

# Crown Development Agreement

**Barangaroo Delivery Authority**  
Authority

**Lend Lease (Millers Point) Pty Limited**  
LLMP

**Lend Lease Corporation Limited**  
LLMP Guarantor

**Crown Sydney Property Pty Limited**  
Crown

**Crown Resorts Limited**  
Crown Guarantor

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# Crown Development Agreement

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Date

27 May 2015

## Parties

**Barangaroo Delivery Authority ABN 94 567 807 277** a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (**Authority**)

**Lend Lease (Millers Point) Pty Limited ABN 15 127 727 502 (LLMP)** of Level 5, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000 as trustee of the Lend Lease Millers Point Trust ABN 96 367 164 319

**Lend Lease Corporation Limited ABN 32 000 226 228 (LLMP Guarantor)** of Level 5, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000

**Crown Sydney Property Pty. Ltd ACN 166 326 861** of Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3000 (**Crown**)

**Crown Resorts Limited ABN 39 125 709 953** of Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3000 (**Crown Guarantor**)

## Background

- A. The Authority owns Barangaroo and accepts responsibility for title.
- B. The Authority, LLMP and the LLMP Guarantor are parties to the PDA.
- C. LLMP has agreed to nominate Crown to be its nominee for the grant of Leases of premises within the Crown Site.
- D. The parties acknowledge that the PDA is amended by the Fifth Deed of Amendment.
- E. Under and subject to the terms of this deed (and for the consideration provided in this deed):
  - (a) Crown will undertake the Crown Works;
  - (b) LLMP and the Authority agree that:
    - (i) LLMP's rights under the PDA to carry out the Works in relation to the Crown Site are modified as set out in this deed; and
    - (ii) the PDA Guarantee continues to remain enforceable and binding on the LLMP Guarantor in accordance with the PDA, as so modified, despite this deed being entered into;
  - (c) the Crown Guarantor agrees to guarantee to the Authority the Crown Guaranteed Obligations; and
  - (d) the LLMP Guarantor agrees to guarantee to the Authority the LLMP Guaranteed Obligations.



The parties agree

## 1. Definitions and interpretation

### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**Acceptable Other Remaining Remediation Works Section A Site Audit Statement** means a Section A Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor in respect of the Other Remaining Remediation Works that certify that the Non-Declaration Area Remaining is suitable for development and intended uses (as contemplated in the PDA) and neither of the Section A Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor contains any conditions, provisions or requirements, which would adversely affect the development and intended uses (as contemplated in the PDA) of the Non-Declaration Area Remaining.

**Acceptable Other Remediation Works Section A Site Audit Statement** means a Section A Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor in respect of the Other Remediation Works that certify that the Non-Declaration Area is suitable for development and intended uses (as contemplated in the PDA) and neither of the Section A Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor contains any conditions, provisions or requirements, which would adversely affect the development and intended uses (as contemplated in the PDA) of the Non-Declaration Area.

**Acceptable PDA Remediation Works Section A Site Audit Statement** means a Section A Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor in respect of the PDA Remediation Works, which satisfies the requirements of the PDA neither of which contains any conditions, provisions or requirements, which would adversely affect the development and use of the Declaration Area as contemplated by the PDA, including the development and intended uses to a depth of not less than the depth of the excavation necessary for the basements contemplated by the Detailed Plans and Specifications and the creation of Southern Cove to the extent they are within the Declaration Area.

**Acceptable VMP Remediation Works Section B Site Audit Statement** means a Section B Site Audit Statement and Site Audit Report issued by the Accredited Site Auditor in respect of the VMP Remediation Works, which satisfies the requirements of clause 16.31(a) of the PDA and which certifies that the Significant Contamination on the Declaration Area has been addressed and the terms of the Approved Voluntary Management Proposal have been complied with and the Declaration Area is not subject to a Long-term Environmental Management Plan to address the Significant Contamination.

**Adjusted NABERS Rating** means a NABERS rating of such stars as represents world's best practice standards for hotels after taking into account any penalties occurring in the certified rating (being the NABERS Hotel Rating) as a result of the intensity of operation of the Hotel Resort Separable Portion, excluding:

- (a) the Restricted Gaming Facility; and
- (b) any restaurants and any other facilities excluded by OEH as part of its rulings for the purposes of such NABERS rating.

**Alternative Development Proposal** means a proposal for the development of the Crown Site approved by the Authority under clause 23A of the PDA.

**Amendment Application** means:

- (a) a Modification Application; or
- (b) an Application to amend under section 96 of the EP&A Act,

as applicable, in relation to the relevant Approval, made before the Effective Date.

**Anticipated Date of Practical Completion** means in respect of the Crown Works or the relevant Separable Portion, the date which the Independent Certifier certifies in writing to the Authority and Crown pursuant to clause 18.2(a), as being the date that is likely to be the date on which Practical Completion will be reached.

**Appeal Period** means:

- (a) in relation to Mod 8, the three month period commencing on the date of public notice pursuant to section 75X(4) of the EP&A Act (as saved by clause 3 of Schedule 6A of the EP&A Act) of the granting of an Approval to Mod 8; or
- (b) in relation to the Hotel Resort DA, the three month period commencing on the date of public notice pursuant to section 101 of the EP&A Act of the granting of an Approval to the Hotel Resort DA.

**Application** means an application for any Approval including (as required):

- (a) the SEARS Application relating to that application; and
- (b) the plans, specifications, environmental assessment requirements, technical reports and any other documents forming part of or to be submitted in respect of that application.

**Application Approval Timeframes** has the meaning given in clause 11.5(a).

**Application Plans** means in respect of each proposed Application, the plans and specifications which are intended to form part of that proposed Application.

**Approval Conditions** means the Conditions referred to in paragraphs (b), (c), (d), (e), (f) and (g) of the definition of Conditions.

**Approvals** means any approvals, consents, Part 4A Certificates, approvals under Part 3A or Part 4 of the EP&A Act, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences (including licences under the Liquor Act 2007 (NSW)), conditions or requirements (and any variations or modifications to them) which may be:

- (a) required by Law or by adjoining owners for the commencement and carrying out of the Works; or
- (b) imposed in relation to the Crown Project by any Public Authority or the Authority,

including any Approval relating to Mod 8 but during the period from the Commencement Date until the commencement date of the first Lease only, excluding any approvals, consents, permits, endorsements, licences, conditions or requirements under the Gaming Legislation.

**Approved Operator** means:

- (a) [REDACTED]
- (b) such other operator, approved by the Authority, acting reasonably, which has the ability to comply with the Climate Positive Waste Principles; or
- (c) where there is no reputable, reasonable and solvent operator that has the ability to comply with the Climate Positive Waste Principles, an operator who is most closely able to satisfy the Climate Positive Waste Principles.

**Artist's Brief** means the brief provided by Crown to the Authority in accordance with clause 8.5.

**Arts and Culture Panel** means, at any time, any committee constituted by the Authority under clause 8.8, or, if not constituted at that time, the Authority.

**Authorised Officer** means:

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

**Authority Unacceptable Condition** means:

- (a) in respect of the conditions in a Modification Application made after the Effective Date but before the Date of Practical Completion of the whole of the Crown Works, a condition which the Authority finds unacceptable in its discretion; and
- (b) in respect of the conditions in the Approval of Mod 8, the Approval of the Hotel Resort DA or any other Approval for a Significant Application, a condition of such an Approval which, when judged against the conditions which the Authority could reasonably have expected (having regard to the conditions of approvals already issued in relation to Stage 1 and the conditions of approvals which commonly appear in approvals of this nature issued by the Consent Authority) results in or could result in:
  - (i) a material adverse change to the Detailed Plans and Specifications (as further detailed by the Detailed Plans and Specifications relevant to the Application associated with that Approval);
  - (ii) a material adverse change to the Public Domain; or
  - (iii) a material adverse change to the Concept Plan Approval in effect immediately prior to the relevant Approval (in so far as it relates to other parts of Barangaroo (outside of Stage 1)) and which:
    - A. is inconsistent with the Application for Approval of Mod 8 or the Hotel Resort DA or any other Approval, as the case may be; and
    - B. has a material adverse impact on Barangaroo.

**Authority's Employees and Agents** means each of the Authority's employees and agents, officers, contractors, service suppliers, licensees and invitees (other than LLMP and LLMP's Employees and Agents and Crown and Crown's Employees and Agents).

**Authority's Solicitor** means Clayton Utz or any other firm of solicitors as advised by the Authority to Crown and LLMP in writing from time to time.

**Bank Guarantee** means an irrevocable and unconditional undertaking by an Australian bank on terms acceptable to the Authority and LLMP (acting reasonably) to pay the relevant sum to LLMP on demand.

**Barangaroo** has the meaning given to it under the BDA Act.

**Barangaroo Approval Documents** means:

- (a) the Concept Plan Approval; and
- (b) the Approval for Mod 8,

as modified and amended from time to time.

**Barangaroo Contributions Plan** has the meaning given to that term in section 31 of the BDA Act 2009.

**Barangaroo Developers' Forum** has the meaning given in clause 16.1.

**Barangaroo Management Plan** means the plan for the management of the Land, a copy of which is Annexure 36.

**Barangaroo Public Art and Cultural Plan** means the Draft Barangaroo Public Art and Cultural Plan in the form to be, and as, approved by the Department of Premier and Cabinet.

**BDA Act** means the Barangaroo Delivery Authority Act 2009 (NSW).

**BDA Development Block** means any of:

- (a) BDA Development Block 5;
- (b) BDA Development Block 5 Foreshore;
- (c) BDA Development Block 6;
- (d) BDA Development Block 6 Foreshore;
- (e) BDA Development Block 7; and
- (f) BDA Development Block 7 Foreshore,

as so designated on the Staging Plans (excepting the Hickson Road Declaration Area) and a reference to a "BDA Development Block" is a reference to any one of those blocks.

**Beneficial Use and Occupation** means the state of completion required for use and occupation of the Hotel Resort Separable Portion being, prior to completion, the stage when:

- (a) the Hotel Resort Separable Portion is sufficiently complete except for defects;
  - (i) which do not materially interfere with, disrupt or restrict the Works from being reasonably capable of being used for the purpose of the Works reasonably ascertainable from the Building Contract; and
  - (ii) which can be corrected without prejudicing the convenient use of the Works for its purpose as reasonably ascertainable from the Contract;
- (b) all Approvals which the Builder is required under the Building Contract to obtain have been obtained and supplied to the Crown's representative;
- (c) all documents and other information required to be obtained by the Builder which are, in the opinion of Crown's representative (but only to the extent the Builder is required under the Building Contract to obtain such documents and information), required for the use, operation and maintenance of the Works have been supplied to Crown's representative;

- (d) the construction of the Works are fit for use and occupation and capable of being lawfully used and occupied by Crown and can be open to the general public with the consent of all relevant Authorities (but only to the extent the Builder is required under the Building Contract to obtain the consent of such Authorities); and
- (e) the Builder has given to Crown's representative a copy of a survey prepared by a surveyor showing that the Works are within the areas to be leased or licensed to Crown are within the Crown Site other than agreed overhangs and encroachments (as contemplated by this deed and the Proposed Premises Plan).

**Builder** means the contractor under the Building Contract.

**Building** means the Integrated Hotel Resort and any other improvements erected on the Crown Site in accordance with this deed and the Final Plans and Specifications.

**Building Contract** means in respect of the Crown Works, the head construction contract, between Crown and the Builder.

**Building Integrated Art Final Plan** means a Building Integrated Art Plan approved by the Authority, or, where clause 8.3(f) applies, any revised Building Integrated Art Final Plan approved by the Authority.

**Building Integrated Art Plan** means a plan required to be provided by Crown to the Authority pursuant to clause 8.3(b).

**Building Management Statement** means the draft building management statement which complies with the requirements of Division 3B of the Conveyancing Act 1919 (NSW) a copy of which is contained in Annexure 35.

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

**By Law Instrument** means an instrument which creates by laws under Part 5 of the Strata Schemes Management Act 1996 (NSW).

**Cash Deposit** has the meaning given in clause 4.13(b)(ii).

**Cash Deposit Account** has the meaning given in clause 4.13(b)(ii).

**Certificate of Practical Completion** means a certificate of Practical Completion issued by the Independent Certifier under clause 18.4.

**Certified Practical Completion Plan** means a Practical Completion Plan, certified by an Independent Expert, stating that the Practical Completion Plan:

- (a) provides for Practical Completion of the Step-in Works to occur within a reasonable period and nominates milestones and milestone dates (including a date for Practical Completion) for the relevant Step-in Works which are reasonable (in each case) having regard to:
  - (i) the objective of achieving Practical Completion of the relevant Step-in Works within a reasonable period and by no later than the Target Date;
  - (ii) the current state of completion of the relevant Step-in Works and then current market conditions; and
  - (iii) the objectives and matters set out in paragraphs (i) and (ii) above and a reasonable period to achieve Practical Completion, which must be no later than the Step-in Sunset Date; and



- (b) includes milestones (and a milestone date for each milestone) to allow for the continued performance of the relevant Step-in Works; and
- (c) sets out a reasonable Certified Practical Completion Plan Cure Period for each milestone if that milestone has not been achieved by the relevant milestone date.

**Certified Practical Completion Plan Cure Notice** means a notice given by the Authority to Crown under clause 41.2.

**Certified Practical Completion Plan Cure Period** means the period allowed in the Certified Practical Completion Plan for the achieving of a milestone if it has not been met by its relevant milestone date.

**Change in Insured Risk** has the meaning ascribed to that expression in clause 28.20(c).

**Claim Notice** has the meaning given in clause 21.3(b).

**Climate Positive Benchmarks** means:

- (a) *In the case of water:* the Crown Project is delivered, commissioned and certified by an independent expert, reasonably acceptable to the Authority, as being:
  - (i) fully operational;
  - (ii) connected to the recycled water plant of Stage 1;
  - (iii) capable of accepting a minimum of 25KL of recycled water per day via a 100 mm recycled water connection; and
  - (iv) capable of operating with a demand on potable water of not more than 0.923 kl/m<sup>2</sup> GFA per annum;
- (b) *in the case of waste:*
  - (i) a waste processing and disposal agreement which requires the operator to achieve 100% carbon neutrality in respect of the disposal of waste (and otherwise on terms reasonably acceptable to the Authority) has been entered into by Crown with an Approved Operator, under which the Approved Operator agrees to process and dispose of waste in accordance with the Climate Positive Waste Principles from that part of Stage 1 which is developed from time to time and that continues to be binding on the relevant parties (and is being complied with and has an unexpired term of not less than 3 years); or
  - (ii) otherwise a new waste processing and disposal agreement which requires the operator to achieve 100% carbon neutrality in respect of the disposal of waste (and otherwise on terms reasonably acceptable to the Authority) has been entered into by Crown with an Approved Operator, under which the Approved Operator agrees to process and dispose of waste in accordance with the Climate Positive Waste Principles from that part of Stage 1 which is developed from time to time or where paragraph (c) of the definition of 'Approved Operator' in this clause 1.1 applies, in accordance with such principles which must closely satisfy the Climate Positive Waste Principles; and
- (c) *in the case of carbon:* by the Climate Positive Relevant Date:
  - (i) procuring a Required NABERS Rating; and

- (ii) the Crown Project (excluding the Restricted Gaming Facility only) is delivered, commissioned and certified by an independent expert, reasonably acceptable to the Authority, as:

- A. fully operational; and
- B. having an operational carbon intensity (on an aggregate basis), of no greater than 114 kgCO<sub>2-e</sub>/m<sup>2</sup> GFA per annum,

such benchmark assuming 153 kgCO<sub>2-e</sub>/m<sup>2</sup> GFA per annum and 36,500 m<sup>2</sup> GFA for the hotel and 48 kgCO<sub>2-e</sub>/m<sup>2</sup> GFA per annum and 22,000 m<sup>2</sup> GFA for the residential component.

