under the Early Activation Licence;
 - (v) attaching a certification addressed to the Authority by the Developer's Solicitor that the Early Activation Licence is in accordance with the terms of this Agreement; and
 - (vi) providing anything else the Early Activation Licence requires the licensee to deliver to the licensor on or before the commencing date of the Early Activation Licence.

36.5 Early Activation Put Offer granted

- (a) In respect of each Early Activation Area, the Developer makes an offer to the Authority to require the Developer to license each Early Activation Area on the terms set out in this clause 36.5 and clause 36.6.
- (b) Each Early Activation Put Offer is an irrecoverable offer by the Developer:
 - (i) to enter into a binding Early Activation Licence of the relevant Early Activation Area as licensee; and
 - (ii) which may only be accepted by the Authority in accordance with the provisions of this Agreement.
- (c) If an Early Activation Put Offer is not accepted by the expiry of the Early Activation Put Offer Period applicable to that Early Activation Put Offer, that Early Activation Put Offer lapses.

36.6 Accepting the Early Activation Put Offer

Each Early Activation Put Offer may be accepted only:

- (a) during the Early Activation Put Offer Period applicable to that Early Activation Put Offer;
- (b) if this Agreement has not been terminated;
- (c) if the Early Activation Call Offer corresponding to that Early Activation Put Offer has not been accepted in accordance with clauses 36.3 and 36.4;
- (d) by the Authority delivering to the Developer at the Developer's Solicitors' address:
 - (i) the Notice of Acceptance of Early Activation Put Offer signed by the Authority;
 - (ii) a copy of a certificate by the Independent Certifier certifying that Stage Practical Completion has occurred in relation to the Office Component or the Residential Component within the Block of which part of the Early Activation Area forms part;
 - (iii) the Early Activation Licence in duplicate executed by the Authority as licensor completed by the insertion of:
 - A. the applicable Early Activation Area;
 - B. the commencing date of the Early Activation Licence being the date of acceptance of the relevant Early Activation Put Offer;
 - C. such of the details, additions or alterations as may be necessary to complete and (if applicable) stamp the Early Activation Licence,

and within 10 Business Days after receipt of the Notice of Acceptance of the Early Activation Put Offer, the Developer must provide:

- (iv) evidence of insurance (including copies of any insurance policies) as required to be provided under the Early Activation Licence; and

- (v) anything else the Early Activation Licence requires the licensee to deliver to the licensor on or before the commencing date of the Early Activation Licence.

36.7 Early Activation Licence binding

If the Developer accepts an Early Activation Call Offer in accordance with clause 36.4, or the Authority accepts an Early Activation Put Offer in accordance with 36.6, then at the time the items set out in that clause 36.4(d) or 36.6(d), as applicable, are delivered to the relevant party, the Early Activation Licence in relation to the relevant Early Activation Area is deemed to have come into existence and is binding on the Authority (as licensor) and the Developer (as licensee) from the relevant commencement date, as if both the Authority and the Developer had executed the Early Activation Licence at that time.

36.8 Counterpart Documents

- (a) The Authority must deliver to the Developer, within 5 Business Days after the relevant Early Activation Call Offer is accepted, a counterpart of the Early Activation Licence executed by the Authority.
- (b) The Developer must deliver to the Authority, within 5 Business Days after receipt of the Notice of Acceptance of the Early Activation Put Offer, a counterpart of the Early Activation Licence executed by the Developer.

36.9 Termination of Early Activation Licence

- (a) If an Early Activation Licence terminates, the Early Activation Area that is subject to the relevant Early Activation Licence will revert to form part of the licensed area of a Construction Licence relevant to the Block of which the Early Activation Area forms part, provided that Construction Licence remains on foot.
- (b) Without prejudice to any of its obligations under this clause 36, despite the grant of a Lease of part of the Retail Component prior to the Date of Retail Final Completion, the Developer must, where clause 6 of Schedule 5 of the Retail Lease of that part of the Retail Component applies, (to the intent that clause 6 of Schedule 5 of that lease is the same as clause 6 of Schedule 5 of the Retail Stratum Lease), do all things necessary:
 - (i) for the commencement of retail operations within the Early Activation Area in accordance with clause 36.11 and the Early Activation Conditions;
 - (ii) so that any non-compliance with the Approved Compliance Report that has not been rectified by the Retail Investor in accordance with the Approved Compliance Report (as defined in schedule 5 of the Retail Lease) is rectified; and
 - (iii) to comply with any other obligations of the Developer under this Agreement in relation to the Early Activation Area and the Early Activation Conditions.

36.10 Early Activation Conditions

Subject to clauses 36.2(b) and 36.3(b), within 20 Business Days after the grant of an Early Activation Licence, the Developer must procure the commencement of retail operations within the Early Activation Area the subject of that Early Activation Licence in accordance with the Early Activation Conditions.

36.11 Transition to Retail Final Completion

- (a) The parties acknowledge that to achieve Retail Final Completion, it will be necessary for some or all of the Early Activation Areas to cease trading to enable the Retail Final Works to be carried out.
- (b) Despite the terms of the Early Activation Conditions but subject to clause 36.2(b), the Developer must ensure that [REDACTED] of the retail premises on the street frontage within the Early Activation Areas is activated and open for trading for the period of [REDACTED].
- (c) Despite the terms of the Early Activation Conditions but subject to clause 36.2(b), during the period of [REDACTED], the Developer is not obliged to keep the Early Activation Areas the subject of Early Activation Licences activated and open for trading while the Retail Final Works to the street frontage within the Early Activation Areas are being carried out.
- (d) Despite the terms of the Early Activation Conditions and clause 36.4(b) but subject to clause 36.2(b), the Developer is not obliged to keep retail premises on the street frontages within the Early Activation Areas activated and open for trading during any period when a tenant has vacated and the retail premises are being re-let or fitted out for a new tenant following a tenant vacating, provided that the Developer uses all reasonable endeavours to re-lease those premises and fit them out, in both cases, as soon as reasonably practicable.
- (e) Where the Developer occupies all or part of an Early Activation Area pursuant to a Construction Licence after that area has been used as an Early Activation Area pursuant to an Early Activation Licence, the Developer accepts that area in the condition it is in at the time of the expiry of the early Activation Licence and will not make any claim against the Authority in relation to the condition of that area arising from, or contributed to by, the use of the area during the term of the Early Activation Licence.

37. Call Offer

37.1 Call Offer granted

- (a) In respect of each Stage (not being part of the Public Domain or the area comprising the [REDACTED]), the Authority makes an offer to the Developer to lease the Premises applicable to that Stage to the Tenant.
- (b) The parties acknowledge and agree that separate Leases will be granted to the same Tenant in respect of each Premises comprised in:
 - (i) the Retail Component constructed as Block 7 Stage 1;
 - (ii) the Retail Component constructed as Block 6 Stage 1;
 - (iii) the Retail Component constructed as Block 5 Stage 4; and
 - (iv) the Retail Component constructed within Foreshore Block North Stage 2.
- (c) Each Call Offer is an irrevocable offer by the Authority to the Developer to enter into a binding lease (or leases in the case of strata lots) of the relevant Premises with the Tenant:
 - (i) (to the extent that the relevant Premises do not comprise part of a strata plan), in the form of the Standard Form Stratum Lease; or

- (ii) (to the extent that the relevant Premises comprise part of a strata plan), as relevant to the Premises, in the form of the:

- A. Standard Form Residential Strata Lot Lease; and
- B. Standard Form Common Property Strata Lease;

- (iii) (to the extent that the Relevant Premises comprise part of the Retail Component) in the form of the Retail Stratum Lease;

- (iv) (to the extent that the Relevant Premises comprise part of the Retail Component situated in Foreshore Block North) in the form of the Foreshore Retail Lease; and

- (v) in respect of each Lease, for the term as relevantly set out in clause 39.1(a)(iii),

and may only be accepted by the Tenant in accordance with the provisions of this Agreement.

- (d) If a Call Offer is not accepted by the expiry of the Call Offer Period applicable to that Call Offer, that Call Offer lapses.

- (e) The Authority makes an offer to the Developer or the Developer's Nominee (which must not be the same Tenant under an existing Retail Stratum Lease [REDACTED]) to grant a single concurrent lease over the entire Retail Component (but excluding the Retail Component constructed within Foreshore Block North) on the basis that such lease must be:

- (i) expressed to be subject to and concurrent with the Retail Stratum Leases granted under:

- A. clause 37.1(b)(i) (in respect of the Retail Component in Block 7 Stage 1);
- B. clause 37.1(b)(ii) (in respect of the Retail Component in Block 6 Stage 1); and
- C. clause 37.1(b)(iii) (in respect of the Retail Component in Block 5 Stage 4);

- (ii) in the form of the Retail Stratum Lease amended to provide:

- A. that the Tenant must, when requested by the Authority, exercise any rights which it has under the Retail Stratum Leases;
- B. that the Tenant's right to occupy the Premises under the Retail Concurrent Lease is subject to the rights of the Tenants under Retail Stratum Leases);
- C. that the Tenant must procure that the Tenants under the Retail Stratum Leases comply with the terms of the Retail Stratum Leases;
- D. that the Tenant must provide the Authority with copies of all notices given either by or to the Tenants under the Retail Stratum Leases as soon as is reasonably practicable after the date on which any notice is given or received and in all

circumstances, not later than 3 Business Days after the date of any such notice;

- E. that the Tenant must not agree to vary, or vary the terms of any Retail Stratum Lease without the consent of the Authority (as landlord) which may be given or withheld in the Authority's sole and absolute discretion;
- F. that the Tenant must not do anything that could affect or bring an end to any of the Retail Stratum Leases (including by accepting a surrender, terminating or otherwise ending a Retail Stratum Lease, except that it may terminate the lease following default by a Tenant under a Retail Stratum Lease with the prior consent of the Authority, as landlord); and
- G. that the Tenant must not do anything that could cause a breach of the Retail Stratum Lease; and

(iii) for a term expiring on the date which is 99 years from the Lease Commencement Date of the first Lease of a Stage of the Retail Component,

and for the purposes of accepting the Call Offer in respect of the Retail Concurrent Lease, clause 37.2(a)(vi) and the words "the Premises applicable to that Stage" and "relevant Premises" in this clause 37.1 and in clause 38.1 shall be interpreted and implemented accordingly.

- (f) The Developer must procure that each Tenant under a Retail Stratum Lease and the Tenant under the Retail Concurrent Lease must enter into a tripartite agreement in such form as may reasonably be required by the Authority to give effect to the provisions of this clause 37.1 and the Developer must pay the Authority's costs in negotiating, preparing and entering into any such agreement.

37.2 Accepting the Call Offer

- (a) Each Call Offer may be accepted only:

- (i) during the Call Offer Period applicable to that Call Offer;
- (ii) if the Developer is not in breach of any of its obligations:

- A. (subject to clauses 37.2(a)(ii)D and 37.2(a)(ii)E) to pay any amounts which have become due and payable under this Agreement including any amounts under clause 5 being:
 - 1) the Development Rights Fees;
 - 2) the Urban Art Contribution;
 - 3) the Developer Contribution; and
 - 4) any interest or other amounts payable pursuant to clause 5 or
- B. to provide the Performance Security (and any replacement Performance Security pursuant to clause 14.3); or
- C. to provide all relevant Public Benefit Contributions which are required to be provided in accordance with the Public Benefit

Delivery Cashflow as at the date of acceptance of the Call Offer;

D.



E. in relation to the grant of the last Lease of Premises situated within Block 5, the Developer has paid all Development Rights Fees then unpaid, irrespective of the date on which those payments otherwise fall due.

