Annexure N - Construction Licence

CLAYTON UTZ

Annexure N to
Central Barangaroo
Development
Agreement

Central Barangaroo Construction Licence Block [#]

Barangaroo Delivery Authority
Authority

Grocon (CB) Developments Pty Limited
Developer

Grocon Constructors Pty Ltd
General Guarantor

[redacted]

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Our reference 18637/16133/80128948

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Construction Licence

Date

Parties

Barangaroo Delivery Authority ABN 94 567 807 277 of 21/201 Kent Street, Sydney NSW 2000 being a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (**Authority**)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates Lane Melbourne VIC 3000 (**Developer**)

Grocon Constructors Pty Ltd ACN 006 703 091 of 3 Albert Coates Lane Melbourne VIC 3000 (**General Guarantor**)

[redacted]

Background

A. The Authority and the Developer entered into the CENDA on [*date*].

B. At the request of the Developer, the Authority has agreed to grant a licence for access to the Licensed Area subject to the terms of this licence.

C. In consideration for the Authority granting the licence for access under this licence, the General Guarantor and the [redacted] each agree to guarantee the obligations of the Developer under this licence.

Operative provisions

1. Definitions

1.1 Definitions

These meanings apply unless the contrary intention appears:

Approved Compliance Report means a compliance report which has been approved by the Authority pursuant to clause 8.3(a)(i)A or the determination of the relevant terms for an Approved Compliance Report made in accordance with the dispute resolution process under clause 48 of the CENDA and arising pursuant to clause 8.3(a)(ii).

Block [*insert*] means [*insert details of relevant development block*].

CENDA means the Development Agreement between the Authority, the Developer and others dated [*date*] for the development of the Developer's Project.

Central Barangaroo has the meaning given in the CENDA.

Commencement Date means the date of this licence.

Construction Licence has the meaning given in the CENDA.

Developer includes:

(a) in the case of a corporation, its successors and permitted assigns;

(b) the Developer's Employees and Agents.

Developer's Project has the meaning given in the CENDA.

Draft Compliance Report has the meaning given in clause 8.2(a).

Early Activation Licence has the meaning given in the CENDA.

Employees and Agents means each of a corporation's employees, agents, officers, contractors, service suppliers, licensees, invitees, builders and those persons who are on Central Barangaroo at the behest of that corporation other than:

(a) (in the case of the Developer): the Authority and the employees, agents and other persons set out above of the Authority; and

(b) (in the case of the Authority): the Developer, TfNSW, LLMP, Crown or the employees agents and other persons set out above of the Developer, TfNSW, LLMP or Crown.

Expiry Date means, as applicable to each part of the Licensed Area as set out below, the earliest to arise of:

(a) the date on which a Lease or Early Activation Licence is granted pursuant to the CENDA, to the extent that such Lease or Early Activation Licence relates to that part of the Licensed Area;

(b) the Termination Date; or

(c) 60 Business Days after the Date of Block Practical Completion in respect of the relevant Block.

Licensed Area means the Block of the Developer's Project, within Central Barangaroo, as shown hatched in Schedule 1, subject to:

(a) this licence expiring in respect of any part of the Licensed Area on an Expiry Date; and

(b) any area forming part of an Early Activation Licence reverting to form part of the Licensed Area pursuant to clause 3.3.

Make Good Works means one or more of the following:

(a) repairing and rectifying any damage or disturbance caused to any part of Central Barangaroo as a result of Developer carrying out the Works;

(b) works to make safe and remove property from the Licensed Area as reasonably required by the Authority; and

(c) any other works reasonably required by the Authority, as specified in a notice given under clause 10.1(a).

Request to Demonstrate Compliance means a request given by the Authority pursuant to clause 8.1.

Special Event means any planned activity that is:

(a) wholly or partly conducted on land owned by the Authority or on Hickson Road;

(b) requires special management arrangements;

(c) involves large numbers of participants or spectators; and

(d) is notified by the Authority to the Developer in accordance with clause 7.3 of this licence,

and which may include (without limitation) New Year's Eve, Australia Day and the Sydney Marathon.

Suspension Area means the area specified in a Suspension Notice in accordance with clause 9(a)(ii) and subject to the requirements in clause 9(b).

Suspension Notice means a notice given by the Authority pursuant to clause 9(a).

Term means the term of this licence set out in clause 3.

Termination Date has the meaning given in clause 10.1(b).

Termination Event means:

(a) termination of the CENDA for any reason;

(b) failure by the Developer to provide a Draft Compliance Report to the Authority in accordance with clause 8.2(a) and within the timeframes specified in that clause;

(c) failure by the Developer to comply with clause 9(f) including the timeframes specified in that clause; or

(d) failure of the Developer to rectify a breach of this licence in accordance with an Approved Compliance Report within the timeframe specified in the Approved Compliance Report and after a Suspension Notice has been given in respect of that breach pursuant to clause 9(a).

Works means:

(a) the works carried out by the Developer to complete that part of the Developer's Project which is situated on the Block; and

(b) the Make Good Works.

1.2 Interpretation

Unless the contrary intention appears, a reference in this licence to:

(a) a group of persons is a reference to any two or more of them jointly and to each of them individually;

(b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

(d) anything (including an amount) is a reference to the whole and each part of it;

(e) a document (including this licence) includes any variation or replacement of it;

(f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

(g) Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia;

(h) a time of day is a reference to Sydney time;

(i) the singular includes the plural and vice versa;

(j) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;

(k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(l) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(m) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this licence.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this licence.

1.4 Capitalised terms in the CENDA

Capitalised terms not defined, but used in this licence, have the same meaning as in the CENDA.

1.5 Inconsistency with CENDA

If there is inconsistency between the provisions of this licence and the CENDA, the provisions of the CENDA prevail.

2. Grant of non-exclusive licence

The Authority grants to the Developer a non-exclusive licence to access and use the Licensed Area during the Term:

(a) to do all things reasonably necessary to carry out the Works within the Licensed Area in accordance with Developer's obligations under this licence and the CENDA; and

(b) for any other uses which the Authority approves (acting reasonably).

3. Licence term

3.1 Term

(a) This licence:

(i) commences on the Commencement Date; and

(ii) expires, in respect of each part of the Licensed Area, or the whole of the Licensed Area (as applicable) on the Expiry Date.

(b) For the avoidance of doubt, clause 3.1(a)(ii) operates so that this licence will continue over parts of the Licensed Area which are not subject to any Lease or Early Activation Licence, until the Expiry Date.

3.2 Extension

The Term may only be extended by written agreement of the Authority which may be given or withheld in the absolute discretion of the Authority.

3.3 Reversion of area following termination of Early Activation Licence

If:

(a) pursuant to the grant of an Early Activation Licence this licence expires in respect of any part of the Licensed Area; and

(b) that Early Activation Licence is subsequently terminated other than due to the grant of a Lease,

the area formerly comprising part of the Licensed Area (prior to the grant of the Early Activation Licence) will revert to forming part of the Licensed Area.

4. Licence Fee

The Developer must pay to the Authority the licence fee of $1 for the Term on demand.

5. Use of the Licensed Area

The Developer must not use the Licensed Area for any purpose other than as provided in clause 2 and will not do anything in or about the Licensed Area which may adversely affect the rights of any other parties to access or make use of Central Barangaroo (except to the extent reasonably necessary in order to protect any person during the carrying out of the Works).

6. Developer obligations

6.1 Carrying out of Works

The Developer must carry out the Works within the Licensed Area in accordance with the CENDA.

6.2 Care of Licensed Area

From the Commencement Date, the Developer must not do anything to interfere with the ability for the Authority or any party authorised by the Authority to access the Licensed Area (except to the extent reasonably necessary in order to protect any person during the carrying out of the Works, pending the completion of the Works).

6.3 Compliance with directions

The Developer must comply with all reasonable directions given by the Authority in relation to the use, access or carrying out of Works under this licence.

6.4 Transfer and other dealings

The Developer must not transfer or assign its rights under this licence or grant an encumbrance over or otherwise deal with the Licensed Area or with its licence to use the Licensed Area except in respect of any grant of sublicence to an Investor or a Builder.

7. Developer acknowledgements

7.1 No proprietary interest

The Developer:

(a) does not have any right to exclusive possession or occupation of the Licensed Area; and

(b) is not a tenant of the Authority.

7.2 Provisions of CENDA not affected

(a) This licence and anything done by the Developer or the Authority under this licence:

(i) does not affect the rights and obligations of the parties under the CENDA;

(ii) is not to be taken as a waiver of any rights of the Authority under the CENDA;

(iii) does not constitute any concession in favour of Developer in respect of any obligations which Developer has under the CENDA; and

(iv) does not release or discharge any of the obligations of Developer under the CENDA.

(b) To the extent of any inconsistency between this licence and the CENDA, the provisions of the CENDA prevail.

7.3 Emergencies and Special Events

(a) Subject to the remainder of this clause 7.3, the Developer must comply with all reasonable directions given to the Developer by the Authority in relation to an emergency or a Special Event.

(b) Nothing in this clause 7.3 requires the Developer to:

(i) vacate the Licensed Area; or

(ii) clear the Licensed Area.

(c) The Authority must, when exercising its rights under this clause 7.3, minimise disruption to the Developer's Project and any Works.

(d) Prior to issuing any directions in respect of a Special Event pursuant to clause 7.3(a), the Authority must provide the Developer with prior written notice of the relevant Special Event.

(e) The Authority will not schedule, procure, permit or cause Special Events to be carried out within Central Barangaroo on more than 6 days in each calendar year.

8. Non-compliance

8.1 Request to Demonstrate Compliance

If at any time during the Term the Authority reasonably considers that the Developer:

(a) is carrying out the Works within the Licensed Area in a manner that is not in compliance with its obligations under this licence;

(b) is using the Licensed Area other than as permitted under this licence; or

(c) is otherwise in breach of the Developer's obligations under this licence and the nature of the breach is capable of being remedied,

the Authority may give a notice to the Developer specifying the nature of the non-compliance and requesting the Developer to show cause as to why the Developer's rights to use the Licensed Area under this licence should not be suspended (**Request to Demonstrate Compliance**).

8.2 Draft Compliance Report

(a) If the Authority issues a Request to Demonstrate Compliance, the Developer must, within 10 Business Days after the date on which that notice is received, provide a written response to the Authority (**Draft Compliance Report**):

(i) setting out the Developer's proposed plan to rectify the non-compliance specified in the Request to Demonstrate Compliance and which must include a program specifying the details of actions and timeframes within which those actions will be carried out by the Developer (which must be reasonable having regard to the nature of the non-compliance) and in respect of any non-compliance which cannot be rectified, proposing an appropriate amount of compensation to be paid to the Authority having regard to any loss, cost or liability which the Authority has incurred (including any costs in relation to the enforcement or attempted enforcement of this licence);

(ii) confirming that the non-compliance specified in the Request to Demonstrate Compliance has been rectified and specifying the details of actions taken by the Developer to rectify the matter; or

(iii) disputing that the non-compliance specified in the Request to Demonstrate Compliance constitutes a breach of this licence.

(b) A failure of the Developer to provide a Draft Compliance Report in accordance with clause 8.2(a) and within the timeframe specified in clause 8.2(a) constitutes a Termination Event.

8.3 Review of Draft Compliance Report

(a) Within 10 Business Days after the date on which the Authority receives a Draft Compliance Report from the Developer, the Authority must give a notice to the Developer either:

(i) accepting the Draft Compliance Report, and if the Draft Compliance Report was given:

A. pursuant to clause 8.2(a)(i), the Developer must rectify the relevant non-compliance in accordance with the compliance report and within the timeframes specified in the compliance report (**Approved Compliance Report**); or

B. pursuant to clause 8.2(a)(ii) or clause 8.2(a)(iii), no further action is required in respect of the Request to Demonstrate Compliance and the Developer must continue to use the Licensed Area in accordance with this licence; or

(ii) rejecting the Draft Compliance Report and referring the matter for determination as a dispute in accordance with clause 48 ('Dispute resolution') of the CENDA for the purposes of determining:

A. where a Draft Compliance Report has been given pursuant to clause 8.2(a)(i), whether the Developer's proposed plan to rectify the non-compliance would in fact rectify the non-compliance, and whether the timeframe to rectify the non-compliance is reasonable having regard to the nature of the non-compliance; or

B. where a Draft Compliance Report has been given pursuant to clause 8.2(a)(ii) or clause 8.2(a)(iii), whether the non-compliance specified in the Request to Demonstrate Compliance is ongoing, and if the non-compliance is ongoing, the details of actions necessary to be carried out, and timeframes within which those actions must be carried out by the Developer in order to rectify the non-compliance (which must be reasonable having regard to the nature of the non-compliance).