**Climate Positive Relevant Date** means 18 months after the date of the opening of the Integrated Hotel Resort to the public.

**Climate Positive Requirements** means the requirements under:

- (a) the Climate Positive Benchmarks;
- (b) the Climate Positive Waste Principles; and
- (c) the requirements of Annexure 13.

**Climate Positive Waste Principles** means:

- (a) a process which is capable of dealing with recyclable materials and mixed waste streams from the Crown Project in a manner which maximises the recovery of recyclable material, minimises the diversion of non-recyclables to landfill and minimises the net carbon emissions from the disposal of waste, such as methane capture and conversion in to energy so as to achieve a minimum 60% reduction in disposal of operational waste to landfill; and
- (b) a willingness to work with the Authority to establish and implement a commercially feasible strategy with the objective of establishing Barangaroo as a zero waste community.

**Climate Positive Work Plan** means the work plan to be prepared (in relation to Stage 1) by LLMP and approved under the PDA as updated from time to time in accordance with the PDA, to deal with LLMP's achievement of the Climate Positive Benchmarks and the satisfaction of LLMP's social sustainability obligations under the PDA.

**Clip On Boardwalk** means the structure contemplated by clause 5.13(a).

**Code** means:

- (a) the NSW Government Code of Practice for Procurement (2005); and
- (b) the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (July 2013).

**Commencement Date** is the date of this deed.

**Compliance Certificate** means a certificate referred to in section 109C(1)(a) of the EP&A Act.

**Complying Development Certificate** means a complying development certificate referred to in section 85 of the EP&A Act.

**Concept Plan Approval** means the instrument of approval entitled "Determination of the Barangaroo Concept Plan (MPA No. 06\_0162)", approved by the Minister on 9 February 2007

and modified on 25 September 2007, 16 February 2009, 11 November 2009, 16 December 2010, 25 March 2014 and 11 April 2014 and as further modified from time to time.

**Conditions** means:

- (a) the Framework Agreement not being terminated at the time when all of the conditions referred to in paragraphs (b) to (i) (both inclusive) of this definition have been satisfied;
- (b) the terms of the Approval of Mod 8 not containing any Crown Unacceptable Conditions;
- (c) the terms of the Approval of Mod 8 not containing Authority Unacceptable Conditions;
- (d) the terms of the Approval of Mod 8 not containing LLMP Unacceptable Conditions;
- (e) the terms of the Approval of the Hotel Resort DA not containing any Crown Unacceptable Conditions;
- (f) the terms of the Approval of the Hotel Resort DA not containing Authority Unacceptable Conditions;
- (g) the terms of the Approval of the Hotel Resort DA not containing LLMP Unacceptable Conditions;
- (h) any Third Party Appeal in relation to Mod 8 having been Finally Determined; and
- (i) any Third Party Appeal in relation to the Hotel Resort DA having been Finally Determined.

**Consent Authority** means, in relation to an Application, the Public Authority having the function to determine the Application.

**Construction Certificate** means a certificate issued under section 109C(1)(b) of the EP&A Act.

**Construction Milestones** means those Milestones which are identified as construction milestones in the Certified Practical Completion Plan.

**Construction Staging** means construction staging activities related to the Crown Works.

**Construction Zone Licence** means the licence granted by the Authority to LLMP under clause 14 on the terms and conditions set out in Annexure 1.

**Construction Zone Plans** means the plans attached to the Construction Zone Licence and the Construction Zone Sub-Licence (and contained in Annexure 1 and Annexure 2) as amended from time to time in accordance with this deed.

**Construction Zone Sub-Licence** means the sub-licence granted by LLMP to Crown under clause 14, on the terms and conditions set out in Annexure 2.

**Contamination** means material which, when excavated, and prior to Remediation meets the classification under NSW Waste Classification Guidelines as anything other than General Solid Waste. Contamination also means Significant Contamination (where the context requires).

**Contribution Payment Date** means the date being 20 Business Days after the earlier to occur of:

- (a) first date of issue of an Occupation Certificate in relation to a Separable Portion forming part of the Crown Works; or
- (b) the Date of Practical Completion of all of the Crown Works.

**Control** of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

**Control Plan** means the control plan attached as Annexure 20.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Costs** include reasonable costs, charges and expenses, including those incurred in connection with advisers.

**CPI** means the Consumer Price Index All Groups Sydney, or the index officially substituted for it.

**Crown Agreed Obligations** means the obligations referred to in Annexure 15.

**Crown Agreed Rights** means the rights referred to in Annexure 15.

**Crown Change of Control Default Event** means where a Dealing under clause 34.1(a)(ii) or clause 34.1(a)(iii) occurs without the consent of the Authority (which must be withheld or given in accordance with clause 34.1).

**Crown Cure Period** has the meaning given in clause 36.3(b).

**Crown Development Costs Amount** means an amount equal to \$ [REDACTED].

**Crown Enhancement Works** has the meaning given in clause 5.10(f).

**Crown Essential Infrastructure** means the Infrastructure Works set out in the Crown Essential Infrastructure Annexure.

**Crown Essential Infrastructure Annexure** means Annexure 24.

**Crown Essential Infrastructure Area** means the areas on which the Crown Essential Infrastructure is to be located as shown in the Crown Essential Infrastructure Annexure.

**Crown Essential Public Domain** means the Public Domain shown in the Crown Essential Public Domain Plan.

**Crown Essential Public Domain Plan** means the plan being Annexure 22.

**Crown Essential Public Domain Works** means part of the Public Domain Works to be approved under the PDA and in accordance with the process set out in clause 5.9, for the Crown Essential Public Domain.

**Crown Event of Default** occurs if the Authority gives notice to Crown under clause 36.4.

**Crown Guaranteed Obligations** means all of Crown's obligations under each of the Project Documents to which the Authority and Crown are party. This definition applies:

- (a) irrespective of the capacity in which Crown or the Authority enter into this deed;
- (b) whether Crown is liable alone, or jointly, or jointly and severally with another person;
- (c) whether the person entitled to the benefit of a Crown Guaranteed Obligation is the Authority or an assignee of the Crown Guaranteed Obligations (provided any such assignment is made in accordance with the terms of the Project Documents) and whether or not:
  - (i) the assignment took place before or after the delivery of this deed; or
  - (ii) Crown or the Crown Guarantor consented to or was aware of the assignment; or
  - (iii) the assigned obligation was secured.

**Crown HPA Default** means the occurrence of:

- (a) any event which is described or defined as a default on the part of Crown under the Hotel Project Agreement; or
- (b) any other event under the Hotel Project Agreement which entitles, or which with the giving of notice, the expiration of time or the satisfaction or non-satisfaction of any condition would entitle LLMP to terminate or rescind the Hotel Project Agreement or treat it as repudiated or suspend Crown's performance of any obligations under it.

**Crown Insolvency Event** means an Insolvency Event in relation to Crown, the Crown Guarantor or where the Crown Guarantor is no longer listed on a recognised stock exchange, a Parent of the Crown Guarantor.

**Crown Insolvency Notice** means a notice given by the Authority to Crown under clause 3.24(a)(i).

**Crown Licensed Area Base Public Domain Works** means the base slab for the foreshore walk areas to be licensed to Crown pursuant to the Long Term Licence contemplated by clause 5.9(a), which is expected to be in situ exposed aggregate concrete.

**Crown Management Committee** means the committee established under clause 15.1(a).

**Crown Management Committee Report** has the meaning given to that term in clause 15.4.

**Crown Milestones** means:

- (a) the milestones to be achieved by Crown in relation to the Crown Works set out in the Milestone Schedule (being Annexure 11); and
- (b) if Crown has given a Crown Step-in Notice, the Milestones specified in the Certified Practical Completion Plan.



**Crown POEO Works** means any works, activity or thing undertaken or to be undertaken with respect to the Crown Works which constitutes work requiring authorisation under the POEO Act.

**Crown Project** means the undertaking by Crown of the following:

- (a) the design, funding, marketing and delivery of the Integrated Hotel Resort;
- (b) the design and funding of the Crown Enhancement Works to be delivered by LLMP; and
- (c) upon Crown exercising its rights under clauses 40 and 41, carrying out the Step-in Works.

**Crown Public Domain** means that part of the Public Domain set out in Crown Public Domain Standards Plan.

**Crown Public Domain Budget** has the meaning given in clause 5.9(b)(ii).

**Crown Public Domain Standards** means the standards of the Crown Public Domain Works as shown in the Crown Public Domain Standards Plan.

**Crown Public Domain Standards Plan** means the plan being Annexure 23.

**Crown Secured Area** means that part of the Crown Site and Central Barangaroo which is the subject, from time to time, of either a Construction Zone Sub-Licence or a Staging Sub-Licence or both and which is shown in the Construction Zone Plans or the Staging Plans but only includes the areas of Central Barangaroo which are being used solely for the Crown Works and not for works being performed by LLMP under the PDA.

**Crown Shared Basement Handover Works** means the completion of the perimeter retaining walls and excavation of the Crown Stage 1B Basement to the design level RL -10.30 or as agreed by Crown and LLMP, in accordance with the Stage 1B Structural Specification, Bulk Excavation, Issue 2 dated 25 July 2014, including the VMP Remediation Works, PDA Remediation Works and Other Remaining Remediation Works to be carried out by LLMP on the Crown Site.

**Crown Site** means the area of the Site which is proposed to be leased or licensed to Crown and which is shown on the Proposed Premises Plan.

**Crown Stage 1B Basement** means the portion of the Crown Works proposed to be constructed on Stage 1B.

**Crown Step-in Notice** means a notice given by Crown to the Authority under clause 40.2(a) following an LLMP Trigger Event or termination under clause 38.5 (whichever is the first to occur), that Crown wishes to step-in to a Step-in Component.

**Crown Step-in Period** means the period:

- (a) commencing on the date which is the first Business Day after the expiry of the LLMP Cure Period or termination under clause 38.5 (whichever is the first to occur); and
- (b) ending on the date being 100 Business Days after that date, extended by such number of days as is equivalent to any extension in accordance with clause 37.2(c).

**Crown Trigger Event** occurs if:

- (a) Crown fails to achieve a Crown Milestone by a relevant Crown Milestone Date by more than 6 months;

- (b) Crown or the Crown Guarantor does not pay any amount in excess of \$ [REDACTED] payable to the Authority within 20 Business Days after the date on which payment is required under this deed and following written request for payment from the Authority;
- (c) a Crown Change of Control Default Event occurs;
- (d) a Crown Insolvency Event occurs; or
- (e) Crown fails to provide evidence to the Authority's reasonable satisfaction that it has procured each of the Insurances required under this deed within 20 Business Days after the date of any relevant notice to Crown from the Authority.

**Crown Trigger Notice** means a notice given by the Authority under clause 36.3.

**Crown Unacceptable Conditions** means:

- (a) in respect of the conditions in the Approval for Mod 8 or the Hotel Resort DA, a condition which Crown finds unacceptable; and
- (b) in respect of the conditions in any other Approval for a Significant Application (other than the Hotel Resort DA or a Modification Application), a condition of the Approval which, when judged against the conditions which Crown could reasonably have expected (having regard to the conditions of approvals already issued in relation to Stage 1 and the conditions which commonly appear in approvals of this nature granted by the relevant Consent Authority), results in or could result in:
  - (i) a material adverse change to the Detailed Plans and Specifications (as further detailed by the Detailed Plans and Specifications relevant to the Application associated with that Approval);
  - (ii) a material adverse effect on the financial return to Crown from that return which could reasonably have been expected to have been earned by Crown with respect to the Crown Works; or
  - (iii) a material adverse effect on the timing of the delivery of the Crown Works or the Crown Project as a whole.

**Crown Works** means:

- (a) any works relating to Site Establishment;
- (b) any Early Works;
- (c) the works required to develop and construct the Integrated Hotel Resort in accordance with the Approvals and the Final Plans and Specifications; and
- (d) if Crown exercises its rights under clauses 40 and 41, each Step-in Component, but does not otherwise include the LLMP Works.

**Crown Works Commencement Date** means the date Crown actually commences carrying out part of the Crown Works.

**Crown's Employees and Agents** means each of Crown's employees, agents, officers, contractors, service suppliers, licensees, invitees, the Builder and those persons who are on Crown Secured Area (other than the Authority, the Authority's Employees and Agents LLMP, LLMP's Employees and Agents and LLMP's builder).

**Crown's Property** means all plant and equipment, fixtures, fittings, furniture, furnishings, decorations and other property not owned by the Authority or LLMP, which Crown brings on to the Crown Site or fixes to the Crown Site.

**Current CPI** means the CPI number for the calendar quarter ending immediately before the relevant Lease Commencement Date.

**Date for Beneficial Use and Occupation** means the date for Beneficial Use and Occupation determined under the Building Contract from time to time.

**Date for Commencement** means, in respect of the Crown Works, the date specified in Crown's notice relating to the Crown Works under clause 14.5(a) as varied under clause 14.5(c).

**Date for Practical Completion** means:

- (a) in respect of the whole of the Crown Works, the Last Date for Practical Completion; or
- (b) following the issue of a Crown Step-in Notice and in respect of the Step-in Works, the date specified as such under the Certified Practical Completion Plan, as approved by the Authority in accordance with this deed.

**Date for Vacation of BDA Development Block 5** means [REDACTED] as that date is extended pursuant to the PDA.

**Date for Vacation of BDA Development Block 5 Foreshore** means the later of [REDACTED] and 6 months after the anticipated date for practical completion of the Integrated Hotel Resort as shown in the Remediation and Vacation Works Program as that date is adjusted pursuant to the PDA.

**Date for Vacation of BDA Development Block 6** means the later of [REDACTED] and 2 years prior to the anticipated date of practical completion of the Integrated Hotel Resort as shown in the Remediation and Vacation Works Program as that date is adjusted pursuant to the PDA.

**Date for Vacation of BDA Development Block 6 Foreshore** means [REDACTED] as that date is adjusted pursuant to the PDA.

**Date for Vacation of BDA Development Block 7** means [REDACTED] as that date is adjusted pursuant to the PDA.

**Date for Vacation of BDA Development Block 7 Foreshore** means [REDACTED] as that date is adjusted pursuant to the PDA.

**Date of Practical Completion** means the date certified by the Independent Certifier under clause 18.4 as being the date on which Practical Completion was achieved.

**Deal and Dealing** have the meanings given in clauses 34.1(a) and 34.2(a).

**Deed Poll** means the deed poll to be signed and delivered by each Tenant (including Crown), Owners Corporation and other person, as contemplated by the Barangaroo Management Plan.

**Detailed Plans and Specifications** means the plans and specifications forming part of the Hotel Resort DA in the form approved by the Authority.