(iii) if, in relation to the Nominee of the Stage applicable to the Call Offer:

A. there is no subsisting Insolvency Event;

B. FIRB Approval is required in relation to the acquisition of the Lease or the Nominee is required to give notice of a 'notifiable action' under the FIRB Act:

- 1) the Nominee has obtained FIRB Approval or given notice of the 'notifiable action' (as relevant); or
- 2) the Treasurer becomes precluded from making an order in relation to the acquisition of the Lease;

(iv) if this Agreement has not terminated;

(v) if in the case of a Call Offer in relation to any Stage of the Retail Component, the Retail Investor has notified the Authority [REDACTED] of its intention to exercise the Call Offer in relation to a Stage in the Retail Component and 65 Business Days have elapsed since the giving of that notice;

(vi) by delivering to the Authority at the Authority's Solicitors' address:

A. the Notice of Acceptance of Call Offer signed by the Tenant;

B. a copy (and duplicate copy) of the relevant Lease executed by the Tenant as lessee completed by the insertion of:

- 1) the date of execution of the Lease;
- 2) the up to date particulars of title in any Lease cover sheet for the Premises (or part of the Premises) (as applicable);
- 3) the commencing date of the Lease;
- 4) the term of the Lease (having regard to the operation of clause 39.1);
- 5) the current amount of the Estate Levy;
- 6) the current amount of the Cultural Contribution;
- 7) any amendment to the form of Lease to be inserted to ensure consistency with the then

current CPW requirements for the Lease or as otherwise required under clause 23 of this Agreement;

- 8) the details of the Tenant's name, ABN, address and facsimile number for service of notices;
- 9) any amendment to the 'Licensable Public Domain Area' to ensure consistency with the then approved Developed Design Documents;
- 10) in relation to a Retail Lease, the Major Events Plan provided by the Authority to the Developer under clause 16.11 as Attachment 2 to the Public Domain Licence which is Schedule 2 to each Retail Lease; and
- 11) such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Lease and comply with any requisition of LPI;

- C. a certification addressed to the Authority by the Developer's Solicitor that the Lease is in accordance with the terms of this Agreement;
- D. anything else the Lease requires the lessee to deliver to the lessor on or before the execution date of the Lease; and
- E. cheques for the payment of all registration fees and (if applicable) any stamp duty in respect of the Lease; and

- (vii) in respect of the Call Offer for the Lease to be granted in respect of the Retail Component in Block 5, where the Leases of Block 6 and Block 7 of the Retail Component have been transferred or assigned to the Developer or any party as provided for in clause 15.2(h) of the Multi-party Investor Side Deed, the transferee or assignee of those Leases must have appointed a retail operator for the whole Retail Component with the approval of the Authority (acting reasonably) on terms disclosed to and approved by the Authority (acting reasonably).

- (b) Despite any other provision of this Agreement the Developer must accept the Call Offer in relation to any Stage comprising part of the Retail Component in Block 6 or Block 7 before it commences the Retail Final Works on any part of Central Barangaroo.

37.3 Lease Binding if Call Offer accepted

If the Tenant accepts a Call Offer in accordance with clause 37.2, then at the time the items set out in that clause are delivered to the Authority, the Lease or Leases applicable to that Call Offer are deemed to have come into existence and are binding on the Authority (as lessor) and the Tenant (as lessee) from the relevant lease commencement date, as if both the Authority and the Tenant had executed the Lease at that time.

37.4 Counterpart Lease

The Authority must deliver to the Tenant at the address given for the lessee in the Lease, within 5 Business Days after the relevant Call Offer is accepted, a counterpart of that Lease executed by the Authority. The relevant Lease comes into existence and is binding on the Authority and the Developer even if the Authority does not comply with this clause 37.4 or does not comply with it on time.

37.5 Nominee for Call Offer

If this Agreement has not ended or been rescinded or terminated, the relevant Call Offer has not lapsed and the relevant Lease has not yet commenced, then the Developer may give a Formal Notice to the Authority nominating a Nominee (and providing address and contact details for that Nominee) as being entitled to accept a Call Offer.

37.6 Right to commence retail trade

(a) For the avoidance of doubt, subject to:

- (i) the date of Retail Final Completion having occurred in relation to a Stage forming part of the Retail Component on Block 6 or Block 7;
- (ii) the Developer having accepted a Call Offer in relation to that Stage in accordance with the definition of Call Offer Period and this clause 37;
- (iii) the Developer having obtained all necessary Approvals required to commence trading from that Stage; and

(iv)

the Tenant of the Retail Lease of that Stage and its subleases and licensees may commence to trade from the Retail Component in that Stage in accordance with the Retail Lease.

- (b) In this clause, the definition of Retail Final Completion is to be taken to apply only in relation to the Stage comprising part of the Retail Component in Block 6 or Block 7, as applicable, and not to the whole of the Retail Component.

38. Put Offer

38.1 Put Offer granted

- (a) In respect of each Stage (not being part of the Public Domain or the area comprising the [REDACTED]), the Developer makes an offer to the Authority to require the Developer to lease the Premises applicable to that Stage.
- (b) Each Put Offer is an irrecoverable offer by the Developer to enter into a binding lease (or leases in the case of strata lots) of the relevant Premises with the Authority:
 - (i) (to the extent that the relevant Premises do not comprise part of a strata plan) in the form of the Standard Form Stratum Lease;
 - (ii) (to the extent that the relevant Premises comprise part of a strata plan), as relevant to the Premises, in the form of the:
 - A. Standard Form Residential Strata Lease; and
 - B. Standard Form Common Property Strata Lease; or
 - (iii) (to the extent that the Relevant Premises comprise part of the Retail Component within Block 7, Block 6 or Block 5) in the form of the Retail Stratum Lease; or

- (iv) (to the extent that the Relevant Premises comprise part of the Retail Component situated within Foreshore Block North) in the form of the Foreshore Retail Lease,

and may only be accepted by the Authority in accordance with the provisions of this Agreement.

- (c) If a Put Offer is not accepted by the expiry of the Put Offer Period applicable to that Put Offer, that Put Offer lapses.
- (d) For the avoidance of doubt, the Developer does not have the right to nominate any party as the Nominee or the Tenant in relation to the Put Offer.

38.2 Accepting the Put Offer

Each Put Offer may be accepted only:

- (a) during the Put Offer Period applicable to that Put Offer;
- (b) if this Agreement has not been terminated;
- (c) if the Call Offer corresponding to that Put Offer has not been accepted;
- (d) by the Authority delivering to the Developer at the Developer's Solicitors' address:
 - (i) the Notice of Acceptance of Put Offer signed by the Authority;
 - (ii) a copy (and duplicate copy) of the relevant Lease executed by the Authority as lessor completed by the insertion of:
 - A. the date of execution of the Lease;
 - B. the up to date particulars of title in any Lease cover sheet for the Premises (or part of the Premises) (as applicable);
 - C. the commencing date of the Lease;
 - D. the term of the Lease (having regard to the operation of clause 39.1);
 - E. the current amount of the Estate Levy;
 - F. the current amount of the Cultural Contribution;
 - G. any amendment to the form of Lease to be inserted to ensure consistency with the then current CPW requirements for the Lease or as otherwise required under clause 23 of this Agreement;
 - H. any amendment to the 'Licensable Public Domain Area' to ensure consistency with the then approved Developed Design Documents;
 - I. in relation to a Retail Lease, the Major Events Plan provided by the Authority to the Developer under clause 16.11 as Attachment 2 to the Public Domain Licence which is Schedule 2 to the Retail Lease;
 - J. the details of the Tenant's name, ABN, address and facsimile number for service of notices; and

- K. such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Lease and comply with any requisition of LPI; and
- (iii) anything else the Lease requires the lessor to deliver to the lessee on or before the execution date of the Lease.

38.3 Lease Binding if Put Offer accepted

If the Authority accepts a Put Offer in accordance with clause 38.2, then at the time the items set out in that clause are delivered:

- (a) the Lease or Leases applicable to that Put Offer are deemed to have come into existence and is binding on the Tenant (as lessee) and the Authority (as lessor) from the relevant lease commencement date, as if both the Authority and Developer had executed that Lease at that time;
- (b) the Lease applicable to that Put Offer is deemed to have come into existence and is binding on the Developer (as lessee) and the Authority (as lessor) from the Lease Commencement Date, as if both the Authority and the Developer had executed that Lease at that time;
- (c) subject to clauses 38.3(f) and (g), the Developer must pay any amounts which have become due and payable under this Agreement including any amounts under clause 5 being:
 - (i) the Development Rights Fees;
 - (ii) the Urban Art Contribution;
 - (iii) the Developer Contribution; and
 - (iv) any interest or other amounts payable pursuant to clause 5;
- (d) the Developer must provide the Performance Security (and any replacement Performance Security pursuant to clause 14.3);
- (e) the Developer must provide all relevant Public Benefit Contributions which are required to be provided in accordance with the Public Benefit Delivery Cashflow as at the date of acceptance of the Put Offer;
- (f) [REDACTED]
- (g) in relation to the grant of the last Lease of Premises situated within Block 5, the Developer must pay all Development Rights Fees then unpaid, irrespective of the date on which those payments otherwise fall due.

38.4 Counterpart Lease

The Developer must deliver to the Authority within 5 Business Days after a Put Offer is accepted, a counterpart of the relevant Lease executed by the Tenant and cheques for the payment of all registration fees and (if applicable) stamp duty. The relevant Lease comes into existence and is binding on the Tenant and the Authority even if the Developer does not comply with this clause 38.4 or does not comply with it on time.

39. Offer acceptance and grant of Lease

39.1 Lease term

- (a) Provided either the relevant Call Offer or the relevant Put Offer is accepted, the Lease or Leases applicable to that Call Offer or Put Offer commence on the relevant Lease Commencement Date and expire:
 - (i) in the case of each Lease within a Block (other than a Lease of the Retail Component) on the date which is 99 years from the Lease Commencement Date of the first Lease, (other than a Lease of the Retail Component) granted in relation to that Block; and
 - (ii) in the case of each Lease comprising part of the Retail Component situated within Block 7, Block 6 or Block 5, on the date which is 99 years from the Lease Commencement Date of the first Lease of a Stage of the Retail Component; or
 - (iii) in the case of a Lease of the Retail Component situated within Foreshore Block North on the date which is 25 years from the Lease Commencement Date of that Lease.
- (b) The Authority elects that any Lease or Leases granted by it as a result of the acceptance of the Call Offer or the Put Offer, as the case may be, will be a long-term lease to which s 104-115 of the Income Tax Assessment Act 1997 (Cth) applies except for any Leases having a term of 50 years or less.

39.2 Ongoing obligations

The Authority's and the Developer's obligations under this Agreement continue, and do not merge, after a Lease or Leases are granted.

39.3 Rights of the Authority to vary Lease

Provided either Call Offer or the Put Offer is accepted, the Authority may make any necessary alterations to the relevant Lease or Leases (as applicable) in form or layout to comply with any requirements of LPI.

39.4 Registration of Lease

The Authority and the Developer agree that within 20 Business Days after a Call Offer or the Put Offer is accepted, the Authority must execute the relevant Lease or Leases (as applicable), cause those Leases to be stamped (if applicable)(at the Developer's Cost), lodge those Leases with LPI (at the Developer's Cost) for registration and do all things necessary (at the Developer's Cost) to procure LPI to register those Leases.

39.5 No agreement for lease

- (a) For the avoidance of doubt the parties acknowledge that this Agreement does not constitute an agreement for lease, lease, sub lease or licence of Central Barangaroo or any part of Central Barangaroo including any relevant Premises. Notwithstanding the rights and obligations of the parties which arise under the provisions of this Agreement, there will be no obligation on either the Authority or the Developer to enter into the Lease (or Leases) unless and until each Call Offer or the Put Offer as the case may be, is accepted.
- (b) If a Call Offer and the Put Offer lapses without being accepted by either the Developer or the Authority, as the case may be, then neither the Authority nor the

Developer will be bound by the Lease applicable to that Call Offer and Put Offer and this Agreement will terminate in respect of that Call Offer and Put Offer only.

40. Intellectual Property

40.1 Developer's Warranty

The Developer warrants that:

- (a) the Developer is entitled to use the Intellectual Property for the completion of the Developer's Project and the performance by the Developer of its obligations under this Agreement;
- (b) the completion of the Developer's Project, the performance by the Developer of its obligations under this Agreement or the enjoyment by the Authority of the rights or benefits it has under this Agreement or otherwise at Law will not involve the breach of any rights of any third party; and
- (c) it is able and entitled to grant the licence described in clause 40.3.

40.2 Developer's Indemnity

The Developer indemnifies and will keep indemnified the Authority, its officers, employees, agents and contractors from and against all claims, liability, Loss, damage, costs and expenses (including legal costs on a solicitor and own client basis) arising out of any claim that the Intellectual Property or any use thereof by or on behalf of the Authority infringes the rights of a third party.

40.3 Grant of Licence

- (a) In consideration of the Authority entering into this Agreement, the Developer grants to the Authority a perpetual, irrevocable, non-exclusive and royalty-free licence to use, reproduce, modify and adapt the Intellectual Property for the purpose of enjoying the benefit of the Developer's Project and otherwise as described in clause 40.3(b).
- (b) The Authority may use and may authorise other persons to use the Intellectual Property, all Design Documentation and/or Approved Design Documents, and any other materials or information prepared by or on behalf of the Developer as part of or in connection with the Developer's Project or the Project Documents including any enhancements or modifications thereto, for any purpose whatsoever in connection with the Developer's Project (including any subsequent refurbishment, reconstruction, alteration or extension of or to the Developer's Project).