(b) If the Authority gives a notice pursuant to clause 8.3(a)(ii), that notice will constitute the 'notice of dispute' for the purposes of clause 48.1 ('Notice of dispute') of the CENDA such that no further 'notice of dispute' is required to be given by the Authority in regard to the matter to commence the dispute resolution process.

8.4 Satisfaction of Compliance Report conditions

(a) As soon as is practicable after the Developer considers that it has taken all necessary action in accordance with an Approved Compliance Report in order to rectify a non-compliance, the Developer must give notice to the Authority confirming that it has rectified the relevant non-compliance.

(b) Within 10 Business Days after receiving a notice from the Developer in accordance with clause 8.4(a), the Authority must give a notice to the Developer:

(i) accepting that the Developer has rectified the non-compliance in accordance with the Approved Compliance Report;

(ii) rejecting that the Developer has rectified the non-compliance in accordance with the Approved Compliance Report and specifying the reasons why the Authority considers that the Developer has failed to rectify the non-compliance in accordance with the Approved Compliance Report which, for the avoidance of doubt, may be given in conjunction with a Suspension Notice under clause 9(a); or

(iii) rejecting that the Developer has rectified the non-compliance in accordance with the Approved Compliance Report and referring the matter for determination as a dispute in accordance with clause 48 ('Dispute resolution') of the CENDA.

(c) If the Authority gives a notice pursuant to clause 8.4(b)(i), no further action is required and the Developer must continue to use the Licensed Area in accordance with this licence.

(d) If the Authority gives a notice pursuant to clause 8.4(b)(ii), the Developer must either:

(i) at its own cost take all further action required to satisfy those matters specified by the Authority in its notice under clause 8.4(b)(ii) (and where that notice is given in conjunction with a Suspension Notice, comply with the requirements of the Suspension Notice) and once completed, resubmit a notice to the Authority in accordance with clause 8.4(a); or

(ii) refer the matter for resolution as a dispute under clause 48 ('Dispute Resolution') of the CENDA.

(e) If the Authority gives a notice pursuant to clause 8.4(b)(iii) or the Developer gives a notice pursuant to clause 8.4(d)(ii), that notice will constitute the 'notice of dispute' for the purposes of clause 48.1 ('Notice of dispute') of the CENDA such that no further 'notice of dispute' is required to be given by the relevant party in regard to the matter to commence the dispute resolution process.

9. Suspension

(a) If at any time after the Authority has given notice of an Approved Compliance Report in accordance with clause 8.3(a)(i)A or the terms of an Approved Compliance Report have been determined through a dispute resolution process arising pursuant to clause 8.3(a)(ii), the Authority considers (acting reasonably) that the Developer is not rectifying a non-compliance in accordance with that Approved Compliance Report, the Authority may give a notice to the Developer (**Suspension Notice**):

(i) specifying the reasons why the Authority considers that the Developer is not rectifying a non-compliance in accordance with the Approved Compliance Report;

(ii) nominating that part of the Licensed Area which the Authority requires the Developer to cease to use except for the purposes of carrying out the actions specified in and in accordance with the Approved Compliance Report (**Suspension Area**); and

(iii) specifying the date on which the suspension of the Developer's rights under this licence is to commence.

(b) The Authority acknowledges and agrees that the Suspension Area nominated in a Suspension Notice must:

(i) be reasonable having regard to the nature of the non-compliance and the actions required to be carried out in that area by the Developer in accordance with the Approved Compliance Report to rectify the non-compliance; and

(ii) must not include any part of the Licensed Area which is not affected by the relevant non-compliance the subject of the Approved Compliance Report.

(c) If the Authority gives a Suspension Notice, the Developer must, at its own cost:

(i) on and from the date specified in the Suspension Notice, cease using the Suspension Area for any purpose other than in order to rectify the non-compliance in accordance with the Approved Compliance Report;

(ii) ensure that all parts of the Licensed Area which the Developer ceases to use and access are made safe and secure; and

(iii) as soon as is practicable after the Developer considers that it has taken all necessary action in accordance with an Approved Compliance Report in order to rectify a non-compliance, give a notice to the Authority confirming that it has rectified the relevant non-compliance.

(d) Within 5 Business Days after receiving a notice pursuant to clause 9(c) the Authority must give written notice to the Developer either:

(i) accepting that the conditions of the Approved Compliance Report have been satisfied; or

(ii) stating that the conditions of the Approved Compliance Report have not been satisfied and providing reasons why.

(e) If the Authority gives a notice pursuant to clause 9(d)(i), the suspension of the Developer's right to access and use the Licensed Area as specified in a Suspension Notice ceases to apply and the Developer is permitted to access and use the Licensed Area in accordance with this licence (subject to any Suspension Notice being given in respect of any other continuing non-compliance of this licence).

(f) If the Authority gives a notice pursuant to clause 9(d)(ii), the Developer must within 5 Business Days after receiving the Authority's notice either:

(i) at its own cost take all further action required to satisfy the requirements of the Approved Compliance Report as specified by the Authority; or

(ii) refer the matter for resolution as a dispute under clause 48 ('Dispute Resolution') of the CENDA for the purposes of determining whether or not the Developer has satisfied the requirements of the Approved Compliance Report so as to rectify the relevant non-compliance, and if the Developer has not satisfied the requirements of the Approved Compliance Report, the additional actions or works the Developer is required to procure in order to rectify the relevant non-compliance.

(g) Upon the Developer taking such further action or carrying out any relevant works in accordance with clause 9(f) the suspension of the Developer's right to access and use the Licensed Area as specified in a Suspension Notice ceases to apply and the Developer is permitted to access and use the Licensed Area in accordance with this licence (subject to any Suspension Notice being given in respect of any other continuing non-compliance of this licence).

(h) A failure by the Developer to comply with clause 9(f) including the timeframes specified constitutes a Termination Event.

(i) The Developer must not recommence accessing and using the relevant part of the Licensed Area unless and until the Authority gives a notice pursuant to clause 9(d)(i) or it is otherwise determined pursuant to the dispute resolution process that the Developer has satisfied the conditions set out in the Approved Compliance Report.

10. Termination

10.1 The Authority's right to terminate

If a Termination Event arises:

(a) the Authority may give notice to the Developer specifying:

(i) the Make Good Works which the Authority requires the Developer to carry out; and

(ii) the date on which this licence terminates (being a date not less than 30 Business Days after the date of such notice, and which the Authority considers acting reasonably to be a reasonable period for completion of the Make Good Works prior to termination); and

(b) subject to the Termination Event not being rectified (in the reasonable opinion of the Authority) or compensation not being paid by the Developer to the Authority before the date specified in any notice given by the Authority to the Developer in accordance with clause 10.1(a), then this licence terminates with immediate effect on that date (**Termination Date**).

10.2 Developer's obligations following notice of termination

(a) If the Authority gives a notice pursuant to clause 10.1(a), the Developer must:

(i) carry out the Make Good Works specified in the notice;

(ii) complete the Make Good Works on or before the Termination Date; and

(iii) vacate the Licensed Area leaving the Licensed Area in a clean and clear condition and free from any rubbish.

(b) The Developer must do all things required under clause 10.2(a) at its own cost.

(c) If the Developer fails to satisfy any of the requirements under clause 10.2(a) on or before the Termination Date, the Authority may (but is not required to) do all things in order to satisfy those requirements and the Developer must pay the Authority's reasonable costs incurred in doing so.

11. GST

11.1 Interpretation

(a) Except where the context suggests otherwise, terms used in this clause 11 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

(b) 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 11.

(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.

11.2 Reimbursements

Any payment or reimbursement required to be made under this licence 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.

11.3 Additional amount of GST payable

Subject to clause 11.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this licence:

(a) any amount payable or consideration to be provided under any provision of this licence (other than this clause 11), for that supply is exclusive of GST;

(b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

(c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11.3(b).

11.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 11.3 and clause 11.5), varies from the additional amount paid by the Recipient under clause 11.3, 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 11.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 11.3.

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

11.5 Exchange of non-monetary consideration

(a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 11.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 11.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 11.3 (or the time at which such GST Amount would have been payable in accordance with clause 11.3 but for the operation of clause 11.5(a)).

11.6 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.

11.7 No merger

This clause 11 will not merge on termination of this licence.

12. Ratification by guarantors

12.1 Status of this licence

For the purposes of the CENDA and the definition of 'Project Document', the parties acknowledge and agree that this licence constitutes a 'Project Document'.

12.2 Guaranteed Obligations

As from the date of this licence, each of the parties to this licence acknowledges and agrees that the Developer's obligations under this licence as a Project Document form part of the 'Guaranteed Obligations' for the purposes of the CENDA.

12.3 Ratification by Guarantors

(a) The General Guarantor separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in clause 46 ('General Guarantee and indemnity') of the CENDA including the obligations under this licence.

(b) [redacted]

13. General

13.1 Costs

The Developer must pay the reasonable costs incurred by the Authority in:

(a) preparing and granting this licence; and

(b) doing anything at the request of the Developer under or in relation to this licence.

13.2 Notices

Unless expressly stated otherwise in this licence, all notices, consents, requests, waivers and other communications between the parties in connection with this licence must be given in accordance with the requirements of clause 51 ('Notices') of the CENDA.

13.3 Governing law

This licence is governed by the law in force in New South Wales.

Schedule 1 - Plan of Licensed Area

Executed as a deed.

Authority

The seal of **Barangaroo Delivery Authority** is affixed in the presence of:

Signature of witness

Signature of Chief Executive Officer

Full name of witness

Full name of Chief Executive Officer

Developer

Executed by **Grocon (CB) Developments Pty Limited ACN 614 118 642** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

General Guarantor

Executed by **Grocon Constructors Pty Limited ACN 006 703 091** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

[redacted]

Executed by [redacted] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

Annexure O - [redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

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Annexure P [redacted]

This Annexure P has been wholly redacted from pages 1 to 233

Annexure Q - Financier's Side Deed

CLAYTON UTZ

Central Barangaroo Financier's Side Deed Stage [■]

Barangaroo Delivery Authority
Authority

Grocon (CB) Developments Pty Limited
Developer

Grocon Constructors Pty Ltd
General Guarantor

[redacted]

[***Financier***]
Financier

[***Note: The Authority will require the Financier (or any alternate entity eg. a Security Trustee) to be an entity of substance***]

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Financier's Side Deed made at on

Parties

Barangaroo Delivery Authority ABN 94 567 807 277 of 21/201 Kent Street, Sydney NSW 2000 being a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (**Authority**)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates Lane Melbourne VIC 3000 (**Licensee**)

Grocon Constructors Pty Ltd ACN 006 703 091 of 3 Albert Coates Lane Melbourne VIC 3000 (**General Guarantor**)

[redacted]

Background

A. The Authority, the Developer, the General Guarantor and the [redacted] have entered into the CENDA under which the Developer has agreed to carry out the Works in respect of the Developer's Project on the Project Site.

B. The Financier has agreed to provide the Facility to the Developer to fund Stage [■] [***insert details of relevant Stage funded by the Financier***].

C. The Developer has granted or will grant the Financier's Securities to the Financier.

D. The parties have agreed to regulate the exercise of their various right and obligations in connection with the CENDA and the Financier's Securities on the terms of this deed.

The parties agree

1. Definitions and Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means:

(a) in the case of the Financier, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them; and

(b) in the case of the Authority, the Chief Executive Officer of the Authority or a person performing the functions of that position or any other person appointed by the Authority and notified in writing to the parties to act as an Authorised Officer for the purposes of this deed; and

(c) in the case of each other party, a person appointed by that party to act as an Authorised Officer for the purposes of this deed.

CENDA means the Development Agreement between the Authority, the Developer and others dated [*date*] for the development of the Project Site which is situated within Central Barangaroo.

Cure Period means the period allowed under the Default Notice or the CENDA to cure the relevant Default.

Default means a " Default Event" as defined in the CENDA.

Default Notice means a notice from the Authority to the Developer given under clause 49.1 ('Occurrence of Default Event') of the CENDA.

Dispute Resolution Procedures means the dispute resolution procedures set out in clause 48 ('Dispute resolution') of the CENDA.