**Developer Contribution** means the contributions payable by Crown pursuant to clause 7.2.

**Development Period** means, in respect of any part of the Crown Secured Area, the period:

- (a) commencing on the later of:
  - (i) the date that the Construction Zone Sub-Licence or Staging Sub-Licence is granted in respect of that part of the Crown Secured Area; and
  - (ii) in respect of a Staging Sub-Licence, the date on which Crown can take access under clause 14.2(d); and
- (b) ending on the date that the Construction Zone Sub-Licence or Staging Sub-Licence terminates.

**Development Program** means a networked activity program using an event oriented critical path technique showing major activities and other milestones in the Crown Works and the LLMP Works, the dates by which or the times within which key decisions are to be made and the various stages or parts of the Crown Works and the LLMP Works are to be executed or completed, including:

- (a) all principal activities relating to the design, construction and commissioning of the Crown Works and the LLMP Works;
- (b) any Approvals which must be obtained prior to the commencement of construction of the Crown Works and the LLMP Works;
- (c) all principal activities relating to the design, construction and commissioning of the Crown Works and the LLMP Works;
- (d) activities in Business Days time scales, their order, duration and interrelationship including each Milestone, each applicable Milestone Date and the relevant PC Dates, Dates for Beneficial Use and Occupation, Last Date for Practical Completion and Vacation Dates as applicable;
- (e) if known, the impact and the estimated potential impact of any delaying events or circumstances;
- (f) any allowances for delay; and
- (g) any other matters which may have a material effect on the time required to complete the Crown Works and the LLMP Works in accordance with this deed.

**Discriminatory Law** means:

- (a) either (or both):
  - (i) New South Wales Law (including any amendment or replacement); or
  - (ii) the exercise of the Minister administering the BDA Act, pursuant to which additional imposts, levies or charges are imposed on (beyond those specified in the BDA Act as at the Commencement Date),

which specifically and only affects all or part of the Crown Site, the Building or the execution of the Works (or any part of the Works) in a manner which is not comparable to the manner in which any other land in and around Sydney Harbour may be affected and which materially adversely impacts (including by increasing the costs of developing or leasing) the Crown Site, the Building or the execution of the Works (or any part of the Works); or

- (b) any legislation which has the effect of repealing section 35 of the BDA Act.

**Draft Barangaroo Public Art and Cultural Plan** means the Draft Barangaroo Public Art and Cultural Plan means the plan which is Annexure 34.

**Draft Deed of Consent** means the draft deed of consent which is Annexure 31.

**Draft Restricted Gaming Facility Sub Lease** means the draft sub lease which is Annexure 32.

**Early Works** means:

- (a) any testing, sampling, investigatory work, preliminary excavation works, archaeological or services diversion or enabling works required to enable the Works to be carried out; or
- (b) in ground structures and perimeter walls,

to the extent described in the Early Works DA but, for the avoidance of doubt, does not include any works relating to Site Establishment or any above ground works relating to the tower forming part of the Crown Works.

**Early Works DA** means an Application for Approval to carry out and complete the Early Works, a draft of which is Exhibit 2.

**Effective Date** means the date when all of the Conditions are satisfied or waived.

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.

**Environment** includes all aspects of the surroundings of human beings.

**Environment Protection Authority** means the Environment Protection Authority of New South Wales.

**Environmental Initiatives** means the initiatives set out in Annexure 13.

**Environmental Liability** means any of the following liabilities which arise, directly or indirectly, from Crown's occupation or use of the Crown Secured Area:

- (a) all Costs associated with undertaking any Cleanup ordered or required by any Public Authority of any land, building or waters;
- (b) any compensation or other monies that a Public Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages, Costs and interest, payable under an Environmental Law.



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

**EPA Levies** means statutory levies payable for disposal of material Off-Site as part of the Remediation Works and Other Remaining Remediation Works to a scheduled waste facility licensed under the POEO Act. For clarity, it excludes Remediation Levies.

**Estate Levy** means the estate levy to be completed in each Lease:

- (a) being \$20.46 per m<sup>2</sup> as at 1 April 2015 of the GFA of the Integrated Hotel Resort; and
- (b) if, on any Lease Commencement Date, the Current CPI exceeds the Commencement Date CPI, then the amount of the Estate Levy from and including that Lease Commencement Date is \$20.46 per m<sup>2</sup> as at 1 April 2015 multiplied by the Current CPI and divided by the Commencement Date CPI.

**Expert Sustainability Certifiers** means suitably qualified independent expert or experts, reasonably acceptable to the Authority who have the necessary expertise in connection with matters relating to the Project Specific Climate Positive Work Plan.

**External Integrated Art Final Plan** means an External Integrated Art Plan approved by the Authority, or, where clause 8.4(f) applies, any revised External Integrated Art Final Plan approved by the Authority.

**External Integrated Art Plan** means a plan required to be provided by Crown to the Authority pursuant to clause 8.4(b).

**Fifth Deed of Amendment** means the deed of that name amending the PDA dated on or about the Commencement Date.

**Final Certificate** means in respect of the relevant Separable Portion or the Crown Works, a certificate under which the Independent Certifier certifies that:

- (a) all defects and omissions in the relevant Separable Portion or the Crown Works have been rectified;
- (b) if a final Occupation Certificate was not issued on or before Practical Completion, a final Occupation Certificate has issued; and
- (c) (if relevant) a building certificate under Part 8 of the EP&A Act has issued.

**Final Completion** means the point in time when the Crown Works have been carried out such that a Final Certificate must issue.

**Final Plans and Specifications** means the Detailed Plans and Specifications for the Crown Works consented to by the Consent Authority and by the Authority which have been approved for the Construction Certificate for the Crown Works, and as may be amended pursuant to the terms of this deed.

**Finally Determined** means:

- (a) judgment has been delivered in relation to any Third Party Appeals to the High Court; or
- (b) all periods in which a Third Party Appeal can be made have expired.

**FIRB Act** means the Foreign Acquisitions and Takeovers Act 1975 (Cth).

**Fitout Statement** means the statement included in Annexure 16.

**Force Majeure** means any one of the following events:

- (a) war (undeclared or declared), civil war, civil commotion, demonstrations, insurrections, riots, floods, explosions, acts of terrorism, earthquakes, substantial fires (not caused by Crown or Crown's Employees and Agents), acts of God or the public enemy or sabotage; or
- (b) state-wide or nationwide industrial disputes, stoppages or strikes; or
- (c) any strike, lockout or other industrial action or dispute, which was caused or contributed to by the acts or omissions of the Authority or any other Public Authority.

**Framework Agreement** means the Amended and Restated Framework Agreement dated 7 July 2014 between NSW Government, Crown, Crown Sydney Gaming Pty Limited ACN 166 326 843, Crown Sydney Holdings Pty Ltd ACN 166 326 781 and the Crown Guarantor, as amended from time to time.

**Gaming Legislation** means the Casino Control Act 1992 (NSW) and the Casino Liquor and Gaming Control Authority Act 2007 (NSW) and all regulations and instruments issued pursuant to any of these Acts which permit, subject to the issue of a licence, the operation of the Restricted Gaming Facility.

**GBCA** means the Green Building Council of Australia or any successor.

**General Solid Waste** means material that meets the classification of general solid waste (non-putrescible) under the NSW Waste Classification Guidelines attached to the PDA (for the avoidance of doubt not as amended from time to time following the Fifth Deed of Amendment). For clarity, it includes material that is virgin excavated natural material and excavated natural material.

**GFA** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (i) any area for common vertical circulation, such as lifts and stairs;
- (ii) any basement;
- (iii) storage;
- (iv) vehicular access, loading areas, garbage and services;
- (v) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting;
- (vi) car parking to meet any requirements of the Consent Authority (including access to that car parking);
- (vii) any space used for the loading or unloading of goods (including access to it);

- (viii) terraces and balconies with outer walls less than 1.4 metres high; and
- (ix) voids above a floor at the level of a storey or storey above.

**GFA of the Integrated Hotel Resort** means, for the purposes of this deed and the Leases, the GFA permitted to be developed pursuant to the Approval for the Hotel Resort DA.

**Green Star 6 Star Design and As Built Rating** means the rating of 6 stars under the Green Star - Design and As Built Rating System as published by the GBCA.

**Green Star Rating** means:

- (a) a customised rating tool for the Integrated Hotel Resort (excluding or including, at the election of Crown, the Restricted Gaming Facility) as approved in accordance with clause 10.1; or
- (b) if no such customised rating tool is approved, the Green Star 6 Star Design and As Built Rating (excluding or including, at the election of Crown, the Restricted Gaming Facility) (as applicable).

**Green Utilities** means the green utilities facilities for Barangaroo South to be the subject of the Building Management Statement.

**Green Utility Services** means the services supplied or to be supplied from the Green Utilities.

**GST** has the meaning it has in the GST Act.

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

**GST Amount** has the meaning given to that term in clause 55.3.

**Guarantor Sunset Date** means 2 years after the Date of Practical Completion of the whole of the Crown Works.

**Hotel Approval Date** means the date of an Approval for the Early Works or an Approval to the Hotel Resort DA (whichever is granted first).

**Hotel Project Agreement** means the "Project Agreement – Crown" dated on or about the Commencement Date between LLMP, Crown, LLMP Guarantor and Crown Guarantor.

**Hotel Resort DA** means the Application for Approval for the development of the Integrated Hotel Resort, a draft of which is Exhibit 1.

**Hotel Resort DA Conditions** means the Conditions referred to in paragraphs (e), (f), (g) and (i) of the definition of Conditions.

**Hotel Resort DA Sunset Date** means [REDACTED].

**Hotel Resort DA Third Party Appeal Condition** means the Condition referred to in paragraph (i) of the definition of Conditions.

**Hotel Resort Lease** means the lease of the Hotel Resort Separable Portion, which is substantially similar to the Pro forma Hotel Resort Lease.

**Hotel Resort Lease Notice** means a notice given by Crown under clause 22.15.

**Hotel Resort Separable Portion** means that part of the Crown Works comprising the hotel resort, the Restricted Gaming Facility, the retail areas, the car park servicing those areas and all common areas, driveways, access ways and Services servicing those areas.

**ILGA** means the NSW Independent Liquor and Gaming Authority and includes any successor authority or body.

**Improvements** means all improvements erected at any time on the Crown Site.

**Indemnified Persons** means the Authority and the Authority's Employees and Agents.

**Independent Certifier** means the person appointed by Crown to be the Independent Certifier for the purposes of this deed pursuant to clauses 13.7 and 13.8, and any replacement appointed under clause 13.8.

**Independent Certifier's Deed** means a deed generally in the form of Annexure 26 and otherwise in a form acceptable to the Authority (acting reasonably).

**Independent Expert** means an experienced independent and qualified person approved by the Step-in Party and the Authority, to be jointly appointed by the Step-in Party and the Authority, with such appointment being taken to have occurred on the date the Independent Expert's Deed is delivered to the Authority executed by the Step-in Party and the Independent Expert nominated by the Step-in Party.

**Independent Expert Deed** means a deed generally in the form of the Independent Certifier Deed, as amended in accordance with clause 40.2(b)(iii) and as may be amended to take into account the role of the Independent Expert under this deed.

**Initial Status Report** means a report setting out the current status of the relevant Step-in Works and the actions, including in relation to funding, being taken in relation the relevant Step-in Works to bring those Step-in Works to Practical Completion.

**Insolvency Event** means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Authority);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 40 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
  - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
  - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is, or it makes a statement from which the Authority reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act;
- (g) a body corporate is otherwise unable to pay its debts when they fall due;

- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the Law of any jurisdiction.

**Insurances** means the insurances required to be effected and maintained in connection with the Crown Project under any Project Document.

**Integrated Art Final Completion Date** means the date by which all works referred to in a Building Integrated Art Final Plan or External Integrated Art Final Plan (as the case may be) must be completed.

**Integrated Hotel Resort** means the building comprising a residential component, hotel component, restricted gaming facility, retail area and car park to be developed in accordance with this deed and the Final Plans and Specifications.

**Integrated Public Art** means works of art produced by an artist or artists which is of a high standard and complementary to or integrated with the Crown Project, and which is designed, created or commissioned in accordance with the approval of the Arts and Culture Panel.

**Intellectual Property Rights** has the meaning given in clause 33.1(a).

**Interest Rate** in relation to interest payable on any payment due under this deed means, for each daily balance, the rate that is 3% per annum above the 90 day Bank Bill Swap Reference Rate (Average Bid) last published on or before that day in The Australian Financial Review or if that rate or publication is not published, another market equivalent rate or publication (as the case requires) selected by the Authority in good faith).

**IP Licences** means either of the licence or the sublicense of the Intellectual Property Rights granted under clauses 33.2(a) or 33.2(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Key Worker Housing** means housing for any nurse, teacher, child-care worker, ambulance officer, member of the police force, member of the fire brigade or retirees with an income of +/- 50% of median household income for the Sydney (Statistical Division) (as that division is defined for the purposes of the Australian Bureau of Statistics).

**Land** means the land in certificates of title folio identifiers 1/876514, 3/876514, 5/876514 and 6/876514 or any replacement certificates of title for those folio identifiers.

**Last Date for Practical Completion** means [REDACTED] (subject to the extensions of time for delays referred to in clause 19.2).



**Law** includes all statutes, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity and any statutory guidelines, and environmental planning instruments from time to time.

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution or, if no such organisation exists, then the President of the Law Society of New South Wales.

**Lease** means, in respect of each Premises (or any part of those Premises) each and every (or any):

- (a) Hotel Resort Lease;
- (b) Strata Lease; and
- (c) Long Term Licence,

to be granted in accordance with this deed.

**Lease Commencement Date** means in respect of:

- (a) the Hotel Resort Lease, the earlier of:
  - (i) the date specified by Crown in a Hotel Resort Lease Notice; and
  - (ii) the Date of Practical Completion of the Hotel Resort Separable Portion;
- (b) any Strata Lease, the date of registration of the relevant Plan of Subdivision creating the strata scheme; and
- (c) the Long Term Licence, the last to occur of the commencing date of the Hotel Resort Lease, Practical Completion of the Crown Licensed Area Base Public Domain Works and the date Crown delivers an executed copy of the licence to the Authority.

**LLB** means Lend Lease Building Pty Limited ABN 97 000 098 162.

**LLMP Cure Period** has the meaning given in clause 37.2(b).

**LLMP Event of Default** occurs if the Authority or Crown gives notice to LLMP under clause 37.3.

**LLMP Guaranteed Obligations** means all LLMP's obligations under each of the Project Documents to which the Authority, Crown and LLMP are party. This definition applies:

- (a) irrespective of the capacity in which LLMP or the Authority enter into this deed;
- (b) whether LLMP is liable alone, or jointly, or jointly and severally with another person;
- (c) whether the person entitled to the benefit of an LLMP Guaranteed Obligation is the Authority or an assignee of the LLMP Guaranteed Obligations (provided any such assignment is made in accordance with the terms of the Project Documents) and whether or not:
  - (i) the assignment took place before or after the delivery of this deed;
  - (ii) LLMP or the LLMP Guarantor consented to or was aware of the assignment; or
- (d) the assigned obligation was secured.

**LLMP HPA Default** means the occurrence of any event under the Hotel Project Agreement which entitles, or which with the giving of notice would entitle, Crown to terminate or rescind the Hotel Project Agreement or treat it as repudiated or suspend Crown's performance of any obligations under it.