40.4 Further action required by the Developer

The Developer:

- (a) must, at the request of the Authority, execute any document reasonably required by the Authority for the purpose of perfecting or more fully giving effect to the licence described in clause 40.3;
- (b) must do all such further acts, including securing such additional rights as may be necessary to give effect to the granting of the licence described in clause 40.3;
- (c) (if it has failed to comply with clause 40.4(a) within 10 Business Days of a request made by the Authority) hereby irrevocably appoints the Authority as its attorney with full power and authority to execute any document described in clause 40.4(a); and

- (d) must deliver to the Authority a copy of all Design Documentation, and any enhancements or modifications thereto as it is approved by the Authority under clause 7.

40.5 The Authority's rights on termination

The licence described in clause 40.3 and the Authority's rights under this clause 40 will not be affected by any matter or thing, including without limitation the termination of this Agreement other than in accordance with clause 1.9 or any dispute under this Agreement.

41. Costs

41.1 Development costs

The Developer is responsible for all Costs in relation to the Developer's Project including all Costs of subdivision and connections to and from External Infrastructure with Internal Infrastructure, all Internal Infrastructure, all relocation of External Infrastructure and carrying out any Remediation Works except as otherwise expressly provided for in this Agreement.

41.2 Obligations of the Developer

Except as otherwise specified in this Agreement, the Developer must pay or reimburse the Authority on demand for:

- (a) the reasonable Costs of the Authority in connection with:
- (i) any consent or approval sought by the Developer under this Agreement, or anyone claiming through the Developer, which is not related to any Application (whether or not that consent or approval is given);
 - (ii) the exercise or non-exercise of rights arising from a breach by the Developer of its obligations under this Agreement;
 - (iii) the actual or (in circumstances where a default by the Developer has occurred or is suspected by the Authority, on reasonable grounds, to have occurred) contemplated enforcement by the Authority of its rights under this Agreement or any Project Document;
 - (iv) a waiver, variation, release, surrender or discharge of or in connection with any Project Document; and
 - (v) its legal costs and disbursements and internal administrative costs in relation to the concurrent lease of the entire Retail Component,
- but excluding in all cases the Authority's internal administrative Costs or Costs incurred by the Authority in complying with its obligations under clause 7;
- (b) without limiting clause 41.2(a), Costs incurred by the Authority in connection with anything the Authority does at the request of the Developer, including:
- (i) considering plans (which do not form part of an Application);
 - (ii) subdividing Central Barangaroo under clause 35;
 - (iii) varying documents;
 - (iv) granting leases and licences;

- (v) negotiating anything in connection with the Developer's Project not specifically dealt with in this Agreement;
 - (vi) negotiating with financiers, investors and tenants;
 - (vii) considering any agreement proposed to be entered into with a third party under a Project Document (whether or not any agreement is entered into); and
 - (viii) any stamp duty on the concurrent lease of the entire Retail Component; and
- (c) taxes and fees (including registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with any Project Document or a payment or receipt or any other transaction excluding any fine or penalty incurred due to the default of the Authority.

41.3 Legal and consultants' costs

- (a) Except as otherwise specified in this Agreement, the Developer and the Authority must bear their own Costs incurred in engaging legal and other consultants in preparing and negotiating this Agreement.
- (b) Without limiting the provisions of clause 45.7, the Developer must pay any stamp duty assessed on this Agreement or any Project Document.
- (c) Where the Developer is required by its Financiers or its Investors, or the Developer for its own purposes requires any Project Document to be wholly or partially restructured, the Developer must pay the Authority's Costs of such restructuring (noting that any such restructuring is subject to the Authority's consent).
- (d) Where the Developer requires the Authority to enter into any agreement with a third party under a Project Document, the Developer must pay the Authority's Costs incurred in relation to the preparation, negotiation and execution of such agreement.

42. Marketing and Communications

42.1 Acknowledgement

The Authority and the Developer acknowledge that they wish to jointly promote Barangaroo for the mutual benefit of the parties recognising that Central Barangaroo is an integral component of Barangaroo.

42.2 Logos and branding

- (a) If requested by the Authority:
 - (i) in all promotional and marketing material issued in connection with the Developer's Project the Developer will promote Central Barangaroo by featuring the Barangaroo logo or any other NSW Government logo; and
 - (ii) the use of any Barangaroo logo must be in accordance with the Barangaroo Marketing Guidelines.
- (b) For the purposes of this clause 42:

- (i) the Developer and the Investors are entitled to use the Barangaroo logo free of charge on a non-exclusive basis as long as such use is strictly in accordance with the Barangaroo Marketing Guidelines; and
- (ii) the Authority is entitled to use the Developer's branding and marks free of charge on a non-exclusive basis.

42.3 Promotional, marketing and sales material

- (a) At least 90 days prior to the launch of any marketing campaign in connection with the promotion of a completed Component, including in relation to any proposed usage of the word Barangaroo, the Developer must submit a proposal detailing the marketing, signage and advertising strategy (consistent with the Barangaroo Marketing Guidelines) for the Authority's approval, not to be unreasonably withheld.
- (b) The Developer may from time to time amend any marketing, signage or advertising strategy approved by the Authority pursuant to clause 42.3(a) with the further approval of the Authority, not to be unreasonably withheld.
- (c) Following the Authority approving the marketing, signage and advertising strategy pursuant to clause 42.3(a) or 42.3(b), the Developer and the Investors may:
 - (i) market the completed Components; and
 - (ii) issue marketing materials,
 consistently with that approved marketing, signage and advertising strategy without the need to obtain any further approval from the Authority.
- (d) The Developer must not issue any promotional or marketing material in connection with the Developer's Project unless such promotional or marketing material:
 - (i) is consistent with a marketing, signage or advertising strategy approved by the Authority pursuant to clause 42.3(a) or 42.3(b); or
 - (ii) is otherwise approved in writing by the Authority acting reasonably prior to its issue.
- (e) The Developer must ensure that any promotional, marketing and sales material (including any sales contracts) produced, commissioned or utilised (including by any of the Investors or their Nominees) includes in relation to the sale, or lease or licence of any part of the completed Components appropriate disclosures (consistent with the Leases), that:
 - (i) the Premises are situated within a major events area and may be affected by noise and other disturbances;
 - (ii) the Tenant is required to pay the Estate Levy and Cultural Contribution as specified in the relevant Lease; and
 - (iii) there may be a Sydney Metro Station at Barangaroo and the construction and use of that station may affect the Premises.
- (f) Despite clauses 42.3(a) and 42.3(b), the Developer must obtain the Authority's approval if it wishes to use the Barangaroo logo which is and remains the intellectual property of the Authority.
- (g) Following the grant of a Lease, the provisions of that Lease apply to the Tenant and the Premises the subject of that Lease rather than the provisions of this clause 42.

43. Naming, signage and advertising materials

43.1 Naming the Premises

- (a) The Authority acknowledges and agrees that the Developer has the naming rights in respect of each Premises.
- (b) If the Developer wishes to use any name for any part of Central Barangaroo (including sub-precincts) or any Premises (including after the commencement of any Lease of the Premises), the Developer must obtain the Authority's consent prior to the proposed name being used, such consent not to be unreasonably withheld or delayed if the proposed name is consistent with the Authority's policies regarding naming and signage.
- (c) The Authority acknowledges that in principle, it will not object to a name of a building where the name of that building is the name of a Tenant or a major sub-tenant in that building.
- (d) The Authority and the Developer acknowledge that the name of a building might be different to the signage on the building.
- (e) The Authority hereby consents to the Retail Component of the Developer's Project being known as:
 - (i) Westfield Barangaroo; or
 - (ii) an alternative name in conjunction with the word Barangaroo, being the name to which the majority (or such lesser percentage as the Authority may approve, acting reasonably, having regard to the nature and circumstances of the name change) of shopping centres owned by the Retail Investor or Related Entities of the Retail Investor has changed,

(in both cases, the **Approved Name**), and the Developer agrees to procure that as from the Date of Retail Final Completion of all Stages of the Retail Component on Block 5, Block 6 and Block 7 the Retail Component will be known by and trade under the Approved Name until a Retail Lease has been granted in relation to the Retail Component on each of Block 5, 6 and Block 7 whereupon the terms of the Retail Leases will apply.

43.2 Signage, advertising and marketing materials

- (a) Other than the signage approved pursuant to clause 43.2(b), no signs or advertisements are to be placed on any part of Central Barangaroo unless the Authority's prior consent is obtained to the size, nature, content, colour, and location of those signs or advertisements, such consent not to be unreasonably withheld or delayed.
- (b) The Authority acknowledges that its consent is not required under this clause 43.2 for the erection of signs and advertising to the extent the details of the proposed signs and advertising:
 - (i) were included in:
 - A. an Application; or
 - B. the strategy referred to in clause 42.3,
 - approved by the Authority; and

- (ii) where such signs and advertising are consistent with Approvals and the Authority's policies regarding naming and signage.
- (c) Following the grant of a Lease, the provisions of that Lease apply to the Tenant and the Premises the subject of that Lease rather than the provisions of this clause.

43.3 Naming rights, signage and use of external parts of Premises

The Authority agrees that in respect of the provisions of each Lease dealing with:

- (a) naming rights;
- (b) signage; and
- (c) the use of external parts of the Premises,

all consents granted under this Agreement in relation to those matters will be deemed to have been given under the relevant Lease.

43.4 Outdoor advertising by the Developer

- (a) The Developer must not (and must not allow any other person to) enter into agreements with third parties under which that third party is able to use any part of Central Barangaroo for the purpose of advertising without the consent of the Authority (other than as permitted under a Lease).
- (b) Clause 43.4 does not apply to the advertisements promoting any sub-tenants of the Retail Component erected on or within the Retail Component.

44. Developer - restrictions on alienation

44.1 Developer must not alienate

Subject to clauses 44.2, 44.3(b), 44.5 and 44.6:

- (a) the Developer must not assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this Agreement in any way;
- (b) a person must not become or cease to be the Parent of the Developer; and
- (c) a change in Control of the Developer must not take place,

(each being a **Prohibited Dealing**), without the consent of the Authority (which may be given unconditionally, withheld or given on conditions). In granting or withholding consent or imposing conditions on such consent, the Authority must act reasonably but may take into account the primary objectives of ensuring Project Practical Completion occurs when due under this Agreement and fulfilment of the Developer's other obligations under this Agreement with reputable parties.

44.2 Stock exchange listing and assignment to a Related Entity

Clause 44.1 does not apply to:

- (a) the initial listing of shares of the Developer or a Guarantor or a Parent of a Guarantor on a recognised stock exchange;

- (b) any transaction on a recognised stock exchange involving the Developer, the General Guarantor or the [REDACTED] or a Parent of the General Guarantor or the [REDACTED] while listed; or
- (c) a Prohibited Dealing where such Prohibited Dealing is with a Related Entity of the Developer or the Guarantor with the consent of the Authority (which may not be unreasonably withheld or delayed).

44.3 Encumbering the Developer's interest in Central Barangaroo

- (a) The Developer must not mortgage, charge or otherwise encumber the Developer's interest in Central Barangaroo or this Agreement without the prior consent of the Authority.
- (b) The Authority agrees to act reasonably and promptly in determining whether to provide its consent to the Developer for the purposes of this clause 44.3 where the provision of such mortgage, charge or other encumbrance is reasonably required by the Developer in order to raise funds for the purposes of carrying out its obligations under this Agreement.

44.4 Leasing and charging Developer's property

The Developer must not mortgage, charge, lease or otherwise deal with any Developer's property which requires the Authority to sign a waiver without first obtaining the consent of the Authority, which consent may not be unreasonably withheld or delayed if:

- (a) the Developer is entering into a proper and bona fide mortgage, charge or lease as a means of financing a Stage and provides sufficient evidence to the Authority (acting reasonably) that it is doing so;
- (b) the Developer uses the standard form of right of entry waiver document prepared by the Authority; and
- (c) the Developer pays the Authority's Costs (including legal Costs where applicable).

44.5 Financing documents

The Authority acknowledges that:

- (a) the Developer or its Related Entities may be obtaining financial accommodation to fund the Developer's Project; and
- (b) it may be a condition of that financing that the Authority enters into a financier's side deed and other agreements with the Financier.