Enforcement Action means the taking of any of the following actions by the Financier:

(a) the enforcement of any right, remedy or power (including without limitation by way of demand for payment or repayment of any money owing) under the Finance Documents; or

(b) the making of an application for, the giving of any notice in relation to, the initiation or support of, or the taking of any steps with a view to:

(i) the liquidation, administration, dissolution or similar proceedings with respect to the Developer, the General Guarantor or the Office Guarantor; or

(ii) the appointment of any person for the purpose of becoming a Controller in relation to any property of the Developer, the General Guarantor or the [redacted] which is the subject of the Financier's Securities,

whether by petition, application, convening of a meeting, voting in favour of a resolution or otherwise.

Facility Agreement means the Facility Agreement dated on or about the date of this deed between the Financier and the Developer.

Finance Default means any event referred to in the definition of Event of Default in the Facility Agreement.

Finance Default Notice means a notice given under clause [***insert***] of the Facility Agreement or any other notice of default given under a Finance Document.

Finance Documents means:

(a) this deed;

(b) the Facility Agreement;

(c) the Financier's Securities; and

(d) any other document acknowledged by the Financier and the other parties to this deed to be a Finance Document,

as varied as permitted under clause 2.3.

Financier's Debt means that part of the Secured Money which is owing or payable to the Financier.

Financier's Securities means:

(a) the Fixed and Floating Charge; and

(b) [***insert details of any other relevant securities***]

Fixed and Floating Charge means the first ranking fixed and floating charge (including agreement to grant a mortgage of lease) dated on or about the date of this deed in favour of the Financier over all present and future assets and property of the Developer.

Secured Money has the meaning given to it in the Financier's Securities.

Secured Property has the same meaning as in the Fixed and Floating Charge by the Developer.

Security Trustee means any person so described in the Finance Documents.

Step-in by the Financier, means:

(a) the Financier appoints a Controller to the Developer in respect of some or all of its assets;

(b) the Financier takes possession as mortgagee of some or all of the assets of the Developer;

(c) the Financier appoints a Controller to the shares in the Developer and/or the units in the [***and/or the units in the <insert name of trust>***]; or

(d) the Financier takes possession as mortgagee of the shares in the Developer and/or the units in the [***and/or the units in the <insert name of trust>***],

in each case in exercise of its powers under the Financier's Securities.

Step-in Period means the period commencing on the date on which the Financier Steps-in and terminating on the expiry of a notice given by the Financier under clause 4.3.

Works means the works the subject of the Building Contract.

1.2 Interpretation

Unless the contrary intention appears, a reference in this deed to:

(a) a group of persons is a reference to any two or more of them jointly and to each of them individually;

(b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

(d) anything (including an amount) is a reference to the whole and each part of it;

(e) a document (including this deed) includes any variation or replacement of it;

(f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

(g) Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia;

(h) a time of day is a reference to Sydney time;

(i) the singular includes the plural and vice versa;

(j) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;

(k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(l) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(m) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this deed;

(n) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

(o) a reference to any thing (including, without limitation, any amount and the Secured Property) is a reference to the whole and each part of it and a reference to a group of persons, is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

1.4 Capitalised terms in the CENDA

Capitalised terms not defined, but used in this deed, have the same meaning as in the CENDA.

1.5 Inconsistency with CENDA

If there is inconsistency between the provisions of this deed and the CENDA, the provisions of the CENDA prevail.

2. Consent to the Financier's Securities by Authority

2.1 Authority's consent

The Authority consents to:

(a) the grant of the Financier's Securities by the Developer and the other relevant parties and the execution of the Finance Documents by the Developer and the other relevant parties; and

(b) the exercise of the rights of the Financier under the Finance Documents, subject to and in accordance with the terms of this deed.

2.2 No extension of rights

(a) Unless expressly authorised under this deed, nothing in this deed or the Finance Documents:

(i) authorises the Financier to do anything which the Developer may not do under the CENDA;

(ii) operates to grant to the Financier rights greater than the rights of the Developer under the CENDA; or

(iii) authorises the Financier or any Controller appointed by the Financier to do any act or thing without the Authority's consent where, under the CENDA, the Developer requires the Authority's consent to such act or thing.

(b) The Financier agrees with the Authority not to exercise any power or remedy under the Finance Documents in a manner which is inconsistent with this deed or, unless expressly authorised under this deed, which enables the Financier to do anything in respect of the CENDA, which the Developer is not permitted to do under the CENDA.

2.3 No change to Finance Documents

Each party to a Finance Document may not vary, amend or replace that Finance Document without the prior written consent of the Authority not to be unreasonably withheld.

3. Default Notices

The Authority agrees to give the Financier a copy of each Default Notice at the same time that the Authority gives each such notice to the Developer.

4. Right of Financier to remedy Defaults

4.1 Rights of Financier during Cure Period

During a Cure Period relating to a Default:

(a) the Developer authorises the Financier and any consultant or any other person nominated by the Financier to inspect the Works at all reasonable times and any plans, drawings, specifications, Approvals, contracts and other materials relating to the Works;

(b) the Developer authorises the Financier to make such enquiries in relation to matters the subject of the Project Documents as the Financier deems are appropriate; and

(c) the Developer and the Guarantor must provide such information in relation to the Default and their proposals to remedy the Default as the Financier may reasonably require and the provisions of clause 17.16 shall not apply in relation to such information to the extent that it becomes necessary for the Financier to use that information to subsequently remedy the Default.

4.2 Rights of Financier to remedy Default and Step-in

If a Default occurs then, provided that the Financier keeps the Developer and the Authority informed of any steps taken by it pursuant to this clause 4.2 and at all times consults with the Developer before implementing any such arrangements, the Financier shall be entitled to:

(a) if the Default is capable of remedy, remedy the Default;

(b) if the Default is not capable of remedy but the Authority can be restored (by the payment of compensation) to the position in which the Authority would have been had the Default not occurred, pay the relevant amount of compensation to the Authority;

(c) if the Default is not capable of remedy and the Authority cannot be restored (by the payment of compensation) to the position in which the Authority would have been had the Default not occurred, cause the rights and obligations of the Developer or other party to which the Default relates under the Project Documents to be novated to a person approved by the Authority and the Financier. Such approval may be withheld by the Authority and the Financier each at their sole and unfettered discretion;

(d) otherwise resolve to the satisfaction of the Authority the circumstances giving rise to the Default; or

(e) Step-in and perform the obligations on the part of the Developer to be performed under the CENDA, and the other Project Documents to which the Developer is a party.

4.3 Termination of exercise of rights by Financier

If the Financier has exercised any of its rights under clause 4.2 to remedy a Default by doing any one of the things described or referred to in that clause and in so doing, the Financier or a Controller appointed by it, is performing obligations of the Developer under the Project Documents, the Financier or the Controller may give 30 Business Days' notice in writing to the Authority, the Developer, the General Guarantor and the [redacted] of its intention to cease to perform those obligations of the Developer under the Project Documents, and on expiry of the period of notice may do so. The giving of a notice under this clause 4.3 by the Financier or a Controller appointed by the Financier will not limit any of the rights (if any) of the Authority against the Financier or that Controller where the Financier or the Controller has expressly adopted or assumed a liability of the Developer under the Project Documents.

4.4 Exercise of rights under the Project Documents

If a Default occurs the Authority must at the request of the Financier:

(a) provide the Financier access to the Land so as to enable the Financier to remedy or procure the remedy of that Default;

(b) permit the Financier to exercise all rights and powers of the Developer under the Project Documents so as to enable the Financier to remedy or procure the remedy of that Default;

(c) provide the Financier with all information in its possession and reasonably requested by the Financier which is relevant to that Default; and

(d) not interfere with any efforts of the Financier which are not in conflict with the terms of the Project Documents or are otherwise expressly permitted by this deed to remedy, or procure the remedy of the Default.

4.5 Acts and omissions of Financier

The Developer is liable to the Authority for the acts and omissions of any contractor or person engaged by the Financier in connection with this deed and the Developer:

(a) consents to the Financier exercising its rights under this clause 4; and

(b) agrees that any act or omission of the Financier or any contractor or person engaged by the Financier in exercising the rights and powers of the Developer under the Project Documents is deemed to be an act or omission of the Developer under the Project Documents.

5. Authority's rights after Default

The Authority agrees not to exercise its rights to terminate the CENDA as a consequence of the occurrence of a Default, unless a Default Notice in respect of that Default has been given to the Financier and:

(a) prior to the last day of the relevant Cure Period or such longer period as is nominated by the Authority prior to the last day of the relevant Cure Period in its absolute discretion, the Developer, the Financier or a Controller appointed by the Financier has not remedied the Default by doing any of the things referred to in clause 4.2;

(b) the Financier has Stepped-in and the Financier or a Controller appointed by the Financier is performing the obligations of the Developer under the CENDA but a further Default occurs and it is not remedied within the Cure Period relating to it by the Financier, the Financier or the Controller doing any of the things referred to in clause 4.2; or

(c) the Financier has Stepped-in and the Financier or a Controller appointed by the Financier is performing the obligations of the Developer under the CENDA but ceases to do so, or does anything which expresses an intention to cease to do so or gives a notice under clause 4.3.

6. Obligations of Financier

6.1 Finance Default Notice

The Financier must:

(a) give the Authority a copy of any Finance Default Notice given to the Developer at the same time the notice is given to the Developer; and

(b) keep the Authority informed about any Finance Default in respect of which a Finance Default Notice has been given to the Developer.

The Financier shall not be liable to the Developer for its failure to comply with any of the provisions of this clause 6.1.

6.2 Notice of Enforcement Action

The Financier must immediately notify the Authority in writing if it takes any Enforcement Action against the Developer with respect to the Project.

6.3 Liability under Project Documents

(a) The Financier is not liable for any of the obligations of the Developer, the General Guarantor or the [redacted] to the Authority under the Project Documents, except to the extent specified in this clause 6.3 or under any express provision of a Project Document.

(b) If the Financier Steps-in, the Financier must during the Step-in Period observe the terms and conditions of the relevant Project Documents (as if the Financier were joined as a party to each of the Project Documents) as the Developer.

(c) If the Financier takes any steps to remedy a Default it must not in doing so do anything which, if it were done by the Developer, would be a breach of the terms of any Project Document.

(d) The Financier is not liable for any loss or damage suffered by the Authority as a result of the failure by the Developer, the General Guarantor or the [redacted] to observe and perform any of the terms and conditions of the Project Documents at any time. This paragraph (d) does not exclude the Financier from liability to the Authority for failure to perform any of the Financier's obligations under this deed, including without limitation, under paragraph (b) or (c) above.

(e) The Financier agrees with the Authority that if there is a dispute between the Developer and the Builder and the Financier has Stepped-in, the Financier will not and will ensure that a Controller appointed by it, does not without the consent of the Authority settle the dispute otherwise than in accordance with the dispute resolution procedures in the Building Contract.

(f) The provisions of this clause 6.3 do not limit any of the rights:

(i) of the Authority against:

A. the Developer; or

B. the General Guarantor; or

C. the [redacted] or

D. any Controller appointed to the Developer who expressly adopts or expressly assumes a liability of the Developer under the Project Documents; or

E. any mortgagee in possession of any of the assets of the Developer who expressly adopts or expressly assumes a liability of the Developer under the Project Documents; or

(ii) of a Controller referred to in clause 6.3 against any person who gives an indemnity to him in relation to any liability of that Controller to the Authority as a result of that Controller adopting or otherwise assuming a liability of the Developer under any Project Document,

but this clause 6.3 does not extend to impose liability on any Controller appointed to the Developer by the Financier as mortgagee in possession of any assets of the Developer unless that Controller or the Financier adopts or otherwise assumes a liability of the Developer under any of the Project Documents.

6.4 Authority's dealings with Financier and Developer

(a) If the Financier notifies the Authority that any right of the Developer under the CENDA, is to be exercised by the Financier, then the Authority must (and the Developer irrevocably directs the Authority to) deal only with the Financier in respect of the exercise of that right.

(b) Despite anything in this deed or the Finance Documents, until the Financier takes any Enforcement Action, the Authority may deal with the Developer in respect of the CENDA.

6.5 Money secured under Financier's Securities

The Developer and the Financier confirm to the Authority that the only obligations to the Financier which form part of the Secured Money are the obligations of the Developer, the General Guarantor and the [redacted] under the Finance Documents.

6.6 Notice of enforcement of Finance Documents

The Financier agrees to keep the Authority informed about:

(a) any Finance Default; and

(b) any action taken to enforce its rights arising as a result of a Finance Default.