**LLMP Insolvency Event** means an Insolvency Event that occurs in relation to LLMP, the LLMP Guarantor or a Parent of the LLMP Guarantor.

**LLMP Milestones** means the milestones to be achieved by LLMP in relation to the LLMP Works set out in the Milestone Schedule (being Annexure 11).

**LLMP Residential Buildings** means the proposed buildings identified as [REDACTED]

**LLMP Trigger Event** occurs if:

- (a) an LLMP Insolvency Event occurs;
- (b) the PDA is terminated as it applies to a Works Portion which includes any part of the LLMP Works (except if the Works Portion solely relates to the Crown Enhancement Works); or
- (c) a Dealing under clause 34.2(a) occurs without the consent of the Authority.

**LLMP Trigger Notice** means a notice given by the Authority or Crown under clause 37.2(a).

**LLMP Unacceptable Condition** means:

- (a) in respect of the conditions in the Approval for Mod 8, those conditions which, when judged against the conditions which LLMP could reasonably have expected (having regard to the conditions of approvals already issued in relation to Stage 1 and the conditions which commonly appear in approvals of this nature issued by the Consent Authority) result in, or could reasonably be expected to result in:
  - (i) a material adverse effect on the financial return to LLMP from that return which could reasonably have been expected to have been earned by LLMP with respect to the Project as a whole (excluding the Crown Works);
  - (ii) a material adverse effect on the timing of the delivery of the Project as a whole (excluding the Crown Works); or
  - (iii) a material adverse change to the Concept Plan Approval in effect immediately prior to the relevant Approval, insofar as it relates to the Project (excluding the Crown Works) which:
    - A. is inconsistent with the Application for Approval for Mod 8; and
    - B. has a material adverse effect on LLMP or Tenants of Barangaroo South;

- (b) in respect of the conditions in the Approval for the Hotel Resort DA, those conditions which, when judged against the conditions which LLMP could reasonably have expected (having regard to the conditions of approvals already issued in relation to Stage 1 and the conditions which commonly appear in approvals of this nature issued by the Consent Authority) result in or could reasonably be expected to result in:

- (i) a material adverse effect on the financial return to LLMP from the return which could reasonably have been expected to have been earned by LLMP with respect to the Project as a whole (excluding the Crown Works);
- (ii) a material adverse effect on the timing of the delivery of the Project as a whole;
- (iii) a material adverse change to any adjoining development being carried out by LLMP on parts of Stage 1 which adjoins the Crown Site;
- (iv) a material adverse change to the use or operation of the shared basement and access facilities to be used by occupants of the Crown Site and occupants of parts of Stage 1 which adjoin the Crown Site; or
- (v) a material adverse change to any Services servicing Stage 1,

provided that LLMP will not be entitled to find any condition of any Approval of the Hotel Resort DA to be an Unacceptable Condition to the extent that the condition only relates to or only impacts the interior of the Integrated Hotel Resort;

- (c) in respect of a condition in an Approval for a Modification Application (other than Mod 8) made by Crown, or at the request of Crown, after the Effective Date but prior to the Date of Practical Completion of the whole of the Crown Works, a condition which LLMP finds unacceptable in its discretion; and
- (d) in respect of a condition in an Approval for a Significant Application (other than the Hotel Resort DA or a Modification Application) made by Crown, or at the request of Crown, after the Effective Date but prior to the Date of Practical Completion of the whole of the Crown Works, a condition of such other Approval which, when judged against the conditions which LLMP could reasonably have expected (having regard to the conditions of approvals already issued in relation to Stage 1 and the conditions which commonly appear in approvals of this nature issued by the Consent Authority) results in, or could reasonably be expected to result in:
- (i) a material adverse effect on the financial return to LLMP from that return which could reasonably have been expected to have been earned by LLMP with respect to the Project as a whole (excluding the Crown Works);
  - (ii) a material adverse effect on the timing of the delivery of the Project as a whole (excluding the Crown Works);
  - (iii) a material adverse change to the Concept Plan Approval in effect immediately prior to the relevant Approval which:
    - A is inconsistent with that Significant Application; and
    - B has a material adverse effect on LLMP or Tenants of Stage 1;
  - (iv) a material adverse change to any adjoining development being carried out by LLMP on parts of Stage 1 which adjoins the Crown Site;

- (v) a material adverse change to the use or operation of the shared basement and access facilities to be used by occupants of the Crown Site and occupants of parts of Stage 1 which adjoin the Crown Site; or
- (vi) a material adverse change to any Services servicing Stage 1,

provided that LLMP will not be entitled to find any condition of any Approval for a Significant Application (other than an Approval of a Modification Application made after the Effective Date but prior to the Date of Practical Completion of the whole of the Crown Works) to be an Unacceptable Condition to the extent that the condition only relates to or only impacts on the interior of the Integrated Hotel Resort.

**LLMP Works** means the:

- (a) Crown Shared Basement Handover Works;
- (b) Crown Essential Public Domain Works (which include the Crown Licensed Area Base Public Domain Works);
- (c) Crown Essential Infrastructure Works; and
- (d) Crown Enhancement Works.

**LLMP's Employees and Agents** means each of LLMP's employees, officers, agents, contractors, service suppliers, licensees and invitees.

**Long Term Licence** means in respect of the outdoor licensed areas located on Public Domain as shown in the Hotel Resort DA, a long term licence which is substantially similar to the Pro forma Public Domain Licence.

**LPI** means Land and Property Information New South Wales.

**Make Good** means Crown's obligations to:

- (a) following receipt of a direction to Make Good from the Authority to Crown given in accordance with clause 4.10(a)(v) or 39.1(a)(v):
  - (i) demolish and remove from the Crown Secured Area all Crown Works and things affixed or intended to be affixed, to the Crown Secured Area as part of the Crown Works or such of them as the Authority may request excluding:
    - A. the Early Works;
    - B. any subterranean structures the subject of the Crown Works, such as diaphragm walls, provided these are structurally sound;
    - C. the Crown Stage 1B Basement;
  - (ii) provide as built and survey information in connection with the Crown Works referred to in paragraphs (a)(i)(A), (a)(i)(B) and (a)(i)(C) within the possession or control of Crown; and

- (iii) restore the above ground areas and any Services affected by any Crown Works (other than Early Works) carried out by Crown to the condition (and, in the case of Services, the location) they were in prior to commencement of those Works excluding:
  - A. any relocation or other works determined by the Authority to be permanent, acting reasonably;
  - B. the Crown Stage 1B Basement;
  - C. the state of any Remediation Works or Other Remaining Remediation Works; and
  - D. any subterranean structures the subject of the Crown Works, such as diaphragm walls provided that they are structurally sound;
- (b) within 5 Business Days after the completion of the demolition or removal referred to in paragraph (a)(i), give the Authority a structural engineer's certificate certifying that the remaining Improvements are stable and safe;
- (c) if required by the Authority, fill in any excavation on the Crown Site except the Crown Stage 1B Basement and lay turf on the filled area;
- (d) if required by the Authority and if a wall is required to support the excavation referred to in paragraph (c), at LLMP's cost, construct a wall to separate the Crown Stage 1B Basement from the LLMP basement on Stage 1B, if it does not already exist;
- (e) promptly re-open the Pedestrian Walkway if it has been closed, unless the Pedestrian Walkway is reasonably required by Crown to complete the Make Good or is being used by LLMP for other construction activities in accordance with a plan and timing approved by the Authority or otherwise in accordance with the existing Construction Zone Licence or Staging Licence (in each case, as defined under the PDA); and
- (f) assign to the Authority or LLMP all of Crown's interest in any Approvals in relation to the Early Works DA obtained by Crown (to the extent that such approvals are capable of assignment).

**Make Good Bank Guarantees** means the Bank Guarantee(s) provided by Crown to LLMP in accordance with clauses 4.3, 4.6(a), 4.8 and 4.13 to secure Crown's obligations to Make Good under this deed, including any further, additional or replacement Bank Guarantees.

**Make Good Estimate Amount** is the most recent Quantity Surveyor estimate of the actual costs which would be incurred in:

- (a) carrying out the Make Good (having regard to the Crown Works which Crown has constructed and which Crown is likely to construct during the next 12 months based on the Development Program); and
  - (b) the Quantity Surveyor certifying progress payments for that Make Good,
- plus an additional 10% of that amount.

**Milestone** means a Crown Milestone or an LLMP Milestone, as the case may be.

**Milestone Date** means, in respect of a Milestone, the date specified in the Milestone Schedule.



**Milestone Schedule** means the program for the achievement of the Milestones showing the dates by which those Milestones are to be achieved as updated, varied or replaced in accordance with this deed, which is Annexure 11.

**Minister** means the New South Wales Minister for Planning.

**Mod 8** means the Application made by LLMP to the Minister for a Modification of the Concept Plan Approval, being MP06\_0162 MOD 8), including the environmental assessment and other material lodged by LLMP on 5 March 2015.

**Mod 8 Conditions** means the Conditions referred to in paragraphs (b), (c), (d) and (h) of the definition of Conditions.

**Mod 8 Sunset Date** means [REDACTED].

**Mod 8 Third Party Appeal Condition** means the Condition referred to in paragraph (h) of the definition of Conditions.

**Modification** means a modification of the Concept Plan Approval within the meaning of section 75W of the EP&A Act.

**Modification Application** means an Application for a Modification.

**Moral Rights** means any of the rights described in Article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any Law (including the Copyright Act 1968 (Cth) or any Law outside Australia), that exists now or in the future anywhere in the world.

**Moral Rights Letter of Consent** means the letter of consent included in Annexure 17.

**NABERS** means the National Australian Built Environment Rating System as published by OEH.

**NABERS Hotel Rating** means a rating of 5 stars under the NABERS Energy for hotels rating system as certified by OEH for the Hotel Resort Separable Portion, excluding:

- (a) the Restricted Gaming Facility; and
- (b) any restaurants or other facilities excluded by OEH as part of its rulings for the purposes of such NABERS rating.

**Naming and Signage Plan** means Crown's naming and signage plan which is Annexure 33 and which has been approved by the Authority.

**Naming and Signage Policy** means the Authority's signage policy (which must be materially consistent with the signage policy comprised in SEPP64 as varied from time to time).

**Native Title Application** means any application made pursuant to the Native Title Act 1993 (Cth) or the Native Title (New South Wales) Act 1994 (NSW).

**New Landlord** has the meaning given in clause 34.4.

**No Reasonable Likelihood** means there is no reasonable likelihood that the Date of Practical Completion will occur by the Date for Practical Completion in the Certified Practical Completion Plan or as that date may be amended under clause 41.

**NSW Government** means the government of New South Wales.

**Occupation Certificate** means an occupation certificate (being an interim or a final certificate) to be issued under Part 4A of the EP&A Act.

**OEH** means the Office of Environment and Heritage and includes the Environment Protection Authority or any successor entity, in either case, from time to time any predecessor (including the Department of Environment Climate Change and Water and the Department of Environment and Climate Change) as the context requires.

**Off-Site** means any location other than a location in Barangaroo.

**Other POEO Works** means any work, activity or other thing undertaken or to be undertaken affecting any part of Barangaroo which requires authorisation under the POEO Act but which is not included as Relevant POEO Works or Crown POEO Works.

**Other Remaining Remediation Works** means the Works in the Non-Declaration Area Remaining described in paragraph 1.1.1(a) of Schedule 7 of the PDA and the works described in paragraph 1.1.1(b) of Schedule 7 of the PDA.

**Other Remediation Works** means any Works required to Remediate Contamination on any part of the Non-Declaration Area.

**Outgoings** means all amounts and Costs of any kind whatsoever assessed, incurred or levied on the Crown Site and the areas licensed under the Public Domain Licence, including:

- (a) Rates, Taxes and other charges imposed by any Public Authority;
- (b) Costs for installing, connecting, supplying, renting, operating, maintaining, servicing, repairing and replacing Services used by Crown or Crown's Employees and Agents and upgrading those Services to comply with any Law; and
- (c) any other Costs necessarily incurred by the Authority because of its ownership of the Crown Site, which are not otherwise recoverable from Crown.

but Outgoings do not include:

- (d) the Authority's internal administrative Costs;
- (e) Costs of any valuation of the Crown Site obtained by the Authority from time to time for its own purposes unrelated to Crown's use and occupation of the Crown Site; and
- (f) the cost of the Authority acquiring any RECs, it being noted that Crown's obligations in relation to RECs are set out in the Leases.

**Owners Corporation** means each owners corporation constituted upon registration of the relevant strata leasehold plan.

**Parent** of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
  - (i) controls the composition of at least half of the board of directors of the first mentioned person;
  - (ii) is in a position to cast, or control the casting of, at least one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or

- (iii) holds or has a beneficial interest in at least one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of Crown, its interest in this deed is property subject to that trust, a person who:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to cast, or control the casting of, at least one half of the maximum number of votes that might be cast at a meeting of holders of units; or
  - (iii) holds or has a beneficial interest in at least one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of Crown, its interest in this deed is property subject to that trust, a person who:
  - (i) is a beneficiary of that trust entitled directly or indirectly to at least one half of the corpus or profits of the trust; or
  - (ii) whose consent is required to:
    - A. appoint or change the trustee;
    - B. give directions to the trustee;
    - C. vary the constituent document of the trust;
    - D. appoint or remove beneficiaries; or
    - E. decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

**Part 4A Certificate** means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the EP&A Act.

**Paying Party** has the meaning given to that term in clause 54.8.

**Payment Currency** means the currency in which a payment is made.

**PDA** means the "Barangaroo Stage 1 – Project Development Agreement" dated 5 March 2010 between the Authority, LLMP and the LLMP Guarantor, as varied by:

- (a) the Project Management Agreement dated 1 April 2010 between the Authority, LLMP and the LLMP Guarantor;
- (b) the First Deed of Amendment dated 8 June 2010 between the Authority, LLMP and the LLMP Guarantor;
- (c) the Second Deed of Amendment dated 30 July 2010 between the Authority, LLMP and the LLMP Guarantor;

- (d) the Third Deed of Amendment dated 23 December 2010 between the Authority, LLMP and the LLMP Guarantor;
- (e) the Fourth Deed of Amendment dated 14 June 2012 between the Authority, LLMP and the LLMP Guarantor; and
- (f) the Fifth Deed of Amendment.

**PDA Certifier** means the independent certifier appointed by the Authority and LLMP under the PDA (or an independent certifier's deed contemplated by the PDA).

**PDA Guarantee** means the guarantee and indemnity given by the LLMP Guarantor under clause 49 of the PDA.

**PDA Remediation Works** means all Works, other than VMP Remediation Works, required to be carried on the Block 4 Declaration Area as described in Schedule 8 to the PDA.

**Pedestrian Walkway** means that part of Barangaroo which comprises a pedestrian walkway along the foreshore of Sydney Harbour.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) collected, held, used or disclosed in connection with this deed or the Crown Project whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Plan of Subdivision** includes a plan of subdivision (including a plan of subdivision which creates a stratum parcel), a strata plan of subdivision (including a strata leasehold plan) or any other form of subdivision and where applicable, a Subdivision Certificate.

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**POEO Act** means the Protection of the Environment Operations Act 1997 (NSW).

**POEO Act Licence** means licence number 13336 granted under Chapter 3 of the POEO Act, as varied or replaced from time to time.