44.6

[REDACTED]

[REDACTED]

44.7 Negotiating terms of financing documents

The Authority agrees to:

- (a) enter into a Financier's Side Deed in the event that the Developer finances the entirety of the Developer's Project using debt funding [REDACTED] and
- (b) be reasonable in negotiating the terms of the Financier's Side Deed and other agreements referred to in clause 44.5(b) provided that:
 - (i) there is no material derogation of the Authority's rights under this Agreement, the Leases (assuming that the relevant Put Offers or the Call Offers are accepted) [REDACTED]; and
 - (ii) [REDACTED]

45. GST and other Taxes

45.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 45 have the meanings given to those terms by the GST Act.
- (b) 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 45.
- (c) 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.

45.2 Reimbursements

Any payment or reimbursement required to be made under this Agreement 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 plus any amount payable under clause 45.3.

45.3 Additional amount of GST payable

Subject to clause 45.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:

- (a) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 45), 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 calculated by reference to the then ascertainable consideration for that supply (**GST Amount**). The GST Amount must be paid at the same time as the first part of the consideration for that supply;
- (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 45.3(b).

- (d) subject to clause 45.3(e), any GST Amount payable under clause 45.3(b) in relation to the Authority's taxable supply for which the Authority will receive the Development Rights Fee as consideration (in accordance with clause 5.1(a)(i)) will not be paid by the Developer to the Authority, and instead:
- (i) the Developer and the Authority will use reasonable endeavours to notify the Commissioner of Taxation of the existence of the contemplated taxable supply by the Authority and the Developer's entitlement to claim an input tax credit;
 - (ii) the Developer will report the input tax credit (referred to in clause 45.3(d)(i)) in its 'Business Activity Statement' (as a component of the Developer's net amount) for the tax period in which the Development Rights Fee is paid to the Authority;
 - (iii) the Developer will lodge its 'Business Activity Statement' (referred to in clause 45.3(d)(ii)) as soon as practically possible following the end of that tax period;
 - (iv) the Developer will pay to the ATO an amount equal to the net amount owing on its Business Activity Statement (referred to in clause 45.3(d)(iii)) after excluding the input tax credit (referred to in clause 45.3(d)(i));
 - (v) the Developer and the Authority will use reasonable endeavours prior to the date of lodgement of the Authority's 'Business Activity Statement' to ensure that the Commissioner of Taxation is satisfied that he will be able to apply the whole or some part of the Developer's input tax credit entitlement as it will accrue on the Developer's 'Integrated Client Account' to the Authority's GST liability in respect of the taxable supply as it will accrue on the Authority's 'Integrated Client Account', including making any written requests to the Commissioner of Taxation in the approved form containing the required information;
 - (vi) if the amount of the Developer's input tax credit (as reflected in the Developer's 'Integrated Client Account' under the agreement with the Commissioner of Taxation referred to in clause 45.3(d)(i)) is less than the additional amount payable under clause 45.3(b), the Developer will pay to the Authority the difference between the two amounts. The Developer must pay the amount under this clause 45.3(d)(vi) to the Authority at the same time it would be required to pay the amount under clause 45.3(b) in the absence of the agreement with the Commissioner of Taxation; and
- (e) If the parties are unable to obtain the Commissioner of Taxation's approval as referred to in clause 45.3(d)(v) at least 5 Business Days prior to the last date on which the Authority is required to lodge its Business Activity Statement with the Commissioner of Taxation for the tax period in which the GST on that taxable supply is attributable, then the Developer will pay to the Authority an additional amount equal to the GST payable in accordance with clause 45.3(b).

45.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 45.3 and clause 45.5), varies from the additional amount paid by the Recipient under clause 45.3, 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 45.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 45.3.

- (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 Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

45.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 45.3 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 45.3 must 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 45.3 (or the time at which such GST Amount would have been payable in accordance with clause 45.3 but for the operation of clause 45.5(a)).

45.6 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.

45.7

(a)

(b)

(c)

45.8 Land Tax

In respect of each Block, the Authority is responsible for, and must pay to the relevant Government Agency, any land tax referable to the period commencing on the date on which the Authority gives the Developer access to a Block pursuant to clause 11.4 and ending on the date on which the relevant Block becomes subject to a Lease in accordance with this Agreement.

45.9 No merger

This clause 45 will not merge on completion or termination of the Agreement.

46. General Guarantee and indemnity

46.1 Consideration

The General Guarantor acknowledges that in entering into this Agreement the Authority is acting in reliance on the General Guarantor incurring obligations and giving rights under this clause 46.

46.2 Guarantee

The General Guarantor unconditionally and irrevocably guarantees to the Authority the due and punctual performance and observance by the Developer of the General Guaranteed Obligations. If the Developer does not perform or observe the General Guaranteed Obligations on time and in accordance with the provisions of the relevant Project Documents, then the General Guarantor agrees to perform and observe the General Guaranteed

Obligations for the benefit of the Authority on demand from the Authority. A demand may be made at any time and from time to time.

46.3 Indemnity

- (a) The General Guarantor unconditionally and irrevocably indemnifies the Authority for all Losses, Costs, damages and liabilities which the Authority incurs or suffers because the Developer fails to duly and punctually perform and observe the General Guaranteed Obligations.
- (b) The liability of the General Guarantor to the Authority for failing to comply for any reason with its obligations under clause 46.2 is limited to the liability of the General Guarantor to the Authority under clause 46.3(a).

46.4 Additional indemnities

Whether or not the Authority exercises any rights it may have under clause 49, and without being affected by the exercise of any such rights, the General Guarantor unconditionally and irrevocably indemnifies the Authority against all Loss, Costs, liability and damages the Authority suffers because:

- (a) the liability to perform or observe the General Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Developer does not observe, perform or comply with (whether full or in part) the General Guaranteed Obligations;
- (c) the General Guaranteed Obligations are rescinded or terminated by the Developer for any reason other than by reason of the wrongful repudiation or default by the Authority;
- (d) the Developer disregards an order for specific performance of the General Guaranteed Obligations;
- (e) the Developer for any reason does not pay any consideration or sum that would have been payable under this Agreement if the Developer had complied with all its obligations under this Agreement;
- (f) an Insolvency Event occurs in respect of the Developer; or
- (g) the General Guaranteed Obligations are not or have never been enforceable against the General Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the General Guaranteed Obligations being illegal, void, voidable or unenforceable and whether or not the Authority knew or should have known anything about that transaction.

46.5 Guarantor as principal debtor

The General Guarantor as principal debtor agrees to pay to the Authority (as directed and within 10 Business Days after a demand) a sum equal to the amount of any loss or obligations to be performed described in clauses 46.2, 46.3 and 46.4. Any such demand must:

- (a) be a Notice;
- (b) state that it is made under clause 46.2, 46.3 or 46.4, as the case may be;
- (c) state and provide details of the amount being demanded or obligations to be performed and confirm that:

- (i) a written demand for payment of the amount or performance of obligations, as applicable has been made on the Developer by the Authority (as relevant);
- (ii) at least 10 Business Days has passed since the demand on the Developer was made; and
- (iii) the demand on the Developer remains unsatisfied; and
- (d) be signed by an Authorised Officer of the Authority (as relevant).

46.6 Extent of guarantee and indemnity

The guarantee provided in clause 46.2 and the indemnities provided in clauses 46.3 and 46.4 are continuing obligations and extend to all of the General Guaranteed Obligations and other money payable under this Agreement.

46.7 Preservation of the Authority's rights

The liabilities under this Agreement of the General Guarantor under this clause 46 as guarantor and indemnifier and the rights of the Authority under a Project Document are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the Authority or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, the Developer, any other indemnifier or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Authority or another person or the Authority and another person;
- (c) any variation or novation of a right of the Authority or another person, or material alteration of a Project Document, in respect of the Developer, the General Guarantor or another person;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Developer, the General Guarantor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the General Guarantor or another person was a member;
- (f) any Security being void, voidable or unenforceable;
- (g) a person dealing in any way with a Security, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (h) the death of any person or an Insolvency Event occurring in respect of any person;
- (i) a change in the legal capacity, rights or obligations of a person;
- (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Developer or another person;

- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) any part of the General Guaranteed Obligations being irrecoverable;
- (n) an assignment of rights in connection with the General Guaranteed Obligations;
- (o) the acceptance of repudiation or other termination in connection with the General Guaranteed Obligations;
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the General Guarantor;
- (q) invalidity or irregularity in the execution of this Agreement by the General Guarantor or any deficiency in or irregularity in the exercise of the powers of the General Guarantor to enter into or observe its obligations under this Agreement;
- (r) any obligation of the Developer, the General Guarantor, the [REDACTED] or any other guarantor being discharged by operation of law or otherwise; or
- (s) property secured under a Security being forfeited, extinguished, surrendered, resumed or determined.

46.8 Liabilities not affected

The liability of the General Guarantor under a Project Document is not affected:

- (a) because any other person who was intended to enter into this Agreement, or otherwise become a co-surety or co-indemnifier for payment of the General Guaranteed Obligations or other money payable under this Agreement has not done so or has not done so effectively; or
- (b) because a person who is a co-surety or co-indemnifier for payment of the General Guaranteed Obligations or other money payable under this Agreement is discharged under an agreement or under statute or a principle of law or equity.

46.9 Suspension of Guarantor's rights

As long as the General Guaranteed Obligations are outstanding or other money payable under this Agreement remains unpaid, the General Guarantor cannot without the consent of the Authority:

- (a) in reduction of its liability under this Agreement, raise a defence, set off or counterclaim available to itself, the Developer or a co-surety or co-indemnifier against the Authority or claim a set off or make a counterclaim against the Authority;
- (b) make a Claim or enforce a right against the Developer or the Guarantor or against the estate or property of either of them;
- (c) prove in competition with the Authority if an Insolvency Event occurs in respect of the Developer or the [REDACTED] whether in respect of an amount paid by the General Guarantor under this Agreement, in respect of another amount (including the proceeds of a security (including a Security)) applied by the Authority in reduction of the General Guarantor's liability under this Agreement, or otherwise; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, mustering or otherwise to the benefit of a security (including a Security) or guarantee or a share in it now or subsequently held for the General Guaranteed Obligations or other money payable under this Agreement.

46.10 Other securities and obligations of Guarantor

The Authority's rights under this Agreement are additional to and do not merge with or affect and are not affected by:

- (a) any security (including any Security) now or subsequently held by the Authority from the Developer, the General Guarantor or any other person; or
- (b) any other obligation of the General Guarantor to the Authority,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

46.11 Reinstatement of the Authority's rights

If a Claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the General Guaranteed Obligations or other money payable under this clause 46 is void or voidable under law relating to Insolvency Events or the protection of creditors or for any other reason and the Claim is upheld, conceded or compromised, then:

- (a) the Authority is entitled immediately as against the General Guarantor to the rights in respect of the General Guaranteed Obligations or other money payable under this Agreement to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the Authority, the General Guarantor agrees to do any act and sign any document reasonably required or desirable to restore to the Authority any Security or guarantee held by it under or in connection with this Agreement from the General Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

46.12 Application of money

- (a) The Authority may apply money paid by the Developer or the Developer's estate, or the General Guarantor or otherwise towards satisfaction of the General Guaranteed Obligations and other money payable under this Agreement in the manner it sees fit.
- (b) Subject to the Developer;
 - (i) complying with its obligations under clause 44 in connection with an assignment or transfer of its interest in Central Barangaroo or this Agreement; and
 - (ii) procuring a replacement guarantor, who is acceptable to the Authority, to enter into a guarantee, on such terms as reasonably required by the Authority (including unconditionally and irrevocably guaranteeing to the Authority the due and punctual performance and observance by the Developer of the General Guaranteed Obligations),

the General Guarantor is released from its obligations under this Agreement on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

46.13 Limitation of Liability

Notwithstanding any other provision of this clause 46, the liability of the General Guarantor to the Authority under or in connection with this clause 46 (whether that liability arises under a specific provision of this Agreement for breach of contract, negligence or otherwise) is no

greater than the liability of the Developer to the Authority under or in connection with the Project Documents (assuming those documents are fully enforceable in accordance with their terms).

46.14 Nature of the Authority's rights and obligations

The failure by the Authority to perform any of its obligations under this Agreement does not relieve the General Guarantor of any of its obligations under this clause 46.