6.7 No caveats

The Financier (and any persons on its behalf) must not lodge a caveat on the title to the Land except in the circumstances permitted by the CENDA.

6.8 Effect of Enforcement Action

Without derogating from any other rights the Financier may have under this deed, the Authority agrees that:

(a) if the Financier Steps-in the Stepping-in will not of itself constitute a Default as long as the Financier, a Controller appointed by the Financier, or if the Financier has Stepped-in to the shares in the Developer [***and/or the units in the <insert name of trust>***], the Developer, performs the obligations of the Developer under the CENDA;

(b) any cure of a Default effected by or on behalf of the Financier within the Cure Period and in accordance with the Project Documents, will be effective as a cure of the Default by the Developer; and

(c) the taking of Enforcement Action by the Financier in accordance with this deed will not by itself entitle the Authority to terminate the relevant Project Documents.

7. Other matters relating to the Project Documents

7.1 Dispute Resolution Procedure

The parties acknowledge and agree that:

(a) where any consultation procedures are provided for in the Project Documents (including, without limitation, the Dispute Resolution Procedures) the Financier or its representatives may attend and speak at any meeting convened to implement the procedures; and

(b) if a Default has occurred, the Financier may require the Developer to implement the Dispute Resolution Procedures where permitted under the Project Documents.

7.2 No change to Project Documents

Each party may not modify, vary or amend the terms of the Project Documents without the prior written consent of the Financier.

7.3 Specific performance

Despite any of the provisions of the Project Documents the Financier in exercising any rights of the Developer is not limited to claims for damages against the Authority for any breach by the Authority of its obligations under the Project Documents and may, if entitled by law to do so, claim specific performance of the obligations of the Authority.

7.4 Authority not to deal with Land

The Authority may not transfer, sell, grant any Encumbrance or other third party right or otherwise dispose of its interest in the Land, except in accordance with the Project Documents.

8. Representations and Warranties

8.1 By various parties to the Authority

Each party to the Finance Documents (other than the Financier) severally represents and warrants to the Authority that so far as it is aware:

(a) the Financier has no right, which is now exercisable or which with the giving of notice or lapse of time will or may become exercisable, to:

(i) terminate, rescind, repudiate or vary any Finance Document to which it is a party; or

(ii) refuse to perform or observe any of the Financier's obligations under any Finance Document to which it is a party; and

(b) the Finance Documents to which it is a party set out all the terms, conditions and warranties of the agreements, arrangements and understandings between it and the Financier in respect of the subject matter of those Finance Documents.

8.2 By the Authority to the Financier

The Authority represents and warrants in favour of the Financier that:

(a) to the Authority's knowledge, the Authority has no right without the Developer's consent, which is now exercisable or with the giving of notice or lapse of time will or may become exercisable to:

(i) terminate, rescind, repudiate or vary the CENDA; or

(ii) refuse to perform or observe any of the Authority's obligations under the CENDA.

(b) the Project Documents set out all the terms, conditions and warranties of the agreements, arrangements and understandings between the Developer of the one part and the Authority of the other part in respect of the subject matter of the Project.

8.3 By the Financier to the Authority

The Financier represents and warrants in favour of the Authority that:

(a) as at the date of this deed, the Financier has no right which is now exercisable or which, with the giving of notice or lapse of time, will or may become exercisable, to:

(i) terminate, rescind, repudiate or vary the Finance Documents; and

(ii) refuse to perform or observe any of its obligations under the Finance Documents; and

(b) the Finance Documents set out all the terms, conditions and warranties of the agreements, arrangements and understandings between the Financier and the other parties to them in respect of the subject matter of the Finance Documents.

8.4 By the Developer to the Financier

The Developer represents and warrants in favour of the Financier that:

(a) as at the date of this deed, the Developer has no right which is now exercisable or which, with the giving of notice or lapse of time, will or may become exercisable, to:

(i) terminate, rescind, repudiate or vary the Project Documents; and

(ii) refuse to perform or observe any of its obligations under the Project Documents; and

(b) the Project Documents set out all the terms, conditions and warranties of the agreements, arrangements and understandings between the Developer and the other parties to them in respect of the subject matter of the Project Documents.

9. Developer to indemnify the Financier

The Developer indemnifies the Financier and its Authorised Officers against any liability or loss arising from, and any costs, charges and expenses:

(a) arising from the failure by the Developer to observe and perform any of the obligations on its part contained in this deed; or

(b) incurred in connection with the exercise by the Financier or any of the rights and powers conferred on it under this deed following the occurrence of a Default.

10. Security Interests and Assignment

10.1 Authority's dealings with the Project Documents

The Authority may not:

(a) dispose of, deal with or part with possession of any estate or interest in the Project Documents or rights or benefits in connection with the Project Documents; or

(b) create or allow to come into existence an Encumbrance which affects the CENDA,

without first causing any proposed transferee, mortgagee, chargee, dispose, encumbrancee or other party to the dealing or person in whose favour or in whom is vested any such right, title or interest to enter into an agreement with the Financier the form and substance of which is approved by the Financier, acting reasonably, and by which that person agrees to be bound by the terms and conditions of this deed unless the disposition, dealing or parting with possession is achieved by statute where the obligations of the Authority under this deed must be performed by the person taking the benefit of that disposition, dealing or parting with possession under the statute.

10.2 Financier's dealings with Finance Documents

The Financier may not without the prior written consent of:

(a) dispose of, deal with or part with possession of any estate or interest in the Finance Documents or rights or benefits in connection with the Finance Documents; or

(b) create or allow to come into existence an Encumbrance which affects the Finance Documents or transfer or dispose of any interest in the Financier's Securities,

without first causing any proposed transferee, mortgagee, chargee, disponee, encumbrancee or other party to the dealing or person in whose favour or in whom is vested any such right, title or interest to enter, at the cost and expense of the Financier, into a deed with the Authority, the form and substance of which is approved by the Authority, acting reasonably, and by which that person agrees to be bound by the terms and conditions of this deed unless the disposition, dealing or parting with possession is achieved by statute where the obligations of the Authority under this deed must be performed by the person taking the benefit of that disposition, dealing or parting with possession under the statute.

10.3 Financier's dealings with Project Documents

The Financier may not without the prior written consent of the Authority dispose of, deal with or part with possession of any estate or interest in the Project Documents or create or allow to come into existence an Encumbrance with affects the Project Documents otherwise than as permitted in this deed.

10.4 Security interest and assignment by Developer

The Developer may not except as provided in the CENDA without the prior written consent of the Authority, create or allow to exist a Security Interest, other than a Security Interest constituted under the Finance Documents, in this deed or assign, novate or otherwise dispose of or deal with its rights under this deed.

11. Costs and indemnities by Developer

11.1 Costs generally

The Developer agrees to pay or reimburse the Authority on demand for:

(a) the Costs of the Authority in connection with any consent, approval, exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this deed), waiver, variation, release or discharge in connection with this deed; and

(b) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with this deed or a payment or receipt or any transaction contemplated by this deed,

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

11.2 Costs of independent consultants

The Developer agrees that the Authority retains an unfettered and absolute discretion to seek and obtain advice in connection with or considering any consent or approval (whether or not that consent or approval is given), exercise or non-exercise of rights arising from a breach of the Developer or its obligations under this deed and the reasonable costs, charges and expenses referred to in clause 11.1 above include, without limitation, those payable to any independent consultant or other person appointed to evaluate any matter of concern and the Authority's administration costs in connection with any event referred to in clause 11.1(a).

11.3 Indemnity by Developer

The Developer indemnifies the Authority against any liability or loss arising from, and any Costs incurred in connection with:

(a) the payment of any moneys, or the acceptance of liabilities, by the Authority to any person as contemplated by this deed;

(b) the payment, omission to make payment or delay in making payment of an amount referred to in clause 11.1);

(c) a Default; or

(d) all acts and omissions of a Security Trustee,

including, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

11.4 Costs incurred by employees and officers

The Developer agrees to pay to the Authority an amount equal to any direct liability, loss, and Costs of the kind referred to in clause 11.3 suffered or incurred by any employee, officer, agent or contractor of the Authority.

11.5 Currency indemnity

If a judgement, order or proof of debt in connection with this deed is expressed in a currency other than the currency in which an amount is due under this deed, then the Developer indemnifies the Authority against:

(a) any difference arising from converting the other currency if the spot rate of exchange of converting the other currency into the due currency available to the Authority when the Authority receives a payment in the other currency is less favourable to the Authority than the rate of exchange used for the purpose of the judgement, order or acceptance of proof of debt; and

(b) the costs of conversion.

12. Copies of Finance Documents

The Financier agrees to promptly give to the Authority a photocopy of each Finance Document once executed, certified by an Authorised Officer of the Financier to be a true copy.

13. Limit on Security Trustee's liability

[***Note: If a Security Trustee is appointed or if the Financier seeks to limit its liability, the Authority will require personal covenants as set out in clause 13.2. If a Security Trustee is appointed the Authority may require further amendment to this deed and for the Security Trustee to be joined as a party***.]

13.1 Capacity and acts

The Security Trustee enters into this deed in its capacity as trustee of the trust established under the Security Trust (**Security Trust**) and, for the purposes of clause 13.2, in its personal capacity. The Developer acknowledges that under the terms of the Security Trust, the Security Trustee:

(a) holds the benefit of this deed for the beneficiaries of the Security Trust from time to time (**Beneficiaries**); and

(b) is bound to act on the instructions of the Beneficiaries, and is not bound to act without instructions or where the Security Trust otherwise provides that the Security Trustee is not bound to act.

13.2 Limit on liability

The Security Trustee acknowledges and agrees that its liability and obligations under or by virtue of this deed (including for any related conduct, act, omission, transaction, agreement, representation or warranty) can be enforced against it:

(a) to the extent that the Security Trustee is entitled to be indemnified for those liabilities or obligations by virtue of indemnities to which it is entitled from the Beneficiaries, in its capacity as trustee of the Security Trust; and

(b) to the extent that the Security Trustee is not entitled to the benefit of any indemnities from the Beneficiaries under the Security Trust, in its personal capacity.

13.3 Benefit and survival

Clause 13 applies for the benefit of the Security Trustee's officers and agents, is not severable from this deed and will survive any termination of this deed for any reason.

14. Notices

14.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

Authority

Name:	Barangaroo Delivery Authority
Address:	21/201 Kent Street SYDNEY NSW 2000
Fax:	[insert]
For the attention of:	[insert]

Developer

Name:	Grocon (CB) Developments Pty Limited ACN 614 118 642
Address:	3 Albert Coates Lane Melbourne VIC 3000
Fax:	[insert]
For the attention of:	[insert]

General Guarantor

Name:	Grocon Constructors Pty Ltd ACN 006 703 091
Address:	3 Albert Coates Lane Melbourne VIC 3000
Fax:	[insert]
For the attention of:	[insert]

[redacted]

Name:	[redacted]
Address:	
Fax:	[insert]
For the attention of:	[insert]

Financier

Name: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

14.2 Delivery

Notices must be:

(a) left at the addresses referred to in clause 14.1;

(b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 14.1; or

(c) sent by fax to the fax number referred to in clause 14.1.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

14.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

14.4 Receipt - postal

If sent by post, notices are taken to be received [2] Business Days after posting (or [5] Business Days after posting if sent to or from a place outside Australia).

14.5 Receipt - fax

If notices are sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

14.6 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

15. GST

15.1 Interpretation

(a) Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

(b) 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 15.

(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.

15.2 Reimbursements

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

15.3 Additional amount of GST payable

Subject to clause 15.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

(a) any amount payable or consideration to be provided under any provision of this deed (other than this clause 15), for that supply is exclusive of GST;

(b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

(c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 15.3(b).

15.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 15.3 and clause 15.5), varies from the additional amount paid by the Recipient under clause 15.3, 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 15.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.3.

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

15.5 Exchange of non-monetary consideration

(a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 15.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 15.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 15.3 (or the time at which such GST Amount would have been payable in accordance with clause 15.3 but for the operation of clause 15.5(a)).

15.6 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.

15.7 No merger

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

16. Ratification by guarantors

16.1 Status of this licence

For the purposes of the CENDA and the definition of 'Project Document', the parties acknowledge and agree that this licence constitutes a 'Project Document'.

16.2 Guaranteed Obligations

As from the date of this licence, each of the parties to this licence acknowledges and agrees that the Developer's obligations under this licence as a Project Document form part of the 'Guaranteed Obligations' for the purposes of the CENDA.