**Pontoon** means a lightweight pontoon structure which would jut out in an L shape from the end of the North/South part of the Pedestrian Walkway which extends in front of the Integrated Hotel Resort to the West to form a notional extension to the Northern arm of Waterman's Cove and a ramp extending down from the public walkway in front of the Integrated Hotel Resort perpendicular to the pontoon structure as marked "Floating Pontoon" on the Crown Public Domain Standards Plan, subject to any amendments made in accordance with clause 5.14.

**Practical Completion means:**

- (a) in relation to the Crown Works or a Separable Portion when:
- (i) the Independent Certifier is satisfied that every item shown or called for in the Final Plans and Specifications (except for minor omissions or defects which the Independent Certifier determines do not adversely impact on the use and enjoyment of the Crown Works or the relevant Separable Portion) has been completed or installed in accordance with the Approvals and the Final Plans and Specifications and Crown's obligations under this deed;
  - (ii) all compliance reports relevant to the Crown Works or the Separable Portion have been delivered to the relevant Consent Authority;
  - (iii) the Crown Works or the relevant Separable Portion are fit for use and occupation and capable of being lawfully used and occupied for their intended purpose (other than in connection with any fit-out by Crown, any tenant or subtenant of any part of the Crown Works or the Separable Portion) with the consent of all relevant Public Authorities, excluding any further or additional requirement which may be imposed in connection with any further development within the Crown Works or the relevant Separable Portion after an Occupation Certificate has been issued in relation to the Crown Works or the relevant Separable Portion;
  - (iv) a Compliance Certificate for the Crown Works or the relevant Separable Portion has issued;
  - (v) (if relevant) an interim Occupation Certificate for the Crown Works or the relevant Separable Portion has issued;
  - (vi) a Complying Development Certificate for the Crown Works or the relevant Separable Portion has issued;
  - (vii) the Plan of Subdivision has been registered to create the Crown Site as a separate lot or as separate lots for each Separable Portion;
  - (viii) the Independent Certifier is satisfied that Crown has carried out and completed any reinstatement and rectification of those parts of the Crown Secured Area (which are not proposed to be the Premises and are otherwise areas on which ongoing Crown Works are to be carried out), any Public Domain damaged and any infrastructure required as a result of carrying out the construction of the Crown Works or the Separable Portion;
  - (ix) where in relation to the Crown Works or the relevant Separable Portion, if the Project Specific Climate Positive Work Plan requires something to be done on or before Practical Completion, the Authority is satisfied (acting reasonably) that that thing has been done in accordance with and as contemplated by the Project Specific Climate Positive Work Plan;
  - (x) where the whole or any part of the Crown Works or the relevant Separable Portion comprises Remediation Works, to the extent they are:
    - A. VMP Remediation Works, provision of one or more Acceptable VMP Remediation Works Section B Site Audit Statement to the Authority; or
    - B. PDA Remediation Works the Accredited Site Auditor has issued, in respect of the PDA Remediation Works, a Site



Audit Report as well as one or more PDA Remediation Works Section A Site Audit Statement(s) which certify that:

- 1) Block 4 Declaration Area is suitable for its intended uses (as contemplated by this deed) and is not subject to an on-going Long-term Environmental Management Plan; and
- 2) the Authority has notified LLMP and Crown in writing that it considers that the Section A Site Audit Statement(s) contemplated by paragraph A. above to be Acceptable PDA Remediation Works Section A Site Audit Statement(s);

(xi) where the whole or any part of the Crown Works or the relevant Separable Portion comprises any Other Remediation Works:

- A. the Accredited Site Auditor has issued, in respect of those Other Remediation Works, one or more Site Audit Report(s) and Section A Site Audit Statement(s) which certify that the land on which those Other Remediation Works are carried out is suitable for its intended uses (as contemplated by this deed) and is not subject to an on-going Long-term Environmental Management Plan; and
- B. the Authority has notified LLMP and Crown in writing within 10 Business Days of the Authority receiving one or more Site Audit Report(s) and Section A Site Audit Statements referred to in subparagraph (j)(ii) above that it considers (acting reasonably) that Section A Site Audit Statement(s) to be an Acceptable Other Remediation Works Section A Site Audit Statement(s);

(xii) where the whole or any part of the Crown Works or the relevant Separable Portion comprises any Other Remaining Remediation Works:

- A. the Accredited Site Auditor has issued, in respect of those Other Remaining Remediation Works, one or more Site Audit Report(s) and Section A Site Audit Statement(s) which certify that the land on which those Other Remaining Remediation Works are carried out is suitable for its intended uses (as contemplated by this deed) and is not subject to an on-going Long-term Environmental Management Plan; and
- B. the Authority has notified LLMP and Crown in writing within 10 Business Days of the Authority receiving one or more Site Audit Report(s) and Section A Site Audit Statement(s) referred to in paragraph (k)(i) above that it considers (acting reasonably) that Section A Site Audit Statement(s) to be an Acceptable Other Remaining Remediation Works Section A Site Audit Statement(s); and

(xiii) Crown has given to the Authority a copy of a survey prepared by a Surveyor showing that the Crown Works or the relevant Separable Portion are within the Crown Site other than agreed overhangs and encroachments (as contemplated by this deed and the Proposed Premises Plan); and

(b) in the case of:

- (i) the Crown Essential Infrastructure, means Practical Completion (as defined in the PDA) of the Crown Essential Infrastructure;
- (ii) the Crown Essential Public Domain Works, means Practical Completion (as defined in the PDA) of the Crown Essential Public Domain Works; and
- (iii) the Pontoon (if any), means Practical Completion (as defined in the PDA) of the Pontoon.

**Practical Completion Plan** means a plan prepared which:

- (a) has the objective of achieving Practical Completion of the relevant Step-in Works, within a reasonable period and by the Target Date;
- (b) has regard to the current state of completion of the relevant Step-in Works, and then current market conditions;
- (c) after regard is had to the objective and the matters in paragraphs (a) and (b), provides for a reasonable period for Practical Completion, which must be by no later than the Step-in Sunset Date; and
- (d) specifies:
  - (i) a Date for Practical Completion of the relevant Step-in Works;
  - (ii) Construction Milestones which must occur at least every 3 months and corresponding dates (as required) by which each such milestone must be completed;
  - (iii) the cure periods required to achieve a Milestone where the corresponding Milestone Date is not met (such periods being reasonable periods not exceeding 6 months, having regard to the relevant milestone and the relevant market conditions); and
  - (iv) critical Milestone events, and their corresponding dates for achievement, including funding commitments (being debt or equity or combination of both) for each stage of the relevant Step-in Works, construction commitments for each such stage and approvals to any redesign of the relevant Step-in Works.

**Premises** means that part of the Crown Site which will comprise the land and Improvements to be leased or licensed (where relevant) to Crown pursuant to clause 20, together with any Improvements on that land and as varied in accordance with this deed.

**Privacy Laws** means:

- (a) the Privacy Act 1988 (Cth); and
- (b) any other Law, industry code or policy relating to the handling of Personal Information.

**Privacy Statement** means a statement containing matters about LLMP's or Crown's information-handling practices as required by the National Privacy Principle 1 in the Privacy Act 1988 (Cth).

**Pro forma Hotel Resort Lease** means the form of lease comprising Annexure 27.

**Pro forma Public Domain Licence** means the form of licence comprising Annexure 28.

**Pro forma Strata Common Property Lease** means the form of lease comprising Annexure 29.

**Pro forma Strata Residential Lot Lease** means the form of lease comprising Annexure 30.

**Prohibited Entity** means any person or entity which:

- (a) is a "terrorist organisation" as defined in Part 5.3 of the Criminal Code Act 1995 (Cth);
- (b) is listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the Charter of the United Nations Act 1945 (Cth) which list as at the Commencement Date is available from the website of the Australian Department of Foreign Affairs and Trade; or
- (c) is listed on any other list of terrorist or terrorist organisations maintained pursuant to the rules and regulations of the Australian Department of Foreign Affairs and Trade or pursuant to any other Australian legislation.

**Project Director** means the individual appointed by Crown and approved by the Authority to take overall responsibility for delivery of the Crown Project and compliance by Crown of its obligations under the Project Documents.

**Project Documents** means:

- (a) this deed;
- (b) the Building Contract; and
- (c) the Independent Certifier Deed,

but for the removal of doubt excludes any Lease.

**Project Specific Climate Positive Supporting Documentation** means such reasonable information, reports and additional material which is either provided by Crown at its discretion or requested by the Authority, acting reasonably, to enable the Authority to assess whether the proper implementation of and compliance by Crown with, the Project Specific Climate Positive Work Plan would ensure that in undertaking the Crown Project, the Climate Positive Requirements and the Social Sustainability Requirements are met or exceeded no later than the Climate Positive Relevant Date.

**Project Specific Climate Positive Work Plan** means the work plan to be prepared by Crown and approved by the Authority as updated from time to time in accordance with this deed, to deal with the achievement of the Climate Positive Requirements and the satisfaction of the Social Sustainability Requirements, a brief outline of which is Annexure 12.

**Project Team** means:

- (a) Todd Nisbet (project director);
- (b) Wilkinson Eyre Architects (principal architect);
- (c) Bates Smart Pty Ltd ACN 004 999 400 (executive architect);
- (d) Arup Pty Ltd ACN 000 966 165 (façade engineering, environmental and sustainable design, BMU and vertical transport consultant);
- (e) Coffey Geotechnics Pty Ltd ACN 056 929 483 (geotechnical services consultant);

- (f) Environ Pty Ltd ACN 165 137 404 (contamination and environmental consultant);
- (g) Fortune Shepler Saling Inc and Arup Pty Ltd ACN 000 966 165 (vertical transportation consultant);
- (h) Robert Bird Group Pty Ltd ACN 010 580 248 (structural design consultant);
- (i) St Legere Design International Ltd (landscape architect);
- (j) JBA Urban Planning Consultants Pty Ltd ACN 060 735 104 (planning consultant);
- (k) AECOM Australia Pty Ltd ACN 093 846 925 (mechanical, electrical, hydraulic, fire protection and security surveillance consultant);
- (l) Brown Consulting Pty Ltd ACN 094 631 017 (pool engineering consultant);
- (m) Razzi Weir & Associates Pty Ltd ACN 119 779 921 (fire engineering consultants); and
- (n) JBA Consulting Engineers Pty Ltd ACN 065 479 898 and AECOM Australia Pty Ltd ACN 093 846 925 (joint acoustic consultants),

as varied from time to time in accordance with this deed.

**Proposed Premises Plan** means the plan, generally showing (excluding the area to be licensed under the Long Term Licence) the location of the Crown Site and the boundaries of the Premises within the Crown Site, being Annexure 21, which plan is subject to updating and amendment in accordance with this deed.

**Public Art and Cultural Development Contribution** means a contribution equivalent to 1% of the Crown Development Costs Amount being \$[REDACTED] to be applied towards Integrated Public Art, provided in the manner described in clause 8.

**Public Authority** means a government, semi government, local government, statutory public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and, where applicable, an accredited certifier accredited under section 109T of the EP&A Act.

**Public Authority Levies** means all Costs, levies, contributions and fees of whatever description in cash or kind lawfully imposed by any Public Authority in connection with the Crown Site or the Crown Project excluding all Remediation Levies.

**Public Domain** means the areas of public domain within Barangaroo including the Southern Cove, the Headland Park and other parks, playing fields, streets and pedestrian connections.

**Public Domain Works** means the works generally described as Public Domain in Schedule 6 of the PDA.

**Quantity Surveyor** means an independent quantity surveyor having no less than 10 years' experience appointed by Crown or LLMP (as the case may be) and approved by the Authority, Crown and LLMP (all acting reasonably), on the basis that the Authority, Crown and LLMP is entitled to rely on the work undertaken by that quantity surveyor.

**Rates** means rates, land taxes, assessments and other charges (including charges for consumption and garbage and waste removal) imposed by a Public Authority, in respect of the Crown Site together with any interest, fines and penalties in connection with them.

**Receiver** includes a receiver or receiver and manager.

**Recipient** has the meaning given to that term in clause 55.3.

**Recipient Party** has the meaning given to that term in clause 54.8.

**Recipient Supply** has the meaning given to that term in clause 55.5.

**RECs** means renewable energy certificates under the Renewable Energy (Electricity) Act 2000 (Cth) generated from assets which become operational after the Commencement Date and:

- (a) have not been created from electricity produced from the burning of wood waste; and
- (b) have been originally sourced from an Accredited Power Station (as defined in the Renewable Energy (Electricity) Act 2000 (Cth) operating in the National Electricity Market.

**Related Entity** of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
- (b) a unit trust in relation to which that corporation directly or indirectly:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Relevant Currency** means Australian dollars.

**Relevant Law Change** means any change to any Law or the normal practice of either the Council of the City of Sydney or the NSW Office of State Revenue the result of which is that the imposition of rates or land tax on Crown in respect of any part or parts of the Crown Site changes so that following that Relevant Law Change the whole or any part of such Council rates or land tax otherwise payable by Crown is no longer legally due and payable by or on behalf of Crown but that a similar concession is not allowed to rate or tax payers who have no direct connection with the Crown Project.

**Relevant Monies** means any monies payable by the Authority:

- (a) to the Environment Protection Authority;
  - (b) as a result of orders made by a court of competent jurisdiction; or
  - (c) in relation to directions by the Environment Protection Authority and a court (or either of them) to carry out remedial or other works,
- with respect to the POEO Act Licence.

**Relevant POEO Works** means any work, activity or other thing undertaken or to be undertaken within Barangaroo by LLMP or any of LLMP's Employees and Agents and which constitutes work or an activity requiring authorisation under the POEO Act.

**Relic** means:

- (a) minerals of commercial value;



- (b) fossils;
- (c) relics, articles or objects of antiquity or of anthropological or archaeological interest;
- (d) coins and other articles of value;
- (e) historical archaeological sites; and
- (f) Aboriginal archaeological relics.

**Remediate and Remediation** includes investigation, removal, abatement, disposal Off Site, containment, encapsulation or other treatment and includes monitoring and risk management.

**Remediation Levies** means all fees, charges and levies payable to Public Authorities having jurisdiction in connection with the carrying out of the Remediation Work.

**Remediation and Vacation Works Program** means a Works Program for:

- (a) the Remediation Works to be completed by LLMP under the PDA; and
- (b) the Vacation of Central Barangaroo by both LLMP and Crown,

to be agreed between the Authority, LLMP and Crown, to the extent that clause 17.7 applies.

**Remediation Works** means the PDA Remediation Works and the VMP Remediation Works.

**Required NABERS Rating** means the NABERS Hotel Rating or an Adjusted NABERS Rating.

**Residential Separable Portion** means that part of the Crown Works comprising serviced apartments or dwellings and the car parking for those apartments or dwellings, all common areas, driveways, access ways and Services servicing, and is the balance of the Crown Works other than the Hotel Resort Separable Portion.

**Restricted Gaming Facility** has the same meaning given to 'Barangaroo Restricted Gaming Facility' in the Casino Control Act 1992 (NSW).

**Restricted Gaming Facility Sub-Lease** means the sub-lease for the Restricted Gaming Facility.

**Retail Leasing Strategy** means the retail leasing strategy included in Annexure 18.

**Revised Statement of Commitments** means the revised statement of commitments approved by the Minister as part of the most recent Modification of the Concept Plan Approval.