46.15 Continuing obligation

Each guarantee and indemnity contained in this clause 46 is a continuing obligation of the General Guarantor, despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and remains in full force and effect until all the General Guaranteed Obligations and all moneys owing by the General Guarantor under this Guarantee and Indemnity, contingently or otherwise, have been paid or satisfied in full.

46.16 Principal and independent obligation

- (a) Each obligation of the General Guarantor under this clause 46 is:
 - (i) a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
 - (ii) independent of and not in substitution for or affected by any other collateral security which the Authority may hold in respect of the General Guaranteed Obligations or any other obligation of any party to a Project Document or any other person.
- (b) This Agreement is enforceable against the General Guarantor:
 - (i) without first having recourse to any collateral security;
 - (i) whether or not the Authority has:
 - A. made demand upon any party to a Project Document (except as required in order to comply with clause 46.5); or
 - B. given notice to any party to a Project Document or any other person in respect of any thing (except as required in order to comply with clause 46.5); or
 - C. taken any other steps against any party to a Project Document or any other person (except as required in order to comply with clause 46.5); and
 - (ii) by action against either one separately or both entities which comprise the Guarantor.

despite the occurrence of any event described in clause 46.7.

47. [REDACTED] Guarantee and indemnity

47.1 Consideration

[REDACTED] acknowledges that in entering into this Agreement the Authority is acting in reliance on [REDACTED] incurring obligations and giving rights under this clause 47.

47.2 Guarantee

[REDACTED] unconditionally and irrevocably guarantees to the Authority the due and punctual performance and observance by the Developer of the [REDACTED]. If the Developer does not perform or observe the [REDACTED] on time and in accordance with the provisions of clause 5 of this Agreement, then the [REDACTED] agrees to perform and observe the [REDACTED] for the benefit of the Authority on demand from the Authority. A demand may be made at any time and from time to time.

47.3 Indemnity

- (a) [REDACTED] unconditionally and irrevocably indemnifies the Authority for all Losses, Costs, damages and liabilities which the Authority incurs or suffers because the Developer fails to duly and punctually perform and observe the [REDACTED].
- (b) The liability of the [REDACTED] to the Authority for failing to comply for any reason with its obligations under clause 47.2 is limited to the liability of the [REDACTED] to the Authority under clause 47.3(a).

47.4 Additional indemnities

Whether or not the Authority exercises any rights it may have under clause 47, and without being affected by the exercise of any such rights, the [REDACTED] unconditionally and irrevocably indemnifies the Authority against all Loss the Authority suffers because:

- (a) the liability to perform or observe the [REDACTED] is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Developer does not observe, perform or comply with (whether full or in part) the [REDACTED];
- (c) the [REDACTED] are rescinded or terminated by the Developer for any reason other than by reason of the wrongful repudiation or default by the Authority;
- (d) the Developer disregards an order for specific performance of the [REDACTED]; or
- (e) the Developer for any reason does not pay any consideration or sum that would have been payable under this Agreement if the Developer had complied with the [REDACTED];
- (f) an Insolvency Event occurs in respect of the Developer;
- (g) the [REDACTED] are not or have never been enforceable against the [REDACTED] or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the [REDACTED] being illegal, void,

voidable or unenforceable and whether or not the Authority knew or should have known anything about that transaction.

47.5 [REDACTED] as principal debtor

[REDACTED] as principal debtor agrees to pay to the Authority (as directed and within 10 Business Days after a demand) a sum equal to the amount of any loss or obligations to be performed described in clauses 46.2, 47.2, 47.3 and 47.4. Any such demand must:

- (a) be a Notice;
- (b) state that it is made under clause 46.2, 47.2, 47.3 or 47.4, as the case may be;
- (c) state and provide details of the amount being demanded or obligations to be performed and confirm that:
 - (i) a written demand for payment of the amount or obligations to be performed has been made on the Developer by the Authority (as relevant);
 - (ii) at least 10 Business Days has passed since the demand on the Developer was made; and
 - (iii) the demand on the Developer remains unsatisfied; and
- (d) be signed by an Authorised Officer of the Authority (as relevant).

47.6 Extent of guarantee and indemnity

The guarantee provided in clause 47.2 and the indemnities provided in clauses 47.3 and 47.4 are continuing security and extend to all of the [REDACTED] and other money payable under this Agreement.

47.7 Preservation of the Authority's rights

The liabilities under this Agreement of the [REDACTED] as a guarantor or an indemnifier and the rights of the Authority under a Project Document are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the Authority or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, the Developer, any other indemnifier or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Authority or another person or the Authority and another person;
- (c) any variation or novation of a right of the Authority or another person, or material alteration of a Project Document, in respect of the Developer, the [REDACTED] or another person;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Developer, the [REDACTED] or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the [REDACTED] or another person was a member;

- (f) any Security being void, voidable or unenforceable;
- (g) a person dealing in any way with a Security, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (h) the death of any person or an Insolvency Event occurring in respect of any person;
- (i) a change in the legal capacity, rights or obligations of a person;
- (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Developer or another person;
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) any part of the [REDACTED] being irrecoverable;
- (n) an assignment of rights in connection with the [REDACTED];
- (o) the acceptance of repudiation or other termination in connection with the [REDACTED];
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the [REDACTED];
- (q) invalidity or irregularity in the execution of this Agreement by the [REDACTED] or any deficiency in or irregularity in the exercise of the powers of the [REDACTED] to enter into or observe its obligations under this Agreement;
- (r) any obligation of the Developer, [REDACTED] the General Guarantor or any other guarantor being discharged by operation of law or otherwise; or
- (s) property secured under a Security being forfeited, extinguished, surrendered, resumed or determined.

47.8 Liabilities not affected

The liability of the [REDACTED] in respect of the [REDACTED] is not affected:

- (a) because any other person who was intended to enter into this Agreement, or otherwise become a co-surety or co-indemnifier for payment of the [REDACTED] or other money payable under this Agreement has not done so or has not done so effectively; or
- (b) because a person who is a co-surety or co-indemnifier for payment of the [REDACTED] or other money payable under this Agreement is discharged under an agreement or under statute or a principle of law or equity.

47.9 Suspension of [REDACTED] rights

As long as the [REDACTED] are outstanding or other money payable under this Agreement remains unpaid, the [REDACTED] cannot without the consent of the Authority:

- (a) in reduction of its liability under this Agreement, raise a defence, set off or counterclaim available to itself, the Developer or a co-surety or co-indemnifier against the Authority or claim a set off or make a counterclaim against the Authority;
- (b) make a Claim or enforce a right against the Developer or the [REDACTED] or against the estate or property of either of them;
- (c) prove in competition with the Authority if an Insolvency Event occurs in respect of the Developer or the General Guarantor whether in respect of an amount paid by the [REDACTED] under this Agreement, in respect of another amount (including the proceeds of a security (including a Security)) applied by the Authority in reduction of the [REDACTED] liability under this Agreement, or otherwise; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, mustering or otherwise to the benefit of a security (including a Security) or guarantee or a share in it now or subsequently held for the [REDACTED] or other money payable under this Agreement.

47.10 Other securities and obligations of [REDACTED]

The Authority's rights under this Agreement are additional to and do not merge with or affect and are not affected by:

- (a) any security (including any Security) now or subsequently held by the Authority from the Developer, the [REDACTED] or any other person; or
- (b) any other obligation of the [REDACTED] to the Authority,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

47.11 Reinstatement of the Authority's rights

If a Claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the [REDACTED] or other money payable under this clause 47 is void or voidable under law relating to Insolvency Events or the protection of creditors or for any other reason and the Claim is upheld, conceded or compromised, then:

- (a) the Authority is entitled immediately as against the [REDACTED] to the rights in respect of the [REDACTED] or other money payable under this Agreement to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the Authority, the [REDACTED] agrees to do any act and sign any document reasonably required or desirable to restore to the Authority any interest or guarantee held by it under or in connection with this Agreement from the [REDACTED] immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

47.12 Application of money

- (a) The Authority may apply money paid by the Developer or the Developer's estate, or the [REDACTED] or otherwise towards satisfaction of the [REDACTED] and other money payable under this Agreement in the manner it sees fit.
- (b) Subject to the Developer:

- (i) complying with its obligations under clause 44.1 in connection with an assignment or transfer of its interest in Central Barangaroo or this Agreement; and
- (ii) procuring a replacement [REDACTED], who is acceptable to the Authority, to enter into a guarantee, on terms acceptable to the Authority including unconditionally and irrevocably guaranteeing to the Authority the due and punctual performance and observance by the Developer of the [REDACTED].

the [REDACTED] is released from its obligations under this Agreement on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

47.13 Limitation of Liability

Notwithstanding any other provision of this clause 47, the liability of the [REDACTED] to the Authority under or in connection with this clause 47 (whether that liability arises under a specific provision of this Agreement for breach of contract, negligence or otherwise) is no greater than the liability of the Developer to the Authority under or in connection with a failure to comply with clause 5 of this Agreement (assuming those documents are fully enforceable in accordance with their terms).

47.14 Nature of the Authority's rights and obligations

The failure by the Authority to perform any of its obligations under this Agreement does not relieve the [REDACTED] of any of its obligations under this clause 47.

47.15 Continuing obligation

Each guarantee and indemnity contained in this clause 47 is a continuing obligation of the [REDACTED], despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,
- (c) and remains in full force and effect until all the [REDACTED] and all moneys owing by the [REDACTED] under this Guarantee and Indemnity, contingently or otherwise, have been paid or satisfied in full.

47.16 Principal and independent obligation

- (a) Each obligation of the [REDACTED] under this clause 47 is:
 - (i) a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
 - (ii) independent of and not in substitution for or affected by any other collateral security which the Authority may hold in respect of the [REDACTED] or any other obligation of any part to a Project Document or any other person.
- (b) This Agreement is enforceable against the [REDACTED]:
 - (i) without first having recourse to any collateral security;
 - (ii) whether or not the Authority has:

- A. made demand upon any party to a Project Document (except as required in order to comply with clause 47.5); or
 - B. given notice to any party to a Project Document or any other person in respect of any thing (except as required in order to comply with clause 47.5); or
 - C. taken any other steps against any party to a Project Document or any other person (except as required in order to comply with clause 44.5; and
- (iii) by action against either one separately or both entities which comprise the [REDACTED],
- (iii) despite the occurrence of any event described in clause 47.7.

48. Dispute resolution

48.1 Notice of dispute

If a dispute between the Developer, the General Guarantor, the [REDACTED] and the Authority (or any two or more of those parties) arises in connection with this Agreement or its subject matter, then the disputing party must give to the others a Notice identifying and providing details of the subject of the dispute.

48.2 Continuing to perform obligations

- (a) All parties to this Agreement must continue to perform their respective obligations under this Agreement if there is a dispute but will not be required to complete the matter the subject of the dispute (while the dispute remains on foot), unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs, Losses, Costs, liability and damages suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party.
- (b) This clause does not limit the right of any party to recover damages (including damages for any delay or other loss and associated costs) if the matter the subject of the dispute is resolved in favour of that party or the other party withdraws its requirement that the dispute be resolved.

48.3 Parties to consult

- (a) Subject to clause 48.3(b), any dispute between the parties arising in connection with this Agreement or its subject matter must first be referred to the chief executive officer of the Authority, the Chief Executive Officer of the General Guarantor, [REDACTED] and the Chief Executive Officer of the Developer to meet within 15 Business Days after the date of the notice for resolution of the dispute and undertake genuine and good faith negotiations with a view to resolving the dispute. If these persons cannot agree within 10 Business Days then the provisions of clauses 48.4 through to 48.18 (both inclusive) apply.
- (b) A dispute does not have to be referred for senior executive negotiations in accordance with clause 48.3(a) where this Agreement expressly provides that it will be determined by the Independent Certifier, the Quantity Surveyor or an Expert.

48.4 Pathway for determining disputes

Following the negotiations referred to in clause 48.3(a), if the parties to those negotiations:

- (a) agree that the matter should be determined by an expert, the matter must be referred to expert determination in accordance with clause 48.8; or
- (b) agree that the matter should be the subject of mediation, the mediator must be agreed by the disputing parties and, if the parties cannot agree within 10 Business Days, the matter must be mediated by a mediator appointed by the Resolution Institute; or
- (c) do not agree within 10 Business Days that the matter should be determined by an expert or a mediator, any of them may commence litigation.