16.3 Ratification by Guarantors

(a) The General Guarantor separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in clause 46 ('General Guarantee and indemnity') of the CENDA including the obligations under this deed.

(b) [redacted]

17. Miscellaneous

17.1 Prompt performance

If this deed specifies when a party agrees to perform an obligation, that party agrees to perform it by the time specified. The parties agree to perform all other obligations promptly.

17.2 Certificates

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

17.3 Exercise of rights

Each party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

17.4 Partial exercise of rights

A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy by that party.

17.5 Delay in exercising rights

Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

17.6 Conflict of interest

The right and remedies of the Authority under this deed may be exercised even if this involves a conflict of duty or the Authority has a personal interest in their exercise.

17.7 Remedies cumulative

The rights and remedies of a party under this deed are in addition to other rights and remedies given by law independently of this deed.

17.8 Rights and obligations are unaffected

Rights given to a party under this deed and the liabilities of that party, under it are not affected by anything which might otherwise affect them at law.

17.9 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

17.10 Antecedent obligations

The expiry or termination date of this deed does not affect a party's obligations:

(a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or

(b) to provide information to another party to enable it to calculate those payments.

17.11 Inconsistent law

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

17.12 Waiver and variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

17.13 Supervening Legislation

Any present or future legislation which operates to vary the obligations of a party to this deed with the result that that party's rights, powers or remedies are adversely affected (including, without limitation, by way of delay of postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

17.14 Approvals and consent

The Authority may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

17.15 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Developer and survives termination, discharge or performance of this deed.

17.16 Confidentiality

All information provided by one party to another party under this deed or the CENDA and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person except:

(a) with the consent of the party providing the information;

(b) if allowed or required by law or required by any stock exchange;

(c) in connection with any legal proceedings relating to this deed or any Project Document,

(d) if the information is generally and publicly available; or

(e) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.

17.17 Inconsistency

Nothing in the Project Documents affects the rights of the parties under this deed which shall prevail over the Project Documents to the extent of any inconsistency.

17.18 Several liability

The liability of each party to this deed is several. Unless otherwise expressly stated, no party is liable for any obligations with the other parties to this deed.

17.19 Severability

(a) A construction of this deed that results in all provisions being enforceable is to be preferred to a construction that does not so result.

(b) If, despite the application of paragraph (a), a provision of this deed is illegal or unenforceable:

   (i) and it will be legal and enforceable if a word or words were omitted, that word or those words are severed; and

   (ii) in any other case, the whole provision is severed,

   and the remainder of this deed continues in force. This paragraph (b) has no effect if the severance alters the basic nature of this deed.

17.20 Further steps

The parties agree to do anything another party reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind the parties and any other person intended to be bound under this deed.

17.21 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

17.22 Effect of moratorium

To the extent permitted by law the application to this deed of any moratorium or other Act whether State or Federal having the effect of extending the term, reducing or postponing the payment of any moneys payable under this deed, or otherwise affecting the operation of the terms of this deed is expressly excluded and negatived.

17.23 Applicable law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

17.24 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 14.

17.25 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

The seal of **Barangaroo Delivery Authority** is affixed in the presence of:

Signature of witness	Signature of Chief Executive Officer
Full name of witness	Full name of Chief Executive Officer

Developer

Executed by **Grocon (CB) Developments Pty Limited ACN 614 118 642** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

General Guarantor

Executed by **Grocon (CB) Developments Pty Limited ACN 614 118 642** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

[redacted]

Executed by [redacted] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by **[Financier] ABN [number]** in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Annexure R - Independent Certifier Deed

CLAYTON UTZ

Central Barangaroo Independent Certifier's Deed

Barangaroo Delivery Authority
Authority

Grocon (CB) Developments Pty Limited
Developer

Aqualand B Development Holding Pty Ltd
Aqualand

Grocon (CB) Management Pty Ltd as trustee of the Central Barangaroo Office Sub-Trust 1

Block 6 Office Investor

Grocon (CB) Management Pty Ltd as trustee of the Central Barangaroo Office Sub-Trust 2

Block 5 Office Investor

WSF Fund Pty Limited as trustee for the Scentre Barangaroo Trust
Retail Investor

Scentre Design and Construction Pty Limited
Retail Step-in Party

[Name of *Independent Certifier*]
Independent Certifier

CLAYTON UTZ

Clayton Utz
Lawyers
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Sydney NSW 2001
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Our reference 18637/16133/80128948

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Independent Certifier's Deed

Date

Parties

Barangaroo Delivery Authority ABN 94 567 807 277 of 21/201 Kent Street, Sydney NSW 2000 being a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (**Authority**)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates Lane Melbourne VIC 3000 (**Developer**)

Aqualand B Development Holding Pty Limited ACN 612 713 916 of Level 29, 225 George Street Sydney NSW 2000 (**Aqualand**)

Grocon (CB) Management Pty Ltd ACN 615 035 937 as trustee of the Central Barangaroo Office Sub-Trust 1 of 3 Albert Coates Lane Melbourne VIC 3000 (**Block 6 Office Investor**)

Grocon (CB) Management Pty Ltd ACN 615 035 937 as trustee of the Central Barangaroo Office Sub-Trust 2 as trustee of the Central Barangaroo Office Sub-Trust 2 of 3 Albert Coates Lane Melbourne VIC 3000 (**Block 5 Office Investor**)

WSF Fund Pty Limited as trustee of the Scentre Barangaroo Trust ACN 120 154 663 of Level 30, 85 Castlereagh Street, Sydney NSW 2000 (**Retail Investor**)

Scentre Design and Construction Pty Limited ACN 000 267 265 of Level 30, 85 Castlereagh Street, Sydney NSW 2000 (**Retail Step-in Party**)

[***Name of Independent Certifier***] **ACN** [***number***] (**Independent Certifier**)

Background

A. The Authority and the Developer have entered into the CENDA under which the Developer will carry out or procure the carrying out of the Developer's Project which is situated within Central Barangaroo.

B. The Developer has entered into the Implementation Agreements with the Investors in relation to the design, construction, completion, financing and acquisition of the completed Works.

C. The Developer has engaged, or will engage, the Builder to carry out part of the Works on the terms of the Building Contracts.

D. The Principal Parties and the Investors have financial and other interests in determining when Works for a Stage reach Stage Practical Completion as that event will cause the relevant parties to commence the relevant Lease.

E. By this deed, the Developer appoints the Independent Certifier to perform its functions in accordance with the requirements of the CENDA and the [redacted]

F. The Independent Certifier accepts its appointment and agrees to perform its functions on the terms of this deed.

The parties agree

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Builder means Grocon Constructors (NSW) Pty Limited ACN 132 035 280 .

Building Contracts means the contracts for the Developer's Project between:

(a) the Developer and the Builder; and

(b) Aqualand and the Builder.

Certificate of Block Practical Completion means in respect of a Block a certificate requested by the Developer under clause 6.1 and issued by the Independent Certifier under clause 6.2 in relation to that Block.

Certificate of Project Practical Completion means the certificate requested by the Developer under clause 7.1 and issued by the Independent Certifier under clause 7.2 in relation to the Developer's Project.

Certificate of Stage Practical Completion means in respect of a Stage a certificate requested by the Developer under clause 5.2 and issued by the Independent Certifier under clause 5.3 in relation to that Stage.

Certifier Default means an event so described in clause 17.1.

Developer's Project means the Central Barangaroo project, Sydney.

CENDA means the Development Agreement between the Authority, the Developer and others dated [*date*] for the development of the Developer's Project which is situated within Central Barangaroo.

Implementation Agreements means:

(a) [redacted]

(b) the Residential Implementation Agreement;

(c) the Retail Sub-Development Agreement;

(d) the Block 5 Office Sub-Development Agreement between the Developer, the Block 5 Office Investor and others; and

(e) the Block 6 Office Sub-Development Agreement between the Developer, the Block 6 Office Investor and others,

for the Developer's Project entered prior to the date of this deed.

Insurances means the insurances required to be effected and maintained under clause 16.

Investors means Aqualand, the Retail Investor, the Retail Step-in Party, the Block 5 Office Investor and the Block 6 Office Investor.

Key Individual means the person employed by the Independent Certifier that is to make and issue the decisions, certifications and determinations required as part of the exercise of its Obligations.

Obligations means the obligations and duties of the Independent Certifier to the Principal Parties under or in connection with this deed including the Obligations specified in Annexure A.

Practical Completion Plan has the meaning given to it in the [redacted]

Principal Default means an event so described in clause 17.2.

Principal Parties means the Authority and the Developer.

Replacement Certifier means the successor of the Independent Certifier appointed under clause 17.5.

Step-in Party has the meaning given to it in the [redacted]

1.2 Interpretation

Unless the contrary intention appears, a reference in this deed to:

(a) a group of persons is a reference to any two or more of them jointly and to each of them individually;

(b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

(d) anything (including an amount) is a reference to the whole and each part of it;

(e) a document (including this deed) includes any variation or replacement of it;

(f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

(g) Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia;

(h) a time of day is a reference to Sydney time;

(i) the singular includes the plural and vice versa;

(j) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;

(k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(l) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(m) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this deed.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

1.4 Capitalised terms

Capitalised terms not defined, but used in this deed, have the same meaning as in the CENDA or the [redacted]

1.5 Inconsistency

If there is inconsistency between the provisions of this deed and either the CENDA or the [redacted] the provisions of the CENDA or the [redacted] as applicable, prevail.

1.6 Step-in

After a Step-in Date, the Step-in Party is deemed to be the Developer for the purposes of this deed.

2. Appointment of Independent Certifier

2.1 Terms of appointment

(a) The Developer appoints the Independent Certifier to perform the Obligations.

(b) The Independent Certifier's appointment commences on the date of this deed and terminates on the date determined pursuant to clause 3.

(c) Each Principal Party confirms and approves the appointment of the Independent Certifier as the independent certifier for the purposes of the CENDA and to do the things provided in this deed.

2.2 Consent

The Independent Certifier accepts its appointment under clause 2.1 and agrees that it will perform the Obligations.

2.3 Receipt of CENDA [redacted]

The Independent Certifier acknowledges:

(a) receipt of a copy of the CENDA and the [redacted] and

(b) confirms that it has read and will be deemed to have informed itself fully of:

(i) the requirements of the CENDA and the [redacted]

(ii) the nature of the work necessary for the performance of the Obligations;

(iii) the accuracy and completeness of the description of the Obligations;

(iv) the fees payable to it which are to cover completely the Costs of complying with the Obligations; and

(v) all matters and things necessary or ancillary to the due and proper performance of the Obligations.

3. Term of appointment

The Principal Parties' rights under this deed to require the Independent Certifier to perform the Obligations remain in effect until the later of:

(a) the date of the expiry of the Defects Liability Period; or

(b) the date the Independent Certifier, pursuant to clause 10.2(e), certifies that the Developer has rectified all defects as identified by the Independent Certifier,

in respect of the Developer's Project under the CENDA, unless that appointment is terminated at an earlier date in accordance with clause 17.

4. Relationship

4.1 Standard of performance

(a) In performing the Obligations, the Independent Certifier agrees:

(i) to act in good faith, impartially, diligently, reasonably and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of project management consultants experienced in the performance of the same or similar services as are required to be performed by the Independent Certifier under this deed; and

(ii) to perform all its Obligations within the times specified in the CENDA.

(b) The Independent Certifier warrants to the Principal Parties and the Investors that it has the capability, expertise and experience to perform the Obligations.

4.2 No conflict of interest

The Independent Certifier acknowledges and warrants that:

(a) it owes a duty of care and professional responsibility to each Principal Party and the Investors in connection with the performance of the Obligations;

(b) the Principal Parties and the Investors are relying on its independence; and

(c) it has no conflict of interest with respect to the carrying out of the Obligations; and

(d) other than in relation to a role as independent certifier under the Implementation Agreements, Building Contracts and other ancillary or replacement contracts entered into by or on behalf of the Developer or the Investors in relation to the works to be completed under the Implementation Agreements and Building Contracts (including any role it may have for a financier of a party), it will not accept any other role in relation to the Developer's Project.

4.3 Nature of relationship

(a) The Independent Certifier is an independent contractor and is not an employee or agent of any of the Principal Parties or the Investors.

(b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of the Principal Parties. The Independent Certifier assumes full responsibility for the acts and omissions of each of its employees and agents.

4.4 Independence

The Principal Parties, the Investors and the Independent Certifier agree that the Independent Certifier will act independently of all parties in connection with the performance of the Obligations.