**SEARS Application** means an Application to the Secretary:

- (a) in respect of a transitional Part 3A project, under section 75F of the EP&A Act; or
- (b) in any other case, section 78A of the EP&A Act and clause 3 of Part 2, Schedule 2 of the Environmental Planning and Assessment Regulation 2000 (NSW).

**Secretary** means the Secretary of the Department of Planning and Environment.

**Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

**Separable Portion** means either:

- (a) the Hotel Resort Separable Portion; or

- (b) the Residential Separable Portion.

**Services** means the services servicing the Crown Site including power, electricity, gas, water, sewerage and telecommunications, including all pipes, wires, cables, ducts and other conduits in connection with them.

**Significant Application** means each Application made after the Effective Date:

- (a) for Modification of the Concept Plan Approval; and  
(b) under Part 4 of the EP&A Act for a development consent for the Crown Works,

but does not include Mod 8, the Early Works DA, the Hotel Resort DA or any Amendment Application (or the SEARS Applications relating to those Applications).

**Significant Project Issue** means:

- (a) any issue that may substantially affect the attainment of the objectives detailed in clauses 5.1 and 5.2;  
(b) any issue that substantially changes the intent of the Detailed Plans and Specifications (as further detailed by the Detailed Plans and Specifications associated with an Approval); or  
(c) any substantial non-compliance with a term of this deed by any party.

**Site** means that part of the Land which is the subject of the PDA together with any improvements on that land.

**Site Encumbrances** has the meaning given in clause 21.3(a).

**Site Establishment** means site establishment on the Crown Secured Area including installation of site amenities, connection of temporary services and erection of hoardings, establishing the boundary, access ways, worker amenities, plant and equipment zones and support infrastructure to enable the trade works to commence, including as set out in Annexure 10.

**Social Sustainability Requirements** means the requirements of clause 10.13 and 10.15 for social sustainability.

**Social Sustainability Schedule** mean those community and learning and skilling programs being delivered by Crown and set out in Annexure 14.

**Stage 1** means that part of the Barangaroo Project, generally known as 'Barangaroo South', which comprises the Project as indicated on the Stage Diagram.

**Stage 1A** means that part of the Barangaroo Project which comprises "stage 1A" as indicated on the Stage Diagram.

**Stage 1B** means that part of the Barangaroo Project which comprises "stage 1B" as indicated on the Stage Diagram.

**Stage 1C** means that part of the Barangaroo Project which comprises "stage 1C" as indicated on the Stage Diagram.

**Stage Diagram** means the stage diagram contained in Annexure 25.

**Stages 1B and 1C Public Domain Budget** has the meaning given in clause 5.9(b)(i).

**Stages 1B and 1C Public Domain Works** means part of the Public Domain Works to be approved under the PDA and in accordance with the process set out in clause 5.9 within Stage 1B and Stage 1C.

**Staging Areas** means, at any time, those parts of the BDA Development Blocks the subject of a Staging Sub-Licence.

**Staging Licence** means a licence granted by the Authority under clause 13.1(aa) of the PDA, copies of which are contained in Annexure 3.

**Staging Plans** means the plans attached to the Staging Sub-Licences (and contained in Annexures 4, 5, 6, 7, 8 and 9), as amended in accordance with the Authority's approval in accordance with this deed.

**Staging Sub-Licences** means the sub-licences granted by LLMP to Crown under clause 14.2 in relation to the Staging Areas, on the terms and conditions set out in Annexures 4, 5, 6, 7, 8 and 9, as the case may be.

**Step-in Component** means any of the following parts of the LLMP Works:

- (a) the Crown Shared Basement Handover Works;
- (b) the Crown Essential Public Domain Works (which include the Crown Licensed Area Base Public Domain Works);
- (c) the Crown Essential Infrastructure Works; and
- (d) the Crown Enhancement Works.

**Step-in Date** means the date the Authority receives a Crown Step-in Notice from Crown.

**Step-in Party** means Crown, if Crown has issued a Crown Step-in Notice.

**Step-in Sunset Date** means 12 months from the Date for Practical Completion of the Step-in Works.

**Step-in Works** means Works relating to the Step-in Component in relation to which Crown has issued a Crown Step-in Notice in accordance with this deed.

**Strata Common Property Lease** means, in respect of Premises (or any part of those Premises) to be common property in a strata leasehold scheme, a lease which is substantially similar to the Pro forma Residential Common Property Lease but takes into account the nature of the premises and the requirements of the Strata Leasehold Act and, where applicable, as amended to be consistent with the terms of the Pro forma Hotel Resort Lease.

**Strata Documents** means each or any (as the context may require):

- (a) Strata Lease;
- (b) Strata Management Statement; and
- (c) By Law Instrument.

**Strata Lease** means each or any (as the context may require):

- (a) Strata Residential Lot Lease; or
- (b) Strata Common Property Lease.

**Strata Leasehold Act** means the Strata Schemes (Leasehold Development) Act 1986 (NSW).

**Strata Management Statement** means a statement under section 57A of the Strata Leasehold Act.

**Strata Residential Lot Lease** means, in respect of Premises (or any part of those Premises), to be a residential lot in a strata leasehold scheme, a lease which is substantially similar to the Pro forma Residential Strata Lot Lease but takes into account the nature of the premises and the requirements of the Strata Leasehold Act and, where applicable, as amended to be consistent with the terms of the Pro forma Hotel Resort Lease.

**Stratum Documents** means each, and any (as the context may require) Building Management Statement or Strata Management Statement.

**Subcontracted Remediation Works** has the meaning given in clause 17.3(a).

**Subdivision Certificate** means a certificate referred to in section 109J of the EP&A Act.

**Substantially Commenced** means that:

- (a) Crown has entered into a Building Contract which is unconditional in relation to any major conditions precedent or subsequent but otherwise may contain usual building contract terms (which has not been terminated or suspended) for the Crown Works with the Builder; and
- (b) the following Crown Works items been completed:
  - (i) Site Establishment; and
  - (ii) bulk excavation; and
  - (iii) detailed excavation; and
  - (iv) concrete foundations and slab on ground,

provided that the Authority agrees that the Crown Works will be deemed to be Substantially Commenced for the purposes of this definition where Crown has paid the Builder a minimum of \$[REDACTED] for the works conducted on the Crown Site.

**Supplier** has the meaning given to that term in clause 55.3.

**Supply Agreement** has the meaning given in the Building Management Statement.

**Surveyor** means a surveyor who is a member of the Association of Consulting Surveyors NSW Inc having at least 5 years' experience in surveying premises of the same type as the Site approved by the Authority (such approval not to be unreasonably withheld).

**Target Date** means the date that is 12 months prior to the Step-in Sunset Date.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Authority or other relevant Public Authority.

**Third Party Appeal** means legal proceedings which have been commenced in the Appeal Period by a person other than the Authority, Crown or LLMP in relation to the granting of an Approval to Mod B or the Hotel Resort DA.

**Threatened Species Claim** means a claim made or legal proceedings commenced in connection with the existence of a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the

Threatened Species Conservation Act 1995 (NSW), the National Parks and Wildlife Act 1974 (NSW) or the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

**Treasurer** means the Treasurer of the Commonwealth of Australia.

**Trust** means the Lend Lease (Millers Point) Trust established under the Trust Deed.

**Trust Deed** means the deed dated 5 November 2009 made by LLMP.

**Trust Fund** means the property held on trust by LLMP under the Trust Deed.

**Unacceptable Condition** means an Authority Unacceptable Condition, a Crown Unacceptable Condition or an LLMP Unacceptable Condition.

**Underground Works** means the Crown Stage 1B Basement and any underground works relating to the Crown Works approved under this deed.

**Updated Status Report** means a further report setting out all continuing and additional steps being taken or to be undertaken by the Step-in Party in relation to the relevant Step-in Works following the LLMP Trigger Event including:

- (a) in relation to funding or equity (or a combination of both) that may be required to bring the relevant Step-in Works to Practical Completion; and
- (b) a summary of the status of all material contractual relationships with third parties, including the Builder, in relation to the relevant Step-in Works, as that information is within the knowledge of the Step-in Party.

**Vacate** means to:

- (a) cease the Crown Works;
- (b) vacate the Crown Secured Area and procure that the Builder and all its subcontractors vacate the Crown Secured Area;
- (c) leave the Crown Secured Area in a safe and secure condition consistent with its obligations under clause 26.3;
- (d) remove from the Crown Secured Area all furniture, loose equipment, material, goods and other items owned by Crown or its contractors or which are not affixed or intended to be affixed; and
- (e) leave the Crown Secured Area clean and tidy and free from rubbish.

**Vacation Dates** means each of:

- (a) the Date for Vacation of BDA Development Block 5;
- (b) the Date for Vacation of BDA Development Block 5 Foreshore;
- (c) the Date for Vacation of BDA Development Block 6;
- (d) the Date for Vacation of BDA Development Block 6 Foreshore;
- (e) the Date for Vacation of BDA Development Block 7; and
- (f) the Date for Vacation of BDA Development Block 7 Foreshore.

**WH&S Act** means the Work Health and Safety Act 2011 (NSW).



**WH&S Plan** means a site specific occupation health and safety management plan to be prepared in relation to the Works as required by Part 8.3 of Chapter 8 of the WH&S Regulation.

**WH&S Regulation** means the regulations made under WH&S Act.

**Works** means the Crown Works and all other work required to be performed or carried out to complete the Crown Project:

- (a) in accordance with the Approvals and the Final Plans and Specifications; and
- (b) as required by this deed.

## 1.2 References to certain general terms

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

- (a) a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by 2 or more persons binds each of them severally;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (f) a document (including this deed) includes any variation or replacement of it;
- (g) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, a Public Authority;
- (h) 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;
- (i) dollars or \$ is a reference to Australian currency;
- (j) a time of day is a reference to Sydney time;
- (k) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (l) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (m) 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;
- (n) the singular includes the plural and the converse;

- (o) all references to this deed to the PDA (other than in paragraph D of the Background) are references to the PDA as amended by the Fifth Deed of Amendment;
- (p) unless the context otherwise requires, defined terms will extend to all parts of speech which are derivative from that term; and
- (q) capitalised words and phrases which are not otherwise defined in this deed have the same meaning as in the PDA.

### **1.3 Number**

The singular includes the plural and vice versa.

### **1.4 Headings**

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

### **1.5 Employees and agents**

- (a) If this deed prohibits Crown from doing a thing, then:
  - (i) Crown must do everything necessary to ensure that Crown's Employees and Agents do not do that thing; and
  - (ii) Crown may not authorise or cause any person to do that thing.
- (b) If this deed prohibits LLMP from doing a thing, then:
  - (i) LLMP must do everything necessary to ensure that LLMP's Employees and Agents do not do that thing; and
  - (ii) LLMP may not authorise or cause any person to do that thing.

### **1.6 Ambiguity and inconsistency**

If there is any ambiguity or inconsistency between any of the documents comprising the Project Documents, that ambiguity or inconsistency will be resolved by interpreting the Project Documents, in the same order of priority that they are referred to in the definition of the 'Project Documents' in clause 1.1.

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## **2. Entry into deed and grant of rights**

### **2.1 Acceptable Tenant**

- (a) The Authority agrees that Crown is an Acceptable Tenant for the purposes of the PDA.
- (b) LLMP acknowledges and agrees that for the purposes of the PDA:
  - (i) it has agreed to nominate Crown as the Nominee entitled to take the Leases in relation to the Crown Site;
  - (ii) the nomination of Crown takes effect on the Effective Date and may not be revoked prior to termination of this deed; and
  - (iii) LLMP cannot revoke its agreement to nominate Crown as set out in clause 2.1(b)(i) prior to termination of this deed, but is entitled to revoke that nomination after this deed is terminated (except where it is

terminated under clause 38.5) or expires, but not after the grant of the Leases.

- (c) The LLMP Guarantor consents to the nomination of Crown as Acceptable Tenant as provided for in this clause 2.1.
- (d) The parties agree that the subsequent provisions of this clause 2 supplant the provisions of clauses 27 and 28 of the PDA as they apply to the Crown Site for so long as this deed is not terminated.

## 2.2 Derivation from PDA

- (a) The parties hereby acknowledge that, subject to the terms of this deed, LLMP has the right to develop parts of the Site and to carry out works for the Authority on other parts of the Site, on the terms set out in the PDA, but has requested the Authority to agree to the appointment of Crown to develop the Crown Site on the terms set out in this deed.
- (b) Except as set out in clause 2.4, LLMP and the Authority acknowledge and agree that:
  - (i) all rights and obligations for the carrying out of the Works Portion comprising the Crown Works are contained in this deed;
  - (ii) LLMP has no rights or obligations to the Authority to carry out the Crown Works under this deed or the PDA;
  - (iii) LLMP's rights and obligations under the PDA in relation to all parts of the Site, are unaffected except in relation to the Crown Secured Area to the extent prescribed by the terms of the Construction Zone Sub-Licence, the Staging Sub-Licences and this deed; and
  - (iv) all approvals, determinations, certifications, confirmations and decisions required under this deed in relation to the Crown Works will constitute satisfaction of matters in respect of which substantially equivalent approvals, determinations, certifications, confirmations and decisions are required under the PDA (even if expressed in different terms) in relation to the Works Portion comprising the Crown Works for the purposes of the PDA.

## 2.3 Appointment and grant

In consideration of the performance by Crown of its obligations under this deed, LLMP and the Authority hereby grant Crown the right to develop the Crown Site and the Authority agrees to grant and Crown agrees to take, Leases in relation to the Crown Site, subject to the terms of this deed.

## 2.4 Ongoing Application of PDA

- (a) Subject to clause 2.4(c), LLMP's rights and obligations under the PDA with respect to the Site subsist in accordance with the terms of the PDA, other than to the extent assumed by Crown in relation to the Crown Site and the Crown Secured Area pursuant to this deed, the Construction Zone Sub-Licence and the Staging Sub-Licences, or otherwise amended by this deed, for so long as this deed remains in effect.
- (b) Despite any other provision of this deed, LLMP's obligations to pay the Development Rights Fee under clause 4 of the PDA, and the LLMP Guarantor's guarantee of those obligations, continue to apply, including to the extent applicable

to the Crown Site, despite the parties entering into this deed or the terms of this deed.

- (c) Despite any other provisions of this deed, LLMP is entitled, and remains obliged, to carry out the Remediation Works, the Other Remediation Works and the Other Remaining Remediation Works on the Crown Secured Area in accordance with the PDA.
- (d) Subject to the rights and obligations of the Authority, Crown and LLMP under this deed, the Authority remains entitled to exercise its rights in accordance with clauses 46.4 and 46.5 of the PDA in relation to the Works Portion comprising the Crown Works.

## **2.5 Ongoing operation of Construction Zone Licence**

Except to enable the grant of the Construction Zone Sub-Licence to Crown and subject to clause 14, nothing in this deed abrogates from LLMP's rights under any Construction Zone Licence granted to LLMP under the PDA whether before or after the Commencement Date.