48.5 Choice of expert

A dispute to be referred to an expert in accordance with clause 48.8 must be determined by an independent expert of at least 10 years immediate past experience in the relevant field:

- (a) agreed between the Authority and the Developer; or
- (b) in the absence of agreement within 5 Business Days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field and, if the parties cannot agree as to the relevant field within 10 Business Days, by an expert appointed by the Resolution Institute.

48.6 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

48.7 Agreement with expert

The parties must enter into an agreement with the expert chosen under clause 48.5 setting out the terms of the expert's engagement (including the time within which the expert must make the determination) and the expert's fees, substantially in the form of the 'Agreement with Expert' set out in Annexure T and otherwise amended to the extent agreed between the parties and the expert.

48.8 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) be engaged by the Authority and the Developer jointly substantially on the terms of the 'Agreement with Expert' set out in Annexure T and otherwise amended to the extent agreed between the parties and the expert;

- (c) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (d) not accept verbal submissions unless all parties to the dispute are present;
- (e) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other parties;
- (f) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (g) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (h) issue a draft certificate stating the expert's intended determination giving each party 10 Business Days to make further submissions;
- (i) issue a final certificate stating the expert's determination having had regard to any further submissions received under clause 48.8(h); and
- (j) act with expedition with a view to issuing the final certificate as soon as practicable.

48.9 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

48.10 Expert may commission reports

Subject to obtaining the prior consent of the disputing parties, the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. Provided that all parties have consented to the Costs, the Authority, the Developer, the General Guarantor and the [REDACTED] must indemnify the expert for the Cost of those advisers or consultants in accordance with clause 48.16.

48.11 Expert may convene meetings

- (a) The expert will hold a meeting with all the parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

48.12 Meeting not a hearing

The parties agree that a meeting under clause 48.11 is not a hearing and is not an arbitration.

48.13 Confidentiality of information

The parties agree, and must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to clause 48.13(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 48.13(a); or
 - (ii) if required by Law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

48.14 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts must have been otherwise discoverable in judicial or arbitral proceedings.

48.15 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them, unless the determination has either of the following effects:

- (a) a requirement for a party to pay the other party an amount exceeding [REDACTED]; and / or
- (b) increases either party's costs in complying with its obligations under this Agreement by an amount in excess of [REDACTED].

48.16 Expert's Costs

If any expert does not award Costs, the disputing parties must each pay an equal share of the expert's Costs (being one half by the Authority and one half by the Developer), incurred from the date of appointment to the date of the final determination.

48.17 Consolidation of disputes

If the subject matter of a dispute under this Agreement concerns similar or like matters that are also the subject of a dispute under another Project Document or under a Consortium Document, the parties to this Agreement agree that the dispute can be consolidated and dealt

with under this clause 48 on the basis that those other parties to the Project Document or the Consortium Document (as relevant) will:

- (a) be deemed to be included as disputing parties for the purposes of this clause 48 and will be bound by the determination made under this clause 48 to the same extent that the parties to this Agreement are bound; and
- (b) enter into a deed with the parties to this deed in the form of the [REDACTED].

48.18 Survive termination

The provisions of this clause 48 survive termination of this Agreement.

49. Developer Default Event and Termination

49.1 Occurrence of Default Event

- (a) If a Default Event occurs:
 - (i) the Authority may give the Developer a notice specifying the Default Event (**Default Notice**); and
 - (ii) if the Developer has not remedied or compensated for the Default Event as required under this Agreement within the period of time specified in the Default Notice, the Authority may, but is not obliged to, remedy (including by entering upon Central Barangaroo for the purpose of doing so) any Default Event including by drawing down upon any Performance Security relevant to the circumstances of the Default Event.
- (b) If the Authority takes any action to remedy a Default Event under clause 49.1(a)(ii) the Developer must pay to the Authority on demand a sum equal to the Costs incurred by the Authority (including legal Costs) in remedying an Default Event or provide such replacement Performance Security to the Authority in accordance with clause 14.3 of this Agreement.
- (c) If the Authority issues a Default Notice in respect of a Default Event under clause 49.1(a), the Authority must not issue a further Default Notice in respect of that same Default Event being the subject of that earlier Default Notice unless:
 - (i) the Cure Period has expired and the Default Event has not been remedied or compensated as required under this Agreement (subject to any extension to the Cure Period granted in accordance with clause 49.4);
 - (ii) a Default Event arises in relation or connection with the Developer's compliance with the Cure Plan (as specified in clause 49.4) in respect of the Default Event; or
 - (iii) due to any negligent, wilful or wrongful act or omission of the Developer (other than any negligent, wilful or wrongful act or omission of the Developer in connection with the initial Default Event itself), the situation giving rise to the relevant Default Event or the nature of the relevant Default Event is materially expanded so as to represent an increased risk of any Cost, Loss, liability or damage being suffered by the Authority or any third parties.

49.2 Financial Default

- (a) If the Developer commits a Financial Default, it must pay to the Authority interest on any amount which is the subject of a Financial Default until that amount is paid to the Authority.
- (b) Interest will accrue daily at the Prescribed Rate for each day from the date on which the amount became due and payable until such default is cured and be payable on the date payment of the amount is made.

49.3 Cure Period for Default Events

- (a) Subject to clause 49.3(b), upon receipt of a Default Notice the Developer must cure that Default Event within the Cure Period.
- (b) If the Developer has not rectified the Financial Default within:

- (i) [REDACTED]; or

[REDACTED]

of receipt of a Default Notice in respect of that Financial Default, the Authority may immediately exercise its rights under clauses 49.5 or 49.6(b) as though the Financial Default was capable of being cured but was not cured to the Authority's satisfaction within the time period required under this clause.

49.4 Extension to Cure Period for Default Events other than Financial Default

- (a) If the Developer requires an extension to the Cure Period it must, as soon as possible (but no later than the expiration of the current Cure Period), give to the Authority:
 - (i) a Cure Plan; and
 - (ii) evidence that the Developer has diligently pursued and is continuing to diligently pursue the remedying of the Default Event but that the Default Event cannot, with reasonable diligence, be cured within the current Cure Period.
- (b) The Authority must not unreasonably refuse to grant an extension of the Cure Period where the Developer has satisfied the requirements of this clause 49.4. The Developer may, unless otherwise agreed by the Authority, in its discretion, only apply once for an extension of the Cure Period in respect of the Default Event specified in the Default Notice.
- (c) If the Authority grants an extension of the Cure Period, the Developer must comply with the Cure Plan.
- (d) This clause 49.4 does not apply to a Financial Default.

49.5 Remedies before Project Practical Completion

- (a) If a Default Event occurs before Project Practical Completion that is not capable of being cured the Developer must:

- (i) within the Cure Period, comply with any reasonable requirements of the Authority; and
 - (ii) pay Compensation to the Authority to adequately redress the Default Event within [REDACTED] of receipt of the Default Notice.
- (b) If a Default Event has occurred before Project Practical Completion and the Default Event is:
- (i) capable of being cured and is not cured to the Authority's satisfaction (which may include the payment of Compensation) within the Cure Period;
 - (ii) not capable of being cured and the Developer fails to comply with clause 49.5(a), or
 - (iii) an Insolvency Event,
- the Authority may (without prejudice to any other rights under this Agreement) issue a notice notifying the Developer that in not less than 5 Business Days it may do any one or more of the following:
- (iv) have recourse to any Security including the Performance Security;
 - (v) in respect of a Material Default only, terminate this Agreement by notice in writing; and
 - (vi) where this Agreement has been so terminated exercise or enforce its rights under clause 49.7.
- (c) Any notice given by the Authority under clause 49.5(b)(v) to the effect that it proposes to terminate this Agreement due to a Material Default is a 'Material Default Notice'.
- (d) For the avoidance of doubt, and subject to clause 49.5(e), to the extent that any Lease has been granted by the Authority pursuant to this Agreement prior to the Authority exercising its rights under this clause 49, any such Lease will not be affected by the termination of this Agreement.
- (e) Clause 49.5(d) will not apply and the termination of this Agreement in accordance with this clause 49 will operate to terminate any Lease of any part of the Retail Component within a Block if this Agreement is terminated prior to the date when Leases of the Residential Component and the Office Component within the relevant Block have commenced.
- (f) [REDACTED]

49.6 Remedies after Project Practical Completion

- (a) If a Default Event occurs after Project Practical Completion that is not capable of being cured the Developer must:

- (i) within the Cure Period, comply with any reasonable requirements of the Authority; and
 - (ii) pay Compensation to the Authority to adequately redress the Default Event within 10 Business Days of receipt of the Default Notice.
- (b) If a Default Event has occurred after Project Practical Completion and the Default Event is:
- (i) capable of being cured and is not cured to the Authority's satisfaction (which may include the payment of Compensation) within the Cure Period; or
 - (ii) not capable of being cured and the Developer fails to comply with clause 49.6(a),
- the Authority may (without prejudice to any other rights under this Agreement):
- A. have recourse to any Security including the Performance Security;
 - B. sue the Developer for Costs, Loss, damages or Compensation; and
 - C. seek all other available legal and equitable remedies.
- (c) The Authority acknowledges and agrees that it is not entitled to terminate this Agreement in respect of a Default Event or Material Default Event that occurs after Project Practical Completion.

49.7 Rights and liabilities of the parties following termination by the Authority

- (a) If the Authority terminates this Agreement in accordance with clause 12.3(c) or clause 49.5, the Authority may:
- (i) exercise or enforce its rights under or terminate any Project Document and Compensation will not be payable to the Developer;
 - (ii) if the Developer has been granted access to a Block under a Construction Licence (and in respect of which a Lease has not been granted), require the Developer to immediately vacate the Block and any other part of Barangaroo in respect of which the Developer has been granted access;
 - (iii) require the Developer to cease Works immediately;
 - (iv) have recourse to any Security to recover any Loss, cost, damage or liability incurred or suffered by the Authority relating to the occurrence of the Default Event;
 - (v) sue the Developer for Compensation;
 - (vi) exercise all legal and equitable rights available to the Authority;
 - (vii) refuse to grant any Lease for any Stage or Block which has not been released to the Developer under clause 11.4 or which has not been certified to have achieved Practical Completion prior to the date of termination;
 - (viii) require the Developer to:

- A. novate or assign to the Authority or its nominee without payment any agreement or the benefit of any agreement for the supply of materials or goods or for the execution of any Works; and
 - B. deliver all documentation necessary to enable the Authority to bring the Works to Project Practical Completion.
- (b) The Developer, for the purposes of any transfer, surrender of lease or assignment under this clause 49.7, irrevocably appoints the Authority as its attorney with full power and authority to execute that transfer, surrender of lease or assignment on behalf of the Developer.
- (c) If this Agreement is terminated in accordance with clause 49.5, the rights and liabilities of the parties are the same as at common law if the Developer had wrongfully repudiated this Agreement and the Authority had elected to treat this Agreement as at an end and recover damages.
- (d) All costs, Loss, damage, liability or other detriment suffered or incurred by the Authority in or in relation to causing the Works to reach Project Practical Completion is a debt due and payable to the Authority which may be deducted from the proceeds of any Security.
- (e) Without affecting the generality of clause 49.8, the Developer acknowledges and agrees that it may make no Claim for any Loss or damage it may suffer in relation to a termination of this Agreement in accordance with clause 49, including, Loss, Costs, liability or damage through:
 - (i) the Developer being unable to complete any development of Central Barangaroo in a manner contemplated by the Developer;
 - (ii) affecting the development of any part of Central Barangaroo or adjacent land by the Developer;
 - (iii) decreasing the value of Central Barangaroo or other parts of Barangaroo in which the Developer has an interest or may become entitled to an interest;
 - (iv) contributing to loss of reputation;
 - (v) loss of profits or future earnings;
 - (vi) costs spent on items incorporated into the development which cannot be removed from Central Barangaroo;
 - (vii) the Authority retaining ownership of Central Barangaroo, the value of which may have increased since the date of this Agreement (whether or not this increase in value is attributable to actions of the Developer); and
 - (viii) any one or more of these.

49.8 Waiver

If this Agreement between the Authority and the Developer is terminated for any reason, the Developer waives any rights it may have to pursue a claim of restitution of any kind, including a claim of unjust enrichment.

50. Obligations and rights of the Authority

50.1 Obligations of the Authority

The Authority must endeavour to provide:

- (a) **(Information)** all information reasonably necessary to assist the Developer in the performance of its obligations under this Agreement;
- (b) **(Directions)** directions or instructions to the Developer in a timely manner as may be reasonably required for the Practical Completion of a Works Component; and
- (c) **(Further Information)** any further information required by the Developer, where the Developer reasonably considers that any information, instruction or direction is inadequate. The Developer must provide full details of the manner and extent to which the information, instruction or direction is inadequate and must ensure it does not cause delay to the Developer's Project.