4.5 Co-operation and assistance

(a) The Principal Parties will co-operate with each other and the Independent Certifier and use their reasonable endeavours (without being obliged to pay money) to assist the Independent Certifier to enable it to satisfy the Obligations.

(b) Subject to any law or duty of confidentiality and without limiting clause 4.5(a), each Principal Party will provide to the Independent Certifier any information reasonably necessary to enable the Independent Certifier to satisfy the Obligations and agrees to provide the Independent Certifier with any such information within the time required by this deed or the CENDA.

(c) The Independent Certifier will co-operate with the Principal Parties and any agent, consultant, contractor or employee of the Principal Parties in relation to the Works and will co-ordinate the performance of the Obligations with the activities being performed by those parties under the CENDA.

4.6 Information provided to Independent Certifier

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

(a) such information is:

(i) manifestly incorrect;

(ii) provided on a qualified basis; or

(iii) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or

(b) the relevant Principal Party subsequently informs the Independent Certifier of any change to the information provided to it.

4.7 Authority to act

The Independent Certifier has no authority:

(a) other than expressly provided in this deed, to give directions to any Principal Party or its officers, employees, contractors, consultants or agents;

(b) to waive or alter any terms of the CENDA; or

(c) to discharge or release a party from any of its obligations pursuant to the CENDA.

4.8 Reliance

The Independent Certifier acknowledges and agrees that:

(a) the Investors are a party to this deed for the purposes of relying on the Independent Certifier's certification given in accordance with the provisions of this deed and for the purpose of enforcing their rights under clause 4.11;

(b) it will perform the Obligations in accordance with this deed for the benefit of each of the Principal Parties and the Investors and that each Principal Party and the Investors will be relying on the performance of the Obligations as if the Independent Certifier were separately performing them for each party directly;

(c) the Principal Parties and the Investors are relying on the skill and expertise of the Independent Certifier in the performance of the Obligations and may suffer loss if it does not perform the Obligations in accordance with this deed;

(d) the Principal Parties and the Investors are entitled to and will rely on its certification in accordance with the provisions of this deed for the purposes of the CENDA.

4.9 Certification final and binding

The Principal Parties and the Investors acknowledge and agree that each of:

(a) the Certificates of Stage Practical Completion;

(b) the Certificates of Block Practical Completion;

(c) the Certificate of Project Practical Completion; and

(d) all other determinations, certifications and confirmations referred to in clause 5,

given by the Independent Certifier pursuant to this deed and the CENDA, in the absence of manifest error of fact or law, are final and binding on the Principal Party under this deed and the CENDA.

4.10 Subcontracting

The Independent Certifier:

(a) may not subcontract the performance of any of its Obligations without the prior written consent of each Principal Party and the Investors (which consent must not be unreasonably withheld); and

(b) remains responsible for the performance of the Obligations in accordance with this deed, notwithstanding any such subcontracting.

4.11 Failure to certify on time

If the Independent Certifier does not within 5 Business Days after receipt of a request made by the Developer pursuant to clause 5.1(a), 5.2(a), 6.1(a), 7.1(a), 8.1(a) or otherwise as contemplated by the Obligations, give the relevant certificate in relation to that request, or give the Developer reasons for not issuing that certificate, then any of the Authority, the Developer or the Investors may (without limiting any other rights which the parties may have under this deed) enforce any rights and take such action against the Independent Certifier as either party deems fit in order to recover for any Loss, Costs, liability or damages suffered, incurred or arising from or in connection with the Independent Certifier's breach.

5. Obligations relating to Stage Practical Completion

5.1 Notice of anticipated Stage Practical Completion

(a) In respect of each Stage, at least 4 months prior to the date on which the Developer reasonably anticipates that Stage Practical Completion will be achieved in respect of each Stage, the Developer must request the Independent Certifier to assess the anticipated date upon which Stage Practical Completion will be reached; and

(b) If requested, the Independent Certifier must:

(i) assess the likely date on which Stage Practical Completion will be reached in respect of that Stage;

(ii) give a notice to each Principal Party, certifying the date on which the Independent Certifier reasonably anticipates that Stage Practical Completion will be reached in respect of that Stage; and

(iii) in addition to any requirements under the CENDA, at the same time give the Investors a copy of that notice.

5.2 Requesting Certificate of Stage Practical Completion

When the Developer is of the opinion that Stage Practical Completion has been reached, the Developer must:

(a) request the Independent Certifier to issue a Certificate of Stage Practical Completion in relation to that Stage confirming that all conditions required to achieve Stage Practical Completion under the CENDA have been satisfied; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of that request.

5.3 Independent Certifier to certify Stage Practical Completion

In respect of a Stage, within 5 Business Days of receipt of the Developer's request under clause 5.2, the Independent Certifier must:

(a) either:

(i) if all conditions required to achieve Stage Practical Completion under the CENDA have been satisfied, issue the Developer with a Certificate of Stage Practical Completion for that Stage confirming that Stage Practical Completion has been reached in relation to that Stage; or

(ii) provide the Developer with the reasons for not issuing the Certificate of Stage Practical Completion for that Stage and provide a detailed list of work required to be completed in order for the Certificate of Stage Practical Completion for that Stage to be issued; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of those reasons or the Certificate of Stage Completion for that Stage and the list of outstanding work (as applicable).

5.4 Carrying out required work for Stage Practical Completion

On receipt of the detailed list referred to in clause 5.3(a)(ii), 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 of Stage Practical Completion for the relevant Stage and clause 5.3 and this clause 5.4 will re-apply, until the Independent Certifier issues the Certificate of Stage Practical Completion for the relevant Stage.

5.5 Prerequisites for Certificate of Stage Practical Completion

A Certificate of Stage Practical Completion for a Stage may not be issued unless and until all conditions required to achieve Stage Practical Completion under the CENDA have been satisfied.

5.6 Documentation

Within a reasonable time after the Date of Stage Practical Completion, the Developer may, in carrying out its obligations under *clause 34.7 ('Documentation')* of the CENDA, request the Independent Certifier to determine the operating manuals, warranties, guarantees, as built drawings and other documents and information which are necessary for the use and occupation of those components of the Works that form public areas, public open space in relation to that Stage, and which are required to be delivered to the Authority.

6. Obligations relating to Block Practical Completion

6.1 Requesting Certificate of Block Practical Completion

When the Developer is of the opinion that Block Practical Completion has been reached, the Developer must:

(a) request the Independent Certifier to issue a Certificate of Block Practical Completion in relation to that Block confirming that all conditions required to achieve Block Practical Completion under the CENDA have been satisfied; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of that request.

6.2 Independent Certifier to certify Block Practical Completion

In respect of a Block, within 5 Business Days of receipt of the Developer's request under clause 6.1, the Independent Certifier must:

(a) either:

(i) if all conditions required to achieve Block Practical Completion under the CENDA have been satisfied, issue the Developer with a Certificate of Block Practical Completion for that Block confirming that Block Practical Completion has been reached in relation to that Block; or

(ii) provide the Developer with the reasons for not issuing the Certificate of Block Practical Completion for that Block and provide a detailed list of work required to be completed in order for the Certificate of Block Practical Completion for that Block to be issued; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of those reasons or the Certificate of Block Completion for that Block and the list of outstanding work (as applicable).

6.3 Carrying out required work for Block Practical Completion

On receipt of the detailed list referred to in clause 6.2(a)(ii), 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 of Block Practical Completion for the relevant Block and clause 6.2 and this clause 6.3 will re-apply, until the Independent Certifier issues the Certificate of Block Practical Completion for the relevant Block.

6.4 Prerequisites for Certificate of Block Practical Completion

A Certificate of Block Practical Completion for a Block may not be issued unless and until all conditions required to achieve Block Practical Completion under the CENDA have been satisfied.

7. Obligations relating to Project Practical Completion

7.1 Requesting Certificate of Project Practical Completion

When the Developer is of the opinion that Project Practical Completion has been reached, the Developer must:

(a) request the Independent Certifier to issue a Certificate of Project Practical Completion confirming that all conditions required to achieve Project Practical Completion under the CENDA have been satisfied; and

(b) in addition to any requirements under the CENDA, at the same time give each other Principal Party a copy of that request.

7.2 Independent Certifier to certify Project Practical Completion

Within 5 Business Days of receipt of the Developer's request under clause 7.1, the Independent Certifier must:

(a) either:

(i) if the conditions required to achieve Project Practical Completion under the CENDA have been satisfied, issue the Developer with a Certificate of Project Practical Completion confirming that Project Practical Completion has been reached; or

(ii) provide the Developer with the reasons for not issuing the Certificate of Project Practical Completion and a detailed list of work required to be completed in order for the Certificate of Project Practical Completion to be issued; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of those reasons or the Certificate of Project Practical Completion and the list of outstanding work (as applicable).

7.3 Carrying out required work for Project Practical Completion

On receipt of the detailed list referred to in clause 7.2(a)(ii), 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 of Project Practical Completion and clause 7.2 and this clause 7.3 will re-apply until the Independent Certifier issues the Certificate of Project Practical Completion.

7.4 Prerequisites for Certificate of Project Practical Completion

A Certificate of Project Practical Completion for a Project may not be issued unless and until all conditions required to achieve Project Practical Completion under the CENDA have been satisfied.

8. Obligations relating to completion of other Works Components

8.1 Requesting certificates

When the Developer is of the opinion that Public Domain Practical Completion, Cold Shell Practical Completion or Retail Final Completion has been reached, the Developer must:

(a) request the Independent Certifier to issue a the relevant certificate confirming that all conditions required to achieve Practical Completion in respect of the relevant Works Component under the CENDA have been satisfied; and

(b) in addition to any requirements under the CENDA, at the same time give each other Principal Party a copy of that request.

8.2 Independent Certifier to certify Practical Completion

Within 5 Business Days of receipt of the Developer's request under clause 8.1, the Independent Certifier must:

(a) either:

(i) if the conditions required to achieve Practical Completion of the relevant Works Component under the CENDA have been satisfied, issue the Developer with a certificate confirming that Practical Completion has been reached in respect of the relevant Works Component; or

(ii) provide the Developer with the reasons for not issuing the certificate of Practical Completion of the relevant Works Component and a detailed list of work required to be completed in order for the certificate of Practical Completion to be issued in respect of the relevant Works Component; and

(b) in addition to any requirements under the CENDA, at the same time give the Authority and the Investors a copy of those reasons or the certificate of Practical Completion and the list of outstanding work (as applicable) in respect of the relevant Works Component.

8.3 Carrying out required Work

On receipt of the detailed list referred to in clause 8.2(a)(ii), 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 Practical Completion has been reached in respect of the relevant Works Component and clause 8.2 and this clause 8.3 will re-apply until the Independent Certifier issues such a certificate in respect of the relevant Works Component.

8.4 Prerequisites for certificates to be issued by Independent Certifier

A certificate confirming Practical Completion has been achieved in respect of a Works Component may not be issued unless and until all conditions required to achieve Practical Completion in relation to the relevant Works Component under the CENDA have been satisfied.

9. Step-in under Multi-Party Investor Side Deed

(a) If an Investor has served a Step-in Notice pursuant to the Multi-Party Investor Side Deed:

(i) if required by the Authority or the Step-in Party, the Independent Certifier must meet at regular intervals with the Authority and the Step-in Party to discuss the draft Practical Completion Plan;

(ii) the Independent Certifier must act reasonably when taking into consideration all suggestions and proposals put forward by the Authority and the Step-in Party in relation to the Practical Completion Plan;

(iii) the Independent Certifier may seek the input of an independent quantity surveyor and an independent construction programming expert each of whom must have no less than 10 years' experience when assessing the Practical Completion Plan; and

(iv) the Independent Certifier must be directed to respond for a request to certify a Practical Completion Plan within 20 Business Days.

(b) If required by the Authority or a Step-in Party, the Independent Certifier must, within 10 Business Days after being requested in writing, enter into a deed of novation with the Authority, the Step-in Party and the remaining Investors on such terms as the Authority and the Step-in Party may reasonably require, [redacted]

10. Defects Liability Period

10.1 Directions to the Independent Certifier

(a) If at any time within the Defects Liability Period, a defect becomes apparent or the Authority issues a notice pursuant to *clause 15.13(c) ('Defects Liability Period')* of the CENDA that there are any defects in any aspects of:

(i) areas of the Developer's Project intended for use or access by the public; or

(ii) the Internal Infrastructure,

then, the Authority may direct the Independent Certifier to carry out obligations in accordance with this clause 10.