## **2.6 Form of PDA**

- (a) Crown acknowledges and agrees that it has been provided with a substantially unredacted copy of the PDA and that it does not object to any provisions of the redacted PDA so provided to it.
- (b) The Authority and LLMP must not vary the PDA in any way which has a material adverse effect on Crown's right to develop the Integrated Hotel Resort as contemplated by Mod 8, without Crown's prior written consent, which must not be unreasonably withheld or delayed.
- (c) Without limiting clause 2.6(b), LLMP must provide Crown with a copy of any amending deeds to the PDA entered into after the Commencement Date and before Practical Completion of the whole of the Crown Works, within 5 Business Days after that amending deed is entered into. LLMP and the Authority may redact amounts and other confidential material in any such amending deed.
- (d) Crown acknowledges that it must keep the terms of the PDA and any amending deeds entered into after the Commencement Date confidential subject to the terms of clause 57.14.

## **2.7 Hotel Project Agreement**

- (a) If it has not already done so, Crown must provide a copy of the Hotel Project Agreement to the Authority (which may have commercial numbers redacted).
- (b) LLMP consents to the provision of the Hotel Project Agreement to the Authority in accordance with clause 2.7(a).
- (c) Crown and LLMP must not vary the Hotel Project Agreement in any way which has a material adverse effect on the Authority's rights under this deed without the Authority's prior written consent, which must not be unreasonably withheld or delayed.
- (d) Without limiting clause 2.7(c), Crown and LLMP must provide the Authority with a copy of any amendments to the Hotel Project Agreement entered into after the Commencement Date and before Practical Completion of the whole of the Crown Works, within 5 Business Days after that amending deed is entered into. Crown and LLMP may redact amounts and other confidential material in any such amending deed except in relation to the nature of works to be carried out on any part of Barangaroo.

## 2.8 Application to Framework Agreement

Crown acknowledges and agrees that, for the purposes of the Framework Agreement:

- (a) this deed comprises the BDA Crown Tripartite Deed and the BDA Crown Commercial Terms Deed;
- (b) the Hotel Project Agreement constitutes the Project Agreement; and
- (c) the Building Contract constitutes the Project Management and Construction Agreement.

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## 3. Planning and Framework Agreement Conditions

### 3.1 Application of clause 3

This clause 3 applies to Mod 8, the Early Works DA, the Hotel Resort DA and any Amendment Application (including the SEARS Applications for those Applications) and does not apply to any other Applications for Approval.

### 3.2 Applications for Approval

- (a) The Authority acknowledges that:
  - (i) LLMP lodged the environmental assessment report and other material for Mod 8 with the Minister on 5 March 2015; and
  - (ii) Crown lodged the SEARS Applications for both the Early Works DA and the Hotel Resort DA with the Consent Authority on 6 March 2015.
- (b) With respect to Mod 8:
  - (i) the Authority, Crown and LLMP have each approved Mod 8; and
  - (ii) LLMP must pay all fees in relation to Mod 8.
- (c) With respect to the Early Works DA and the Hotel Resort DA:
  - (i) Crown has submitted the Early Works DA and the Hotel Resort DA to the Authority for its approval;
  - (ii) LLMP has approved the Early Works DA and the Hotel Resort DA (in the form of Exhibit 2 and Exhibit 1);
  - (iii) the Authority agrees to give or refuse consent (which may be given or refused in its sole and unfettered discretion) to the Early Works DA and the Hotel Resort DA within 20 Business Days after the Commencement Date;
  - (iv) the Authority agrees it will not approve the Hotel Resort DA if it is inconsistent with Mod 8;
  - (v) Crown agrees it will not lodge with the Consent Authority a Hotel Resort DA which is inconsistent with Mod 8; and
  - (vi) LLMP acknowledges and agrees that the Hotel Resort DA (in the form of Exhibit 1), is consistent with Mod 8.



- (d) The parties acknowledge and agree that it may be that because of feedback received from the Consent Authority or the Secretary including as part of the Consent Authority's test of adequacy review, the Early Works DA or the Hotel Resort DA may require amendment to the form submitted by Crown prior to the Commencement Date.
- (e) The Authority, LLMP and Crown agree to act reasonably and as expeditiously as possible and negotiate in good faith to endeavour to agree any such consequential amendments referred to in clause 3.2(d) to enable the Early Works DA or the Hotel Resort DA to be lodged when required under this deed in an agreed form.
- (f) When the final form of the Early Works DA has been approved by the Authority in accordance with clause 3.2(c) and agreed in accordance with clause 3.2(e):
  - (i) the Authority must sign and return the amended Early Works DA to Crown no later than 2 Business Days after it is agreed; and
  - (ii) Crown must:
    - A. lodge the Early Works DA with the Consent Authority in the form agreed pursuant to this clause 3.2 within 5 Business Days after the amended signed Early Works DA is received from the Authority;
    - B. pay all fees in relation to the Early Works DA; and
    - C. notify the Authority and LLMP of the lodgement of the Early Works DA on the same day it occurs.
- (g) When the final form of the Hotel Resort DA has been approved by the Authority in accordance with clause 3.2(c) and agreed in accordance with clause 3.2(e):
  - (i) the Authority must sign and return the amended Hotel Resort DA to Crown no later than 2 Business Days after it is agreed; and
  - (ii) Crown must:
    - A. lodge the final form of the Hotel Resort DA with the Consent Authority in the form agreed pursuant to this clause 3.2 within 5 Business Days after the amended signed Hotel Resort DA is received from the Authority;
    - B. pay all fees in relation to the Hotel Resort DA; and
    - C. notify the Authority and LLMP of the lodgement of the Hotel Resort DA on the same day it occurs.
- (h) The parties must use their reasonable endeavours to ensure the Early Works DA and the Hotel Resort DA are lodged with the Consent Authority by no later than 30 June 2015.

### 3.3 No objections

All parties agree they will not themselves object, or procure any other party to object, to Mod 8, the Early Works DA or the Hotel Resort DA once lodged with the Consent Authority for Approval.

### 3.4 Waiver

If all the parties to this deed agree, they may waive any or all of the Conditions.

### 3.5 Reasonable endeavours and progress

- (a) Each party must use reasonable endeavours to procure satisfaction of the Conditions before the Sunset Date.
- (b) LLMP must provide the Authority and Crown from the Commencement Date a fortnightly written report of the progress it is making in regard to the obtaining of the Approval to Mod 8 and provide the Authority and Crown with copies of all correspondence to and from the Consent Authority in regard to the obtaining of that Approval.
- (c) Crown must provide the Authority and LLMP from the Commencement Date a fortnightly written report of the progress it is making in regard to the obtaining of the Approval to the Hotel Resort DA and provide the Authority and LLMP with copies of all correspondence to and from the Consent Authority in regard to the obtaining of that Approval.

### 3.6 Notification of Approval terms

- (a) LLMP must provide a copy of the Approval to Mod 8 to the Authority and Crown within 2 Business Days after LLMP receives that Approval.
- (b) Crown must provide a copy of the Approval to the Hotel Resort DA to the Authority and LLMP within 2 Business Days after Crown receives that Approval.

### 3.7 Crown Unacceptable Conditions

Within 15 Business Days after receipt of the Approval for Mod 8 or the Approval for the Hotel Resort DA, as the case may be, Crown must:

- (a) notify the Authority and LLMP whether or not, in Crown's opinion, the relevant Approval contains a Crown Unacceptable Condition;
- (b) if so, provide reasonable details to support its opinion (having regard to the matters to be taken into account in determining whether a condition of that Approval is a Crown Unacceptable Condition including relevant provisions and reasons for unacceptability); and
- (c) indicate its proposed course of action with respect to any Crown Unacceptable Condition having regard to the mutual intention set out in clause 3.11.

Without prejudice to clauses 3.12(e) and 3.18, if Crown does not notify the Authority and LLMP within 30 Business Days after receipt of the Approval for Mod 8, or the Approval for the Hotel Resort DA, as the case may be, there are deemed to be no Crown Unacceptable Conditions in respect of the Approval for Mod 8 or the Hotel Resort DA.

### 3.8 LLMP Unacceptable Conditions

Within 15 Business Days after receipt of the Approval for Mod 8 or the Approval for the Hotel Resort DA, as the case may be, LLMP must:

- (a) notify the Authority and Crown whether or not, in LLMP's opinion, the relevant Approval contains an LLMP Unacceptable Condition;
- (b) if so, provide reasonable details to support its opinion (having regard to the matters to be taken into account in determining whether a condition of that Approval is an LLMP Unacceptable Condition), including relevant provisions and reasons for unacceptability; and

- (c) indicate its proposed course of action with respect to any LLMP Unacceptable Condition having regard to the mutual intention set out in clause 3.11.

Without prejudice to clauses 3.12(e) and 3.18, if LLMP does not notify the Authority and Crown within 30 Business Days after receipt of the Approval for Mod 8, or the approval for the Hotel Resort DA, as the case may be, there are deemed to be no LLMP Unacceptable Conditions in respect of the Approval for Mod 8 or the Hotel Resort DA.

### 3.9 Authority Unacceptable Conditions

Within 15 Business Days after receipt of the Approval for Mod 8 or the Approval for the Hotel Resort DA, as the case may be, the Authority must:

- (a) notify Crown and LLMP whether or not, in the Authority's opinion, the relevant Approval contains an Authority Unacceptable Condition;
- (b) if so, provide reasonable details to support its opinion (having regard to the matters to be taken into account in determining whether a condition is an Authority Unacceptable Condition) including relevant provisions and reasons for unacceptability; and
- (c) indicate its proposed course of action with respect to the Authority Unacceptable Conditions having regard to the mutual intentions set out in clause 3.11.

Without prejudice to clauses 3.12(e) and 3.18, if the Authority does not notify Crown and LLMP within 30 Business Days after receipt of the Approval for Mod 8 or the Approval for the Hotel Resort DA, as the case may be, there are deemed to be no Authority Unacceptable Conditions in respect of the Approval for Mod 8 or the Hotel Resort DA.

### 3.10 Meet in good faith and termination right

- (a) If a party notifies an Unacceptable Condition in the Approval for Mod 8 or the Approval for the Hotel Resort DA pursuant to clause 3.7, 3.8 or 3.9, as the case may be, before that party terminates this deed, Crown, LLMP and the Authority must meet in good faith within 3 Business Days following receipt of the notice of the Unacceptable Condition to:
  - (i) discuss the condition which is claimed to be an Unacceptable Condition; and
  - (ii) use their reasonable endeavours to agree on a course of action to reduce the impact of that Unacceptable Condition,

such discussions and reasonable endeavours obligations are to continue over a period of not more than 30 Business Days following the date of receipt of the notice or such further period of not more than 30 Business Days following the end of that period, as agreed in writing among the parties.
- (b) If the Unacceptable Condition notified by a party under clause 3.10(a) is:
  - (i) a Crown Unacceptable Condition within the meaning of paragraph (a) of the definition of that term;
  - (ii) an LLMP Unacceptable Condition within the meaning of paragraph (a) or (b) of the definition of that term; or
  - (iii) an Authority Unacceptable Condition within the meaning of paragraph (b) of the definition of that term,

then the parties must, during the course of the discussions contemplated by clause 3.10(a), consider whether a Modification Application may be able to remove the Unacceptable Condition and comply with clause 3.13(b) before the relevant party may terminate this deed under clause 3.10(c).

- (c) If by the end of that period of 30 Business Days or any further agreed period referred to in clause 3.10(a):
- (i) no course of action has been agreed in writing among the parties;
  - (ii) no party has notified a dispute in accordance with clause 35 (as contemplated by clause 3.13) which is yet to be resolved; or
  - (iii) a party has notified a dispute in accordance with clause 35 (as contemplated by clause 3.13) and it is determined that the party which gave the notice referred to in clause 3.10(a) has an Unacceptable Condition,

then if the Effective Date has not occurred:

- (iv) the party which gave the notice referred to in clause 3.10(a) may terminate this deed by notice in writing to the other parties; and
- (v) if that party does not terminate this deed within 10 Business Days after the end of that period or any further agreed period referred to in clause 3.10(a), or determination referred to in clause 3.10(b)(iii), that party's right to terminate under this clause 3.10 lapses.

### 3.11 Mutual intention

- (a) Without limiting the foregoing, the parties agree that it is their mutual intention that any discussions to occur pursuant to clause 3.10 are intended to identify a solution which retains as many elements of Mod 8 or the Hotel Resort DA, as the case may be, as reasonably possible, whilst addressing the Consent Authority's concerns which have prompted the inclusion of Unacceptable Conditions.
- (b) If the relevant Unacceptable Condition relates to an issue which might be addressed by refining the design of the Integrated Hotel Resort, the parties will consider preparing and lodging an Amendment Application with the Consent Authority.

### 3.12 Amendment Application

- (a) If an Amendment Application is to be prepared and lodged with the Consent Authority as contemplated by clause 3.11, LLMP and Crown must prepare revised plans, elevations and sections for the Amendment Application and submit those plans, elevations and sections to the Authority for its approval, at LLMP's cost in the case of a revised Mod 8 or at Crown's cost in the case of a revised Hotel Resort DA. Once approved by the Authority, those plans, elevations and sections for the Hotel Resort DA (to the extent of the revisions) will comprise the Detailed Plans and Specifications for the purposes of this deed.
- (b) Crown and LLMP must consult and discuss with the Authority and have reasonable regard to any reasonable comments or suggestions that the Authority may make in respect of the proposed terms and conditions of the Amendment Application.
- (c) The Authority must notify LLMP and Crown whether it approves the Amendment Application within 10 Business Days after receipt of such Amendment Application.

- (d) If the Amendment Application is approved by the Authority, then the Amendment Application may be lodged with the Consent Authority on the terms approved by the Authority.
- (e) If the Amendment Application is approved by the Consent Authority with Unacceptable Conditions, the parties must meet to discuss any Unacceptable Conditions and this clause 3 will reapply and may reapply more than once during the period until the Effective Date.
- (f) When considering the conditions of any Approval arising as a result of:
  - (i) the determination of a Third Party Appeal; or
  - (ii) the Approval of an Amendment Application,
 no party is entitled to find a condition to be an Unacceptable Condition if that party previously found that condition acceptable.

### 3.13 Disputes regarding Unacceptable Conditions

- (a) Clause 3.13(b) applies:
  - (i) if one or more parties notifies the others of an Unacceptable Condition within the period of 15 Business Days referred to in clauses 3.7, 3.8 or 3.9; and
  - (ii) if the Unacceptable Condition to which the notice relates is not a Crown Unacceptable Condition within the meaning of paragraph (a) of the definition of that term.
- (b) Following compliance with clauses 3.10(a), 3.10(b), 3.11 and 3.12 (where applicable), if the parties do not agree:
  - (i) that the condition which is claimed to be an Unacceptable Condition is an Unacceptable Condition; or
  - (ii) a course of action to reduce the impact of that Unacceptable Condition,
 then any party may notify a dispute in accordance with clause 35.

### 3.14 Adjustment of the Crown Site

- (a) Crown, LLMP and the Authority acknowledge that as at the Commencement Date, the Crown Site is defined to include the maximum areas needed to accommodate any of the designs contemplated in the versions of the Detailed Plans and Specifications at the Commencement Date, except to the extent of agreed overhangs and encroachments as contemplated by this deed and the Proposed Premises Plan.
- (b) Crown, LLMP and the Authority agree that as soon as commercially practicable after Approval to an Amendment Application pursuant to this clause is obtained, they will meet to discuss in good faith any amendments required to the boundaries specified on the Proposed Premises Plan, to ensure that those boundaries extend only to the extent needed to accommodate the improvements the subject of the Detailed Plans and Specifications which are then relevant (having regard to the designs contemplated in the Approvals to the Amendment Application), providing that such boundaries must not exceed the boundaries contained in the Proposed Premises Plan.