50.2 Consents and Approvals by the Authority

- (a) Unless otherwise specified in this Agreement, the Authority's consent or approval may be:

- (i) given or withheld in the Authority's sole discretion; and
- (ii) given conditionally or unconditionally,

provided that the Authority must exercise its discretion in a manner which is consistent with its functions and objectives specified in the *Barangaroo Delivery Authority Act 2009* (NSW) and the Objectives and must not act capriciously or arbitrarily when granting or withholding its consent or approval under this Agreement.

- (b) Despite any timeframes or other requirements under this Agreement, the Authority will not have any obligation to review, consider or to give or withhold its consent or approval to any thing for which its consent or approval may be required under this Agreement if (and for so long as):

- (i) a Default Event arises and until such time as it is remedied or compensated as required under this Agreement or determined in accordance with this Agreement; or
- (ii) any documentation requiring consent is incomplete or not in the form required by this Agreement.

- (c) Despite any other provision in this Agreement, the parties acknowledge and agree that the Authority:

- (i) will not be acting capriciously, arbitrarily or unreasonably in withholding its consent or approval or refusing to sign any document or do anything where it does so pursuant to clause 50.2(b); and
- (ii) will not be liable for, and the Developer must not make any Claim against the Authority or the State in respect of any Loss, Costs or Claim against the Developer as a result of the Authority exercising its rights under this clause 50.2; and
- (iii) will not be deemed or otherwise taken to have given or withheld its consent or approval, or agreed or refused any matter or thing as a result

of the Authority exercising its rights under this clause 50.2 except where this Agreement provides expressly to the contrary.

50.3 Delegation

- (a) The Authority may delegate any power, function or responsibility which the Authority has under this Agreement or the Authority may perform or exercise such power, function or responsibility.
- (b) Any such delegation may be:
 - (i) revoked, changed or delegated; and
 - (ii) limited or may be subject to such conditions as the Authority determines from time to time.
- (c) Where the Authority delegates any powers, functions or responsibilities under this Agreement to an individual, the Authority must give Notice of such delegation to the Developer including the identity and address of any person to whom such powers, functions or responsibilities are delegated and any changes in the identity and address of such person. The Notice by the Authority may contain details of the delegation of any powers, functions or responsibility. Where such Notice has been given by the Authority, the Developer is entitled to rely upon such Notice unless and until given Notice of revocation of that delegation.
- (d) The Developer is entitled to request details of the delegation of any power, function or responsibility under this Agreement where a person purports to be acting under such a delegation. Once the Developer obtains such details, it is entitled to rely on them unless and until given Notice of the revocation of that delegation.
- (e) Any person to whom powers, functions or responsibilities are delegated by the Authority has, subject to the extent of that delegation and compliance with the terms of such delegation, the full power and authority to act for and on behalf of and to bind the Authority under this Agreement.

50.4 Authority may assign

- (a) The Authority may at any time assign its interest in this Agreement to any person provided that the assignee:
 - (i) is a Government Agency and has the necessary powers to enable it to perform the Authority's obligations under this Agreement; and
 - (ii) has title to Central Barangaroo following the assignment.
- (b) If the assignee is not a Government Agency but otherwise satisfies the requirements of this clause 50.4, then the Authority may only assign its interest in this Agreement with the consent of the Developer.

50.5 Change of landlord

If the Authority transfers title to any part of Central Barangaroo or grants a concurrent lease over any part of Central Barangaroo, so that the Developer becomes obliged to perform all or part its obligations under this Agreement in favour of another person (**New Landlord**), then:

- (a) where the New Landlord is a Government Agency, the Authority is released from those obligations under this Agreement which relate to that part of Central Barangaroo transferred or the subject of the concurrent lease, arising after the Developer receives notice of that event;

- (b) the Developer must procure that the New Landlord is substituted for the Authority as a named insured under those Insurances which relate to that part of Central Barangaroo transferred or the subject of the concurrent lease;
- (c) where the Authority holds (or is entitled to hold) Performance Security which secures obligations which the Developer becomes obliged to perform in favour of the New Landlord, the Developer must give the New Landlord replacement Performance Security, such Performance Security to be in the same form (except that the New Landlord is named as favouree) and for the same amount as the Performance Security it replaces;
- (d) the Authority must, on the same date as the replacement Performance Security is given to the New Landlord in accordance with clause 50.5(c), return the Performance Security held by it and which have been replaced, to the Developer (subject to exercising any rights to call on the Performance Security which it may have at that time);
- (e) the Developer must enter into those documents and assurances the Authority or the New Landlord reasonably requires to enable the New Landlord to enforce the benefit of all obligations owed under this Agreement which the Developer becomes obliged to perform in favour of the New Landlord, in the New Landlord's name;
- (f) prior to such transfer or grant, the Authority must procure the New Landlord to enter into such documents as are required to ensure that the New Landlord is bound by all Project Documents executed by the Authority and any consents to the extent they relate to that part of Central Barangaroo transferred or the subject of the concurrent lease; and
- (g) the Authority must pay the reasonable Costs incurred by the Developer in complying with the Developer's obligations under this clause 50.5.

51. Notices

51.1 How to give a notice

A notice, consent, Formal Notice or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) both:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; and
 - (ii) sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address.

51.2 Time of receipt of notices

A notice, consent or other communication that complies with this clause 51 is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia - 5 Business Days after posting; or

- (ii) to or from a place outside Australia - 10 Business Days after posting; and
- (b) if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

51.3 Address for Notices

For the purposes of this clause 51, a person (the sender) may take the address or email address of another person (the recipient) to be the address or email address set out below unless a different address or email address is notified by the recipient to the sender, then to the last so notified address or email address.

Authority

Name	Barangaroo Delivery Authority
Address	27/201 Kent Street, Sydney NSW 2000
Contact person	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

Developer

Name	Grocon (CB) Developments Pty Limited
Address	3 Albert Coates Lane MELBOURNE VIC 3000
Contact person	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

General Guarantor

Name	Grocon Constructors Pty Ltd ACN 006 703 091
Address	3 Albert Coates Lane MELBOURNE VIC 3000
Contact person	[REDACTED]
Telephone	[REDACTED]

Email

[REDACTED]

Name

Address

Contact person

Telephone

Email

51.4 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 51.4(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 51. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 51.1(c)(ii) will only form part of a communication under this clause 51 if it is in *.pdf, *.xls, *.doc, *.vsd, *.mpp, *.mdb, *.xer or *.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this Agreement to ensure that their respective firewall and/or mail server (as applicable) allows messages of up to 20 MB.

51.5 Formal Notices

If this Agreement requires the Developer to submit a Formal Notice to the Authority, the Developer:

- (a) must submit a written notice in the form of Annexure V (completed as appropriate having regard to the nature and the subject of the notice and the particular requirements of this Agreement in relation to that matter, item or thing); and
- (b) acknowledges and agrees that:
 - (i) a 'Formal Notice' is not validly given for the purposes of this Agreement unless it is made in accordance with the requirements of this clause 51.5;
 - (ii) the Authority is not required to review, consider, approve or withhold its approval to any matter, item or thing which is required to be submitted by Formal Notice and is not submitted as a Formal Notice in accordance with the requirements of this clause 51.5; and
 - (iii) any timeframes within which the Authority must consider and respond to any matter the subject of a Formal Notice will not commence unless and until a Formal Notice is validly given to the Authority in accordance with this Agreement with all required annexures.

52. Representations and warranties

52.1 Representations and warranties

The Developer represents and warrants to the Authority that:

- (a) **(Sub-contractor and consultants)** either the Developer and/or the Subcontractor will engage and retain the Key Consultants and will be responsible for ensuring that each of them is suitably qualified and experienced;
- (b) **(design completion)** it will ensure that the Design Documentation is completed in a manner which fully satisfies and complies with the Approvals;
- (c) **(Works)** it will ensure that the Works are carried out and completed in accordance with the Approved Design Documents at the level of the Developed Design Documentation for those Works and where applicable, Tender Documentation and Issued for Construction Drawings and so that the Developer's Project, when completed, will:
 - (i) be fit for its stated purpose; and
 - (ii) satisfy the requirements of the Approvals and comply with all Law;
- (d) **(status)** it is not in liquidation, provisional liquidation or receivership, or under administration;
- (e) **(power)** it has full legal capacity and power:
 - (i) to own its property and assets and carry on its business as it is now being conducted; and
 - (ii) to enter into, exercise its rights and perform its obligations under this Agreement and the other Project Documents;
- (f) **(approval)** all conditions and things required by applicable Law to be fulfilled or done (including the obtaining of any necessary Approvals) in order:
 - (i) to enable it lawfully to enter into, and exercise its rights and perform its obligations under, this Agreement and the other Project Documents; and
 - (ii) to ensure that its obligations under this Agreement and the other Project Documents rank and will continue to rank at all times in accordance with clause 52.1(g),

have been fulfilled or done;
- (g) **(obligations binding)** this Agreement and the other Project Documents form valid and legally binding obligations, enforceable against it except to the extent limited by equitable principles and Law affecting creditors' rights generally;
- (h) **(no contravention)** neither its execution of, nor its exercise of its rights or performance of its obligations under, this Agreement and the other Project Documents does or will:
 - (i) contravene any applicable Law to which it or any of its property is subject or any order of any Government Agency binding on it or any of its property;
 - (ii) contravene any Approval or require that any Approval be obtained;

- (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene any provision of its constitution;
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery; or
 - (vi) cause any limitation on its power to incur financial indebtedness to be exceeded;
- (i) **(no litigation)** no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, could have, either separately or in aggregate, a material adverse effect on it or any of its subsidiaries or a Project Document;
- (j) **(financial statements)** its financial statements and all other accounts, financial statements and reports which it has delivered to the Authority under this Agreement have been prepared in accordance with the Law of Australia and (except where inconsistent with that Law) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial period then ended;
- (k) **(other information)** the written information and reports (if any) which it has furnished to the Authority in connection with the negotiation and preparation of this Agreement and the other Project Documents:
- (i) were, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed;
- (l) **(no filings or taxes)** it is not necessary to file or register with any Government Agency or to pay any taxes to ensure legality, validity, enforceability or admissibility in evidence of this Agreement or the Project Documents;
- (m) **(no security interests)** none of its property, and no property of any of its subsidiaries, is subject to any security interest or lien, other than a Permitted Security Interest;
- (n) **(no reasonable grounds)** there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (o) it is not in breach of a Law or any obligation affecting it or its assets in a way which is, or is likely to have, a Material Adverse Effect. For the purposes of this clause 52.1(o) only **Material Adverse Effect** means a material adverse effect on:
- (i) each of the Developer's, the General Guarantor's or the [REDACTED] ability to comply with its obligations under any Project Document;
 - (ii) the Authority's rights under any Project Document; or
 - (iii) the business or financial condition of the Developer;

- (p) **(Disclosure Materials)** it has satisfied itself in relation to all matters dealt with or referred to in the Disclosure Materials;
- (q) **(trust)** in entering into this Agreement, it is not acting as trustee of any trust or settlement; and
- (r) **(probity)** in making and preparing the Final Bid, the Developer has complied with the Authority's probity requirements and standards in all respects and has not acted in concert with any other bidder or tenderer for the Developer's Project.

52.2 Warranties unaffected

The Developer acknowledges that the representations and warranties in clause 52.1 and the Developer's obligations under clause 7 will remain unaffected notwithstanding any Variation.

52.3 Continuance of representations and warranties

The Developer must immediately notify the Authority if a representation or warranty given under clause 52.1 becomes untrue.

52.4 Reliance on representations and warranties

The Developer acknowledges that the Authority has entered into this Agreement in reliance on the representations and warranties in this clause 52.

52.5 Warranty and indemnity

Where any warranty is given by the Developer under this Agreement, the Developer indemnifies the Authority in respect of any Costs, Claims, Loss, damage or expense which arises out of or is in any way connected with a breach of that warranty.

52.6 Extent of indemnity

Any indemnity given by the Developer under this Agreement extends to any Loss, liability, damage or expense, including (without limitation):

- (a) loss of profit;
- (b) liability to third parties;
- (c) legal costs (on a solicitor own client basis) in respect of enforcing the indemnity or defending any claim brought by any party, including a third party, in respect of a matter which is the subject of the indemnity; and
- (d) Costs, Claims, Loss, liability, damage or expense arising from or in any way connected with an act, default or omission or other event in respect of which the indemnity is given.