(b) For purposes of this clause10, a 'defect' includes any design errors, construction faults, omissions, shrinkages, expansions or other construction or design defects.

10.2 Obligations in relation to the defective works

(a) If, the Authority directs the Independent Certifier under clause 10.1, the Independent Certifier must:

(i) inspect the Developer's Project to ascertain what defects and faults (if any) in those works are required to be made good by the Developer; and

(ii) give the Developer 2 Business Days' notice before it carries out an inspection under clause 10.2(a).

(b) In carrying out any inspections under clause 10.2(a) the Independent Certifier must have regard to any instructions or directions given to the Developer by the Authority under *clause 15.13(c) ('Defects Liability Period')* of the CENDA.

(c) After each inspection the Independent Certifier must give a notice in writing to the Developer of all defects and faults (if any) which in the opinion of the Independent Certifier are required to be made good.

(d) After receipt of a notice under clause 10.2(c), the Developer must

(i) promptly make good any defects identified by the Independent Certifier at its own expense (by appropriate rectification work) in accordance with *clause 15.13 ('Defects Liability Period')* of the CENDA; and

(ii) give notice in writing to the Independent Certifier when, in the Developer's opinion, all omissions and defects referred to in the direction have been made good; and

(e) Within 5 Business Days after the receipt of the Developer's notice under clause 10.2(d)(ii), the Independent Certifier must certifywhether or not the

Developer has rectified all defects as identified by the Independent Certifier and as otherwise directed or instructed by the Authority.

11. General rights and obligations

11.1 Independent Certifier's Obligations [redacted]

The Independent Certifier must perform all the Obligations of the Independent Certifier specified in the CENDA and the [redacted] including the Obligations.

11.2 Independent Certifier's right to enter and inspect

(a) The Independent Certifier may, for the purposes of carrying out any of its obligations under this deed:

(i) inspect the Developer's Project after having given the Developer at least 2 Business Days' notice (except in the case of an emergency where no notice is required) but is not required to occupy any part of Central Barangaroo on which the Developer's Project is situated on a permanent basis;

(ii) inspect and test materials used in connection with the Developer's Project;

(iii) require the Developer to produce any evidence of tests which may reasonably be required by the Independent Certifier with respect to the Developer's Project; and

(iv) reject any materials or workmanship materially inconsistent with:

A. the Approved Design Documentation and Approvals;

B. the best practices of the respective trades; or

C. to the standard required under this deed and the CENDA.

(b) At the request of the Independent Certifier, the Developer must immediately remove, or replace all unauthorised or unsatisfactory Works and make good any workmanship as directed by the Independent Certifier.

11.3 Independent Certifier's additional obligations

The Independent Certifier must perform each of the other Obligations, if any, specified in Annexure A.

11.4 Developer's Obligations

The Developer:

(a) acknowledges the Independent Certifier's right to enter and inspect the Developer's Project under clause 11.2;

(b) must not do anything to limit the Independent Certifier's rights under clause 11.2; and

(c) must do all things reasonable to assist the Independent Certifier to exercise its rights under clause 11.2.

11.5 Performance during dispute

Notwithstanding the existence of a dispute, the Independent Certifier must continue to perform its Obligations.

12. Independent Certifier's personnel

12.1 Properly qualified

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

12.2 List of personnel

(a) The Independent Certifier must promptly provide to each Principal Party a list of the personnel (including the Key Individual) which it will use or will be using to perform the obligations and detailing the qualifications and experience of each person.

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

12.3 Removal of personnel

If at any time during the term of this deed, a Principal Party considers that the conduct of the Independent Certifier's personnel (including the Key Individual) is prejudicial to the interest of the Developer's Project or that the Independent Certifier has not engaged personnel (including the Key Individual) who are sufficiently competent, experienced and qualified to perform the Obligations, that Principal Party may, after consultation with the Independent Certifier, by written notice to the Independent Certifier require the removal of that person from any involvement in the Developer's Project. The Independent Certifier shall within 10 Business Days replace the person named in that notice with the person approved by the Principal Parties.

12.4 Removal of Key Individual

Subject to clause 12.3, if the Key Individual resigns or is unable to work due to illness or other circumstances, the Independent Certifier must procure that they are replaced as soon as reasonable practicable and in any event with 10 Business Days. The Principal Parties and the Independent Certifier must agree the identity of the replacement Key Individual in writing. In endeavouring to reach agreement under this clause 12.4, the parties must act reasonably.

13. Notifications

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

(a) that any matter stated or certified by the Developer or certificate provided under the CENDA is not correct as at the date stated or certified; and

(b) of any matter or circumstance which in its reasonable opinion:

(i) may materially or adversely affect the Developer's ability to achieve:

A. Stage Practical Completion of a Stage by the Date for Stage Practical Completion for that Stage;

B. Block Practical Completion of a Block by the Date for Block Practical Completion for that Block;

C. Project Practical Completion by the Date for Project Practical Completion;

D. Public Domain Practical Completion;

E. Cold Shell Practical Completion; or

F. Retail Final Completion;

(ii) it considers to be, in the context of the Developer's Project, of material interest to a Principal Party;

(iii) may involve a material breach of the CENDA; or

(iv) may involve a material dispute between the Authority and the Developer or any other person in relation to the CENDA or the Developer's Project.

14. Fees

14.1 Payment by Developer

(a) The Developer agrees to pay to the Independent Certifier, such fees and expenses as are set out in Annexure C or as separately agreed between the Developer and the Independent Certifier.

(b) If the Independent Certifier performs any Obligations in relation to the certification of a Practical Completion Plan [redacted] the fees and expenses in relation to such performance will (as between the Developer and the Investors) be payable by the Investor requiring certification of the Practical Completion Plan.

14.2 Authority not to pay

The Authority has no obligation to pay fees and expenses to the Independent Certifier for work carried out under this deed, the CENDA or the [redacted]ed.

15. Representations and Warranties

15.1 Independent Certifier's representations and warranties

The Independent Certifier represents and warrants that:

(a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;

(b) it has power to enter into this deed to which it is a party and comply with its obligations under each of it;

(c) this deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;

(d) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with the Obligations and exercise its rights under it, and allow it to be enforced;

(e) the Obligations are valid and binding and are enforceable against it in accordance with its terms;

(f) it benefits by entering into this deed;

(g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;

(h) unless stated in this deed, it does not enter into this deed as trustee;

(i) there is no pending or threatened proceeding affecting it or any of assets before a court, governmental agency, commission or arbitrator except those in which a decision against it would be insignificant;

(j) it does not have immunity from the jurisdiction of a court or from legal process;

(k) it has the appropriate qualifications to undertake all of the certification requirements forming part of the Obligations; and

(l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Obligations possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Obligation.

16. Insurance

16.1 Own Risk

The Independent Certifier undertakes to carry out the Obligations entirely at its own risk.

16.2 Undertakings

The Independent Certifier undertakes as follows:

(a) it will obtain and maintain the Insurances;

(b) it will obtain and maintain such additional insurances, and make such variations to existing Insurances, as may reasonably be requested by the Principal Parties, promptly after that request;

(c) each Insurance policy will comply with the following requirements:

  (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy;

  (ii) the insurers must be reputable, and approved by the Principal Parties;

  (iii) the named insured on the policy (except where the policy is for professional indemnity insurance) must be the Principal Parties and the Investors or such other persons as the Principal Parties reasonably require; and

  (iv) the Insurance must at all times cover liability for an amount stated in Annexure B;

(d) each insurance policy must contain the following:

(i) the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;

(ii) the insurer must waive its right to claim from the Principal Parties and the Investors any insurance premiums, fees, commissions or the like;

(iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;

(iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;

(v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);

(vi) the insurer must undertake to promptly notify the Principal Parties of:

A. cancellation or avoidance of any Insurances;

B. any change whatsoever of a restrictive nature which affects any Insurances;

C. any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or

D. any failure to pay an amount on account of premiums when due;

(vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;

(viii) despite the occurrence of an event referred to in clauses 16.2(d)(vi) and 16.2(d)(vii), the Insurances must continue unaltered for the benefit of the Principal Parties for a period of at least of 20 Business Days after notice is given to the Principal Parties under either of those clauses;

(ix) there must be no reduction of limits or coverage without the prior consent of the Principal Parties; and

(x) the insurer's obligations must be primary obligations, without right of contribution in respect of any other indemnity or insurance cap.

(e) it will provide the Principal Parties with:

(i) a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Independent Certifier;

(ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;

(iii) it will give the Principal Parties a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and

(iv) such other details in respect of Insurances as the Principal Parties may from time to time reasonably request, promptly after the request;

(f) it will pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Principal Parties;

(g) it will do all things necessary or desirable to maintain the Insurances in full force;

(h) not, without the Principal Parties' consent, vary, cancel or allow to lapse any Insurances;

(i) it will do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;

(j) it will not, without the consent of the Principal Parties do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any obligations of the insurer in respect of any Insurances;

(k) it will immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;

(l) it will not, without the consent of the Principal Parties, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;

(m) it will not, without the consent of the Principal Parties:

(i) consent to any reduction in limits or coverage; or

(ii) enforce, conduct, settle or compromise any claims,

in respect of any Insurances, whether or not any of them cover other property; and

(n) it will notify the Principal Parties immediately when:

(i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or

(ii) any one of the Insurances is cancelled.

16.3 Failure to produce proof of insurance

If after being requested in writing by the Authority to do so, the Independent Certifier fails to comply with its obligations under clause 16.2 to effect any of the insurances required to be effected and maintained pursuant to clause 16.2 the Authority may (acting in good faith and reasonably) (after giving the Independent Certifier 5 Business Days' prior notice of its intention to do so) effect and maintain the Insurances and pay the premiums. The Independent Certifier must pay to the Authority on demand a sum equal to the amount paid by the Authority.

17. Default

17.1 Certifier Default

(a) The Independent Certifier must ensure that no Certifier Default occurs.

(b) Each of the following is a Certifier Default:

(i) the Independent Certifier does not comply with or perform any of the Obligations;

(ii) the Independent Certifier becomes the subject of an Insolvency Event;

(iii) a representation or warranty made by or for the Independent Certifier in connection with this deed or the CENDA is found to have been incorrect or misleading when made;

(iv) the Independent Certifier ceases to carry on its business or material part of it; or

(v) a person is appointed under legislation to manage any part of the affairs of the Independent Certifier.

17.2 Principal Default

(a) The Developer must ensure that no Principal Default occurs.

(b) A Principal Default occurs when the Developer does not pay on time any amount payable by it under this deed, unless there is a dispute between the Developer and the Independent Certifier regarding the amount or the subject of the amount to be paid.

17.3 Right to terminate

(a) Subject to clause 17.3(c), if a Certifier Default occurs and the default is not remedied by the Independent Certifier within 10 Business Days of notice of that default being given by any of the Principal Parties to the Independent Certifier, either of the Principal Parties may terminate the appointment of the Independent Certifier by giving not less than 10 Business Days' notice in writing to the Independent Certifier and each other Principal Party and the Principal Parties' obligations under this deed are terminated.

(b) If a Principal Default occurs and the default is not remedied within 20 Business Days of notice being given by the Independent Certifier to each Principal Party, the Independent Certifier may terminate this deed by giving not less than 20 Business Days' notice in writing to each Principal Party.

(c) A Principal Party may, without giving advance notice, terminate this deed by giving notice in writing to the Independent Certifier and each other Principal Party if an event described in clause 17.1(b)(ii) occurs.

(d) If the CENDA is terminated for the default of a Principal Party, the Principal Party not in default may elect in writing to the other parties to this deed either to terminate this deed or to continue with it (and if it has not made an election within one month of the date of termination of the CENDA, is taken to have elected to terminate this deed).

(e) If the Principal Party not in default under the CENDA:

(i) elects to terminate this deed under clause 17.3(d), that termination does not disturb any existing rights of the parties arising prior to the date of termination; and

(ii) elects to continue with this deed under clause 17.3(d), it does so on the basis that it accepts the obligation to pay the Independent Certifier for work done after the date of the election pursuant to this deed.

17.4 Rights on termination

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

(a) clauses 17.3(a) or 17.3(d), the Independent Certifier will only be entitled to payment from the Developer of all amounts due to it under clause 14, up to and including the date of termination; or

(b) clause 17.3(b), then the Independent Certifier will also be entitled to receive from the Developer its reasonable Costs arising from that termination.

17.5 Appointment of successor

(a) The termination of the appointment of the Independent Certifier under clause 17.3 will not be effective until the successor to the Independent Certifier is appointed by the Principal Parties in accordance with this clause 17.5.

(b) The Principal Parties must, prior to giving the notice of termination under clause 17.5(a), appoint a Replacement Certifier as the successor to the Independent Certifier.

(c) The Replacement Certifier must:

(i) be acceptable to the Principal Parties and the Investors (acting reasonably);

(ii) enter into a deed with the Principal Parties and the Investors on substantially the same terms and conditions as this deed; and

(iii) be a person who is able, in the reasonable opinion of the Principal Parties and the Investors, to fully and properly perform and satisfy the Obligations.

(d) The Principal Parties and the Investors agree to enter into the deed with the Replacement Certifier as contemplated under clause 17.5(c)(ii).

(e) In the event that the Principal Parties and the Investors do not agree on the identity of the Replacement Certifier within 10 Business Days of the decision to terminate the appointment of the Independent Certifier, the issue will be referred for a decision by the president of the Law Society of New South Wales, or their nominee.

17.6 Return of records

(a) Within 10 Business Days of the termination of its appointment, the Independent Certifier must:

(i) deliver to the relevant Principal Party or, at the direction of the relevant Principal Party, to the Replacement Certifier, all copies of the CENDA , all books, records, plans, specifications and other documents relating to the Obligations or the Project in the possession or control of the Independent Certifier (with the Independent Certifier being entitled to retain copies but only for insurance purposes); and

(ii) use its reasonable endeavours to ensure the representative of the Independent Certifier, its agents and subcontractors deliver such material to the relevant Principal Party or, at the direction of the relevant Principal Party, to the Replacement Certifier.

The Independent Certifier may not exercise any lien against any of the documentation referred to in this clause.

(b) In the event that its appointment is terminated, the Independent Certifier agrees that it will co-operate with and assist the Replacement Certifier to ensure an effective and smooth transition of its duties and obligations under this deed to the Replacement Certifier.

18. Change to or suspension of Obligations

18.1 Change to Obligations

(a) The Principal Parties may, by joint notice to the Independent Certifier, instruct the Independent Certifier to carry out a change to Obligations (including an addition or omission) which is within the general scope of this deed. The Independent Certifier must comply with any such instruction.

(b) The fees and expenses set out in Annexure C will be adjusted to reflect the change to the Obligations referred to in clause 18.1(a).

18.2 Independent Certifier must continue to perform

Notwithstanding a change to the Obligations, the Independent Certifier must continue to perform the Obligations, as changed in accordance with clause 18.1, in accordance with this deed.

18.3 Suspension of Obligations

(a) The Principal Parties may, by joint notice to the Independent Certifier, instruct the Independent Certifier to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Obligations.

(b) During the period which the Independent Certifier's performance of the Obligations are suspended in accordance with clause 18.3(a), the Developer will pay the Independent Certifier:

(i) subject to the provisions of this deed, for the Obligations that are not suspended (if any); and

(ii) subject to the Independent Certifier using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Obligations and provided that the suspension is not as a result of the Independent Certifier failing to comply with its obligations under this deed, such unavoidable costs or expenses incurred arising in connection with the suspension of the Obligations or costs and expenses incurred by the Independent Certifier in anticipation of their Obligations not being suspended.

19. Costs and indemnity

19.1 What the Independent Certifier agrees to pay

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

19.2 Payment for each Principal Party's Obligations

Each Principal Party agrees to pay for anything that it agrees to do under this deed.

19.3 Indemnity

The Independent Certifier is liable for and indemnifies each Principal Party against any Claim or Loss brought against, suffered or incurred by a Principal Party to the extent that Claim or Loss arises out of:

(a) any damage to, loss of or loss of use of (whether total or partial) any real or personal property; or

(b) illness or death of or injury to any person,

and to the extent that it arises out of any negligent act or omission of or any breach of this deed by the Independent Certifier or its agents or consultants.

20. Assignment

20.1 Assignment by the Independent Certifier

Except as set out in this deed the Independent Certifier may not assign or transfer its rights or obligations under this deed without the prior written consent of the Principal Parties (which may be given or withheld in its absolute discretion and with or without conditions).

20.2 Assignment by Authority

The Authority may at any time assign (in whole or part) its rights and obligations under this deed at any time to any entity which succeeds to the rights of the Authority under the CENDA and must promptly give the Builder written notice of any such assignment.

21. Notices

21.1 Form

Unless expressly stated otherwise in the CENDA , all notices, certificates, consents, approvals, waivers and other communications in connection with the CENDA must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

Authority

Name:	Barangaroo Delivery Authority
Address:	21/201 Kent Street Sydney NSW 20007
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	[insert]

Developer

Name:	Grocon (CB) Developments Pty Limited
Address:	3 Albert Coates Lane Melbourne VIC 3000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	[insert]

Aqualand

Name:	Aqualand B Development Holding Pty Limited
Address:	Level 29, 225 George Street Sydney NSW 2000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	[insert]

Block 5 Office Investor

Name:	Grocon (CB) Developments Pty Limited
Address:	3 Albert Coates Lane Melbourne VIC 3000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	Company Secretary

Block 6 Office Investor

Name:	Grocon (CB) Developments Pty Limited
Address:	3 Albert Coates Lane Melbourne VIC 3000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	Company Secretary

Retail Investor

Name:	WSF Fund Pty Limited
Address:	Level 30, 85 Castlereagh Street Sydney, NSW 2000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	Company Secretary

Retail Step-in Party

Name:	Scentre Design and Construction Pty Limited
Address:	Level 30, 85 Castlereagh Street Sydney, NSW 2000
Email:	[insert email address of the responsible person for receipt of notices] and [***insert general mailbox if required***]
For the attention of:	Company Secretary

Independent Certifier

Name:	[insert]
Address:	[insert]
Email:	[insert]
For the attention of:	[insert]

21.2 Delivery

Notices must be:

(a) left at the addresses referred to in clause 21.1;

(b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 21.1; or

(c) sent by email to the email address referred to in clause 21.1.

However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that address.

21.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

21.4 Receipt - post

If sent by post, notices are taken to be received 5 Business Days after posting (or 10 Business Days after posting if sent to or from a place outside Australia).

21.5 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 21.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 21.5. 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 will only form part of a communication under this clause 21 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 deed to ensure that their respective firewall and/or mail server (as applicable) allows messages of up to 20 MB to be received.

21.6 Receipt - general

Other than in the case of notices sent by post (in which case clause 21.4 applies), if notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

22. GST

22.1 Interpretation

(a) Except where the context suggests otherwise, terms used in this clause 22 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

(b) 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 22.

(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.

22.2 Reimbursements

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

22.3 Additional amount of GST payable

Subject to clause 22.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

(a) any amount payable or consideration to be provided under any provision of this deed (other than this clause 22), for that supply is exclusive of GST;

(b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

(c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 22.3(b).

22.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 22.3 and clause 22.5), varies from the additional amount paid by the Recipient under clause 22.3, 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 22.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 22.3.

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

22.5 Exchange of non-monetary consideration

(a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 22.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 22.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 22.3 (or the time at which such GST Amount would have been payable in accordance with clause 22.3 but for the operation of clause 22.5(a)).

22.6 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.

22.7 No merger

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

23. General

23.1 Prompt performance

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

23.2 Consents

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

23.3 Certificates

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

23.4 Set-off

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

23.5 Discretion in exercising rights

The Principal Parties may, exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

23.6 Partial exercising of rights

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

23.7 No liability for loss

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

23.8 Conflict of interest

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

23.9 Remedies cumulative

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

23.10 Other Encumbrances or judgments

(a) This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

(i) any Encumbrance or other right or remedy to which the Principal Parties are entitled; or

(ii) a judgment which the Principal Parties obtain against the Independent Certifier in connection with this deed.

(b) Notwithstanding clause 23.10(a), the Principal Parties may still exercise their rights under this deed as well as under the judgment, the Encumbrance or the right or remedy.

23.11 Inconsistent law

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

23.12 Supervening legislation

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

23.13 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

23.14 Confidentiality

All information provided by one party to another party under this deed or the CENDA and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person except:

(a) with the consent of the party providing the information;

(b) if allowed or required by law or required by any stock exchange;

(c) in connection with any legal proceedings relating to this deed or the CENDA;

(d) if the information is generally and publicly available; or

(e) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.

The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person.

23.15 Further steps

The Independent Certifier agrees to do anything the Principal Parties ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

(a) to bind the Independent Certifier and any other person intended to be bound under this deed; or

(b) to show whether the Independent Certifier is complying with this deed.

23.16 Each signatory bound

This deed binds each person who signs as a party described in this deed even if another person who was intended to sign does not sign it or is not bound by it.

23.17 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to the this deed. If so, the signed copies are treated as making up the one document.

23.18 Applicable Law

This deed is governed by the Law in force in New South Wales. The Independent Certifier and the Principal Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Annexure A - Obligations of Independent Certifier

For the purposes of this deed, the Obligations of the Independent Certifier include (but are not limited to) the following:

(a) provide all certifications, determinations, authorisations and notices as required to be provided by the Independent Certifier pursuant to the CENDA and the Multi-Party Investor Side Deed;

(b) perform any function or do anything required of the Independent Certifier under the CENDA and the Multi-Party Investor Side Deed.

Annexure B - Insurances (clause 16)

1. Third Party Legal Liability

Coverage: The legal liabilities of the Independent Certifier, the Principal Parties and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Independent Certifier's Obligations under this deed and all other obligations under the CENDA.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until the later of:

(a) the date of the expiry of the Defects Liability Period; or

(b) the date the Independent Certifier, pursuant to clause 10.2(e), certifies that the Developer has rectified all defects as identified by the Independent Certifier.

Limit: A minimum of $20 million for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Works.

2. Professional Indemnity

Coverage: The professional activities and duties of the Independent Certifier and its employees and agents in respect of its Obligations.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until 6 years from the later of:

(a) the date of the expiry of the Defects Liability Period; or

(b) the date the Independent Certifier, pursuant to clause 10.2(e), certifies that the Developer has rectified all defects as identified by the Independent Certifier.

Limit: A minimum of $20 million for any one occurrence and in the aggregate subject to an automatic reinstatement.

3. Workers' Compensation Insurance

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the *Workers Compensation Act* 1987 (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Independent Certifier.

Insurance Term: From the date of this deed until the later of:

(a) the date of the expiry of the Defects Liability Period; or

(b) the date the Independent Certifier, pursuant to clause 10.2(e), certifies that the Developer has rectified all defects as identified by the Independent Certifier.

4. Other Insurances

Such other insurances as may be reasonably required by the Principal Parties from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against) including, without limitation, motor vehicle insurance covering third party property damage for all vehicles for a minimum of $20 million for any one occurrence.

Insurance Term: From the date of this deed until the later of:

(a) the date of the expiry of the Defects Liability Period; or

(b) the date the Independent Certifier, pursuant to clause 10.2(e), certifies that the Developer has rectified all defects as identified by the Independent Certifier.

Annexure C - Fees

[*Completion note: schedule of fees to be inserted*]

Executed as a deed.

The seal of **Barangaroo Delivery Authority** is affixed by authority of the Chief Executive Officer in the presence of:

Signature of authorised person	Signature of authorised person
Name of authorised person	Name of authorised person
Office held	Office held

EXECUTED by **Grocon (CB) Developments Pty Ltd ACN 614 118 642** by being signed, sealed and delivered by its attorneys under power of attorney dated who each declares that they have no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of Level A attorney
Print name	Name of Level A attorney
Signature of witness	Signature of Level B attorney
Print name	Name of Level B attorney

EXECUTED by **Aqualand B Development Holding Pty Ltd** by being signed, sealed and delivered by its attorney under power of attorney dated 1 June 2016 who declares that they have no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Print name	Name of attorney

Executed by **Grocon (CB) Management Pty Ltd** (as trustee of the Central Barangaroo Office Sub-Trust 1) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

Executed by **Grocon (CB) Management Pty Ltd** (as trustee of the Central Barangaroo Office Sub-Trust 2) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

Signed, sealed and delivered for and on behalf of **WSF Fund Pty Limited** ACN 120 154 663 (as trustee for the Scentre Barangaroo Trust) by its attorneys under a power of attorney dated 20 in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **Scentre Design and Construction Pty Limited** ACN 000 267 265 by its attorneys under a power of attorney dated 20 in the presence of:

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of attorney

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Executed by [*insert Independent Certifier*] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director	Signature of Director
Name of Secretary/other Director in full	Name of Director