- (c) If Crown, LLMP and the Authority fail to reach agreement on the matters referred to in clause 3.14(a), then any of Crown, LLMP or the Authority may notify a dispute pursuant to the dispute resolution provisions of clause 35.

### **3.15 Termination of the Framework Agreement**

- (a) Crown must notify each of the Authority and LLMP within 2 Business Days after the termination of the Framework Agreement.
- (b) If the Framework Agreement is terminated before all of the conditions listed in paragraphs (b) to (i) (both inclusive) of the definition of "Conditions" in clause 1.1 are satisfied or waived, any party may terminate this deed by notice in writing to the other parties.

### **3.16 Failure to notify**

Without prejudice to clause 3.12(e) and 3.18, if a party does not notify the others in writing that it considers the terms of the Approval contain an Unacceptable Condition within the period of 30 Business Days referred to in clause 3.7, 3.8 or 3.9, that party is deemed to find that there are no Unacceptable Conditions in the relevant Approval.

### **3.17 Commencement of obligations**

Each of the parties must do all things required to be done by it to perform its obligations under this deed.

### **3.18 Third Party Appeals**

If a Third Party Appeal occurs, the Authority, LLMP and Crown agree that promptly after any of them becomes aware of the Third Party Appeal, Crown, LLMP and the Authority must meet and discuss in good faith (acting reasonably) the most appropriate action to be taken in respect of that Third Party Appeal, which may include:

- (a) lodging a new (and amended) Application with the Consent Authority; and
- (b) taking whatever action necessary to object to or defend the Third Party Appeal,

and notwithstanding anything to the contrary contained in this deed, if the effective outcome of any such Third Party Appeal is to vary or supplement the conditions of the Approval as previously granted, the provisions of this clause 3 will apply, mutatis mutandis, to the relevant Approval as varied or supplemented.

### **3.19 Third Party Proceedings**

- (a) Despite clause 3.18, if:
- (i) proceedings relating to the Approval of Mod 8 or an Application for Modification of the Concept Plan Approval are commenced by a person other than the Authority, LLMP or Crown; and
- (ii) any of the Authority, Crown or LLMP has obtained (at its cost) a written legal opinion from a barrister, who is a Queen's Counsel or Senior Counsel regularly practising in the relevant jurisdiction, to the effect that any defence of those proceedings has reasonable prospects of success,
- then the Authority may require Crown in the case of proceedings relating in the most part to the Integrated Hotel Resort or LLMP in any other case to defend those proceedings at its sole risk and expense.

- (b) The Authority, Crown and LLMP agree to provide to each other a copy of any written legal opinion referred to under clause 3.19(a)(ii) that it obtains, and each party must keep the contents and effect of the legal opinion confidential.

### 3.20 Non-Satisfaction of Conditions by sunset dates

- (a) If the Mod 8 Conditions are not satisfied by the Mod 8 Sunset Date (as may be extended under clause 3.20(c)), the Authority, LLMP and Crown must meet and negotiate in good faith and acting reasonably with each other over a period of 30 Business Days to consult and discuss possible courses of action to deal with the non-satisfaction of the Mod 8 Conditions. For clarity, the negotiation will take place:
- (i) after the Mod 8 Sunset Date if the Mod 8 Conditions are not satisfied as at that date and there are no Third Party Appeals in relation to Mod 8 which have not been resolved as at the Mod 8 Sunset Date; or
  - (ii) after the Mod 8 Sunset Date (as extended under clause 3.20(c)) where all of the Mod 8 Conditions are not satisfied as at that date and there are Third Party Appeals in relation to Mod 8 which have not been resolved as at the Mod 8 Sunset Date as so extended.

- (b) Subject to clause 3.20(c), if:

- (i) following the period of 30 Business Days of consultation referred to in clause 3.20(a) the parties have not reached any resolution in relation to the non-satisfaction of the Mod 8 Conditions; and
- (ii) the Mod 8 Conditions are not satisfied by the expiry of the 30 Business Day period referred to in clause 3.20(a),

the Authority or Crown may terminate this deed by notice to the other parties given within 10 Business Days after the expiry of the 30 Business Day period referred to in clause 3.20(a) and LLMP may terminate this deed by notice to the other parties given within 12 Business Days after the expiry of such period.

- (c) If:

- (i) the Mod 8 Conditions (other than the Mod 8 Third Party Appeal Condition) are satisfied by the Mod 8 Sunset Date; and
- (ii) the Framework Agreement is not terminated by the Mod 8 Sunset Date; but
- (iii) the Mod 8 Third Party Appeal Condition is not satisfied by the Mod 8 Sunset Date,

the Mod 8 Sunset Date is extended by 6 months, but if the Mod 8 Third Party Appeal Condition is not then satisfied by the expiry of that period of 6 months from the Mod 8 Sunset Date then subject to the parties having met and negotiated as contemplated by clause 3.20(a), any of the Authority, LLMP or Crown may terminate this deed by notice to the other parties.

- (d) If the Hotel Resort DA Conditions are not satisfied by the Hotel Resort DA Sunset Date (as may be extended under clause 3.20(f)), the Authority, LLMP and Crown must meet and negotiate in good faith and acting reasonably with each other over a period of 30 Business Days to consult and discuss possible courses of action to deal with the non-satisfaction of the Hotel Resort DA Conditions. For clarity, the negotiation will take place:
- (i) after the Hotel Resort DA Sunset Date if the Hotel Resort DA Conditions are not satisfied as at that date and there are no Third Party Appeals in relation to Hotel Resort DA which have not been resolved as at the Hotel Resort DA Sunset Date; or
  - (ii) after the Hotel Resort DA Sunset Date (as extended under clause 3.20(c)) where all of the Hotel Resort DA Conditions are not satisfied as at that date and there are Third Party Appeals in relation to Hotel Resort DA which have not been resolved as at the Hotel Resort DA Sunset Date as so extended.
- (e) Subject to clause 3.20(f), if:
- (i) following the period of 30 Business Days of consultation referred to in clause 3.20(d) the parties have not reached any resolution in relation to the non-satisfaction of the Hotel Resort DA Conditions; and
  - (ii) the Hotel Resort DA Conditions are not satisfied by the expiry of the 30 Business Day period referred to in clause 3.20(d),
- any of the Authority, LLMP or Crown may terminate this deed by notice to the other parties given within 10 Business Days after the expiry of the 30 Business Day period referred to in clause 3.20(d) and LLMP may terminate this deed by notice to the other parties given within 12 Business Days after the expiry of such period.
- (f) If:
- (i) the Hotel Resort DA Conditions (other than the Hotel Resort DA Third Party Appeal Condition) are satisfied by the date which is 30 Business Days after the Hotel Resort DA Sunset Date; and
  - (ii) the Framework Agreement is not terminated by the date which is 30 Business Days after the Hotel Resort DA Sunset Date; but
  - (iii) the Hotel Resort DA Third Party Appeal Condition is not satisfied by the Hotel Resort DA Sunset Date,

the Hotel Resort DA Sunset Date is extended by 6 months, but if the Hotel Resort DA Third Party Appeal Condition is not then satisfied by the expiry of that period of 6 months from the Hotel Resort DA Sunset Date then subject to the parties having met and negotiated as contemplated by clause 3.20(d), any of the Authority, LLMP or Crown may terminate this deed by notice to the other parties.

### 3.21 Consequences of termination for non-satisfaction

If this deed is terminated under clauses 3.10, 3.15 or 3.20:

- (a) this deed will terminate with effect from the date of receipt of the notice by the last party to receive the notice;
- (b) no party will have any claim against any other party under this deed arising from the termination of this deed, except in relation to any rights or obligations accrued up

until the date of termination and in respect of any provisions that survive termination of this deed;

- (c) within 5 Business Days after termination of this deed, the parties must meet to discuss the future of the Crown Project; and
- (d) this clause 3.21 survives termination of this deed.

### 3.22 Right to use plans and Approvals

Where this deed is terminated under this clause 3, Crown acknowledges and agrees that the provisions of clause 33 apply.

### 3.23 Termination for default under Hotel Project Agreement

- (a) LLMP must notify the Authority on the occurrence of either of:

- (i) the payment of the moneys referred to in clause 4.1 of the Hotel Project Agreement; and
- (ii) the provision of the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement,

within 5 Business Days after each of those events occurs.

- (b) If Crown fails to:

- (i) make the payments referred to in clause 4.1 of the Hotel Project Agreement when due to be paid; or
- (ii) provide the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement,

and LLMP issues a Payment Notice under the Hotel Project Agreement, LLMP must notify the Authority, within 2 Business Days after the issue of that Payment Notice, that it has issued a Payment Notice under the Hotel Project Agreement.

- (c) The Authority acknowledges that if LLMP issues a Payment Notice under the Hotel Project Agreement, the Payment Notice will require Crown to (as the case may be):

- (i) make the payments referred to in clause 4.1 of the Hotel Project Agreement; or
- (ii) provide the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement,

within 10 Business Days of the date of service of the Payment Notice on Crown.

- (d) Subject to clause 3.23(h) and clause 3.23(i), if Crown fails to:

- (i) make the payments referred to in clause 4.1 of the Hotel Project Agreement; or
- (ii) provide the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement,

within 10 Business Days of a Payment Notice, LLMP may issue a Payment Default Notice to Crown and the Authority.

(e) If Crown fails to:

- (i) make the payments referred to in clause 4.1 of the Hotel Project Agreement; or
- (ii) provide the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement,

within 20 Business Days of a Payment Default Notice, LLMP may terminate this deed by written notice to the Authority and Crown.

(f) The parties agree that clause 3.23 applies to the payments referred to in clause 4.1 of the Hotel Project Agreement and the provision of the bank guarantees in accordance with clause 4.7(a) of the Hotel Project Agreement separately, so that a separate Payment Notice, Payment Default Notice and notice of termination can be issued by LLMP in respect of each of those payments and the provision of those bank guarantees.

(g) If LLMP issues a Payment Notice under the Hotel Project Agreement, Crown may issue a notice to LLMP and the Authority stating that it does not agree that:

- (i) the payments referred to in clause 4.1 of the Hotel Project Agreement are due and payable; or
- (ii) the bank guarantees are due to be provided in accordance with clause 4.7(a) of the Hotel Project Agreement,

within 5 Business Days of the issue of the Payment Notice (**Payment Notice Dispute**).

(h) If Crown issues a Payment Notice Dispute, that notice is a notice of a dispute to which clause 35 applies except:

- (i) clauses 35.3 and 35.4 will not apply; and
- (ii) the parties agree that the dispute must be referred to a relevant expert for determination, who must be a Queen's Counsel or Senior Counsel engaged on the basis that his or her determination must be made within 30 Business Days after he or she is engaged to determine the Payment Notice Dispute.

(i) If the expert determines that (as applicable):

- (i) the payments referred to in clause 4.1 of the Hotel Project Agreement are due and payable; or
- (ii) the bank guarantees are due to be provided in accordance with clause 4.7(a) of the Hotel Project Agreement,

LLMP may issue a Payment Default Notice under clause 3.23(d) upon receipt of the determination by the expert and the provisions of clause 3.23(e) will reapply.

(j) If the expert determines that (as applicable):

- (i) the payments referred to in clause 4.1 of the Hotel Project Agreement are not due and payable; or
- (ii) the bank guarantees are not due to be provided in accordance with clause 4.7(a) of the Hotel Project Agreement,



the Payment Notice issued by LLMP is null and void.

- (k) Crown acknowledges and agrees that if it fails to rectify the HPA Default Event as contemplated by clause 3.23(e):
  - (i) Crown is in essential breach of this deed and LLMP is entitled to terminate this deed and Crown is liable to LLMP and the Authority for all damages occasioned as a result of that termination; and
  - (ii) Crown is in essential breach of the Framework Agreement entitling the NSW Government to terminate the Framework Agreement and Crown is liable to the NSW Government for all damages occasioned as a result of that termination.

### 3.24 Crown Insolvency prior to Effective Date

- (a) Within 15 Business Days after the Authority becomes aware that a Crown Insolvency Event has occurred, the Authority must:
  - (i) notify Crown that the Authority considers that a Crown Insolvency Event has occurred; and
  - (ii) at the same time, notify LLMP:
    - A. that the Authority considers that a Crown Insolvency Event has occurred, giving details of that event and a copy of the notice given to Crown under clause 3.24(a)(i); and
    - B. what the Authority proposes to do in relation to that Crown Insolvency Event.
- (b) Subject to clause 3.24(c), for so long as the Crown Insolvency Event subsists, during the period of 30 Business Days after the date of the Authority's notice to LLMP under clause 3.24(a)(ii), the Authority must, once each week, give LLMP a brief report of the status of the discussions between the Authority or the NSW Government and Crown.
- (c) Where a Controller has been appointed as part of, or as a result of, the Crown Insolvency Event, clause 3.24(b) applies but the period of time during which the Authority must provide a weekly report of its progress is reduced to 10 Business Days.
- (d) Within 5 Business Days after receipt of the Crown Insolvency Notice, Crown may make submissions to the Authority and LLMP as to what it proposes to do to mitigate the consequences of that Crown Insolvency Event for LLMP and the Authority.
- (e) At any time after the receipt of the Authority's notice under clause 3.24(a)(ii), LLMP may make a submission to the Authority about the detriment being suffered by LLMP, if any, as a result of the Crown Insolvency Event, including delayed payment or non-payment under the Hotel Project Agreement or under the Building Contract.
- (f) The Authority must take any submission made by LLMP under clause 3.24(e) and any submission made by Crown under clause 3.24(d) into account and act in good faith in considering whether to terminate this deed.
- (g) If after the expiry of 30 Business Days or, where clause 3.24(c) applies, 10 Business Days, from the date of the Authority's notice to LLMP under clause 3.24(a)(ii) the Crown Insolvency Event subsists, the Authority may terminate

this deed by notice to Crown and must, at the same time, provide a copy of that notice to LLMP.

- (h) If after the expiry of 35 Business Days or, where clause 3.24(c) applies, 15 Business Days, from the date of the Authority's notice to LLMP under clause 3.24(a)(ii):

- (i) the Crown Insolvency Event subsists; and
- (ii) the Authority has not terminated this deed under clause 3.24(g),

LLMP may give the Authority and Crown a notice of its intention to terminate this deed.

- (i) If after expiry of 10 Business Days after the giving of LLMP's notice of intention to terminate under clause 3.24(h) the events referred to in clause 3.24(h) subsist, LLMP may terminate this deed by notice to Crown and must at the same time provide a copy of that notice to the Authority.

### **3.25 Operation of clauses**

- (a) Clause 3.24 has no application after the Effective Date.
- (b) LLMP agrees that it is only entitled to issue a Payment Notice under clause 3.23 up to and including the date which is 20 Business Days after the Effective Date and any Payment Notice issued after that date will be null and void.

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## **4. Site Establishment and Early Works**

### **4.1 Right for Site Establishment before the Effective Date**

- (a) Crown, LLMP and the Authority acknowledge that prior to the Conditions being satisfied (and without limiting any party's right to find that the terms of the Approvals for Mod 8 or the Hotel Resort DA (or both) contain Unacceptable Conditions, as applicable to that party) subject to clauses 4.3, 4.4, 4.5 and 4.6, Crown may carry out Site