53. Confidentiality

53.1 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 terms of this Agreement (including any written or oral agreements, negotiations or information in relation to this Agreement) and the Project Documents; and

- (b) any documents which are, or information which is, confidential under this Agreement,

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.

53.2 Exceptions

The parties' obligations in clause 53.1 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 each of the Developer and the Authority to perform its obligations under this Agreement;
- (d) made by the Developer to the Investors, shareholders, financiers, professional advisers, the Builder and its subcontractors in relation to the Developer's Project but only to the extent that those parties need to know that information to perform their services to the Developer or otherwise participate in the Developer's Project;
- (e) made by the Authority to the State of NSW or any entity or department of the State of NSW [REDACTED];
- (f) in accordance with clauses 7.13, 53.4 and 53.5; or
- (g) where required by government directive applying to the Authority.

53.3 Procure compliance

The parties must procure any sub-contractors, Financiers, other person with whom they have an agreement in relation to the Developer's Project and their respective employees, agents and sub-contractors to:

- (a) comply with the obligations set out in this clause; 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 Agreement.

53.4 Disclosure by Authority

- (a) The parties acknowledge and agree that:
 - (i) the Authority may make the Project Documents available to the Auditor-General:
 - A. in accordance with and to the extent required by the *Public Finance and Audit Act 1983* (NSW); and
 - B. so far as possible, on a commercial-in-confidence basis;
 - (ii) subject to the Developer's, the General Guarantor's and the [REDACTED] rights at Law, the Authority may publish information concerning the Project Documents in accordance with:
 - A. the NSW Government's Code of Practice for the Building and Construction Industry; and

- B. the NSW Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry; and
- (iii) under the GIPA Act, the Authority has obligations to:
- A. publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing the Project Documents on the Authority's contract registers; and
- B. release information pursuant to an access application unless the Authority is reasonably satisfied that there is an overriding public interest against disclosure.
- (b) Notwithstanding the other provisions of this clause 53.4, in relation to any disclosure under clause 53.4(a)(iii) the parties acknowledge that:
- (i) the Authority will notify the Developer, the General Guarantor and the [REDACTED] of any disclosure of commercially sensitive information in relation to any Project Document or the Developer's Project by the Authority under the GIPA Act in accordance with clause 53.4(a)(iii) and will use reasonable endeavours to give such notice prior to the relevant disclosure;
- (ii) following notification by the Authority under clause 53.4(b)(i), the Authority will use reasonable endeavours to consult with the Developer before disclosing the commercially sensitive information;
- (iii) if, following:
- A. notification by the Authority under clause 53.4(b)(i); or
- B. consultation between the parties in accordance with clause 53.4(b)(ii),
- the Developer, the General Guarantor or the [REDACTED] objects to disclosure of some or all of the commercially sensitive information, the Developer, the General Guarantor or the [REDACTED] (as relevant) must provide details of any such objection within 5 Business Days after the date the Developer, the General Guarantor or the [REDACTED] received notification from the Authority or the date on which the consultation process concluded (as relevant); and
- (iv) the Authority must take reasonable account of any objection received from the Developer, the General Guarantor or the [REDACTED] (or any all of them) pursuant to clause 53.4(b)(iii) in determining whether the commercially sensitive information identified by the Developer, the General Guarantor or the [REDACTED] (or all of them) should be disclosed, and further acknowledging that:
- A. the Authority will be under no obligation to accept or otherwise agree to the objections; and
- B. the Developer, the General Guarantor or the [REDACTED] (or all of them) may have rights to seek a review of the decision by the Authority to disclose any commercially sensitive information.

53.5 Overriding statutory obligations

The parties, acknowledge and agree that nothing in clause 53.4 will limit or otherwise affect the discharge of the Authority's obligations to disclose information in connection with the Developer's Project as required by any Law including the GIPA Act.

54. General

54.1 Continuing indemnities

Each indemnity given by any of the Developer, the General Guarantor and the [REDACTED] [REDACTED] of the Developer, the General Guarantor and the [REDACTED] as the case may be and survives termination of this Agreement.

54.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

54.3 Rights cumulative

The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by Law.

54.4 Entire agreement

This Agreement and the other Project Documents form the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement and the Project Documents. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement and the other Project Documents.

54.5 Amendment

This Agreement may only be amended or supplemented in writing signed by the parties.

54.6 Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

54.7 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its Employees and Agents does, signs, executes and delivers, all deeds, documents, instruments and acts as reasonably required of it or them and must carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

54.8 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute the same instrument.

54.9 Attorneys

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Agreement.

54.10 No partnership or agency

Except as expressly provided in this Agreement nothing contained or implied in this Agreement will:

- (a) constitute or be deemed to constitute a party to be the partner, agent or legal representative of any other party for any purpose whatsoever or create or be deemed to create any partnership; or
- (b) create or be deemed to create any agency or trust.

54.11 Non-merger

No provision of this Agreement:

- (a) merges on or by virtue of any act, matter or thing undertaken or carried out by either of the Developer or the Authority under this Agreement including without limitation Project Practical Completion; or
- (b) is in any way modified, discharged or prejudiced by reason of any investigations made or any information acquired by or on behalf of the Developer or any of the conditions specified in clauses 1.9 or 12.1 being waived.

54.12 Law and jurisdiction

- (a) This Agreement is governed by the Law of the State.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement or any other Project Document.

54.13 Surviving provisions

Clauses 4, 5.5, 5.6, 33.10, 40.5, 45, 46, 47, 48, 49.7, 51, 53 and 54 will survive the termination otherwise than in accordance with clause 1.9 or expiration of this Agreement (whether or not other clauses also survive termination or expiration).

54.14 Communication Protocol

The Developer proposes to use Aconex as a document management and file transfer system for the administration of this Agreement, including communications and the submission of design and other materials in connection with the Developer's Project. The Developer will, at its cost, enable the Authority to access and receive file transmittals via its system, and otherwise procure any training of the Authority's personnel in the use of its system.

54.15 No fettering of Statutory Power

Nothing in this Agreement will operate so as to fetter or in any way impede the exercise of the statutory powers, functions and discretion of the Authority in its role as a government agency under the *Barangaroo Delivery Authority Act 2009* (NSW) or its role as Roads Authority under the *Roads Act 1993* (NSW).

54.16 Audit

- (a) From the date of this Agreement until the date which is 27 months after the Date of Project Practical Completion, the Authority may at any time and from time to time but no more than once per calendar year (or twice a year in the case of the items referred to in clause 54.16(a)(ii)), audit the Developer's compliance with the Law, this Agreement, or any aspect of this Agreement including:
 - (i) progress towards achieving or compliance with the Sustainability Obligations and/or the Social Outcomes and/or the Carbon Neutral Obligations;
 - (ii) WHS Legislation and/or the Work Health and Safety Management Plan;
 - (iii) the Works, including quality of the Works or any part of a Works Component and/or Good Design and Construction Practices;
 - (iv) a Planning Approval;
 - (v) the POEO Act Licence or any other Approval granted pursuant to Environmental Law; or
 - (vi) an Environmental Law.
- (b) The Developer must make available to or provide the Authority (or its nominee or auditor) with access to or copies of (as determined by the Authority) all accounts, financial statements, records, time sheets, policies, data (including information stored by computer and other devices) and/or access to Blocks and/or the Works, as may be required by Notice from the Authority. The Developer must comply with each Notice given under this clause 54.16 within a reasonable time from each Notice. The Developer must participate promptly, co-operatively and at its own cost in any audit instigated by the Authority pursuant to this clause 54.16.
- (c) The Authority will pay the costs of each auditor appointed under this clause.
- (d) Where an audit reveals a breach of this Agreement and/or the Law, the Developer must reimburse the Authority for the costs of the auditor within 5 Business Days of the date of demand from the Authority.

55. Home Building Act

- (a) The parties acknowledge and agree that:
 - (i) neither this Agreement nor any other Project Document requires the Developer to carry out residential building work within the meaning of the Home Building Law;
 - (ii) the Developer does not hold a contractor licence under the Home Building Law authorising it to carry out HBA Work;
 - (iii) by entering into this Agreement, the Developer is not contracting to do HBA Work.
- (b) Despite any other provisions of this Agreement, the parties acknowledge and agree that the Developer will not carry out any HBA Work itself but will, to the extent any of the Works comprise HBA Work, ensure that those works are carried out by or on behalf of a person:
 - (i) holding a contractor licence within the meaning of the Home Building Law; and

- (ii) who has effected any insurance required by the Home Building Law.
- (c) The Developer represents that:
 - (i) the Developer does not hold a contractor licence under the Home Building Law authorising it to do "specialist work" as that term is defined in section 3 of the Home Building Law (**Specialist Work**) (to the extent the Home Building Law requires contractors to be licensed to carry out Specialist Work); and
 - (ii) by entering into this Agreement, the Developer is not contracting to do any Specialist Work.
- (d) Notwithstanding any other provisions of this Agreement, the parties agree and acknowledge that the Developer will not do any Specialist Work itself but will, to the extent any of the Works comprise Specialist Work, engage a Builder to carry out or cause to be carried out Specialist Work by a contractor appropriately licensed under the Home Building Law.
- (e) The Developer:
 - (i) warrants to the Authority that any Building Contract it is required to enter into under this Agreement, to the extent that the Building Contract provides for the carrying out of HBA Work, will require those HBA Works to be done in accordance with, and will comply with, Home Building Law;
 - (ii) will ensure that all warranties required to be given by a contractor carrying out HBA Work under Home Building Law will apply for the benefit of the Authority, as applicable, and each purchaser under a contract of sale and their successors in title; and
 - (iii) acknowledges that those warranties required of it by Home Building Law apply to any HBA Work within the Works, including but not limited to, the warranties under s18B of the Home Building Law. Accordingly, the Developer, in addition to any other warranties required under the Home Building Law from time to time, will procure and warrants to the Authority that:
 - A. all HBA Work within the Works will be done with due care and skill and in accordance with the plans and specifications set out in the Building Contracts;
 - B. all materials supplied by a Builder in respect of the HBA Works will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the Building Contracts, those materials will be new;
 - C. the HBA Work within the Works will be done in accordance with, and will comply with, Home Building Law;
 - D. the HBA Work within the Works will be done with due diligence and within the time stipulated in the Building Contracts, or if no time is stipulated, within a reasonable time;
 - E. if the HBA Works within the Works consist of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the HBA Works within the Works will result, to the extent of the applicable work conducted, in a

dwelling that is reasonably fit for occupation as a dwelling;
and

- F. the HBA Works within the Works and any materials used in carrying out the HBA Works within the Works, will be reasonably fit for the specified purpose or result, if the Authority or the Developer expressly makes known to the relevant Builder the particular purpose for which the Works are required or the result that the Authority or the Developer desires the HBA Works within the Works to achieve, so as to show that the Authority and the Developer rely on the relevant Builder's skill and judgment.

- (iv) The Developer indemnifies the Authority against, and must pay to the Authority, on demand the amount of all Loss, liabilities, Costs or other detriment and expenses (including legal expenses on a full indemnity basis) directly or indirectly arising from or in connection with Claims by third parties for breach by the Developer of any of the covenants made and warranties given by the Developer under this clause 55(e).

Execution page**Signed as a deed.****The seal of Barangaroo Delivery Authority is affixed in the presence of:**_____
Signature of witness_____
Full name of witness**Signed, sealed and delivered for and on behalf of Grocon (CB) Developments Pty Limited ACN 614 118 642 by its attorneys under the power of attorney dated 23 May 2017** __________
and in the presence of: __________
Signature of witness_____
Full name of witness**Signed, sealed and delivered for and on behalf of Grocon Constructors Pty Ltd ACN 006 703 091 by its attorneys under the power of attorney dated 23 May 2017** __________
and in the presence of: __________
Signature of witness_____
Full name of witness_____
Signature of Chief Executive Officer_____
Full name of Chief Executive Officer_____
Signature of Attorney A_____
Full name of Attorney A_____
Signature of Attorney B_____
Full name of Attorney B_____
Signature of Attorney A_____
Full Name of Attorney A_____
Signature of Attorney B_____
Full name of Attorney B

[Redacted Signature]

Signature of Attorney A

and in the presence of:

Full name of Attorney A

Signature of witness

Signature of Attorney B

Full name of witness

Full name of Attorney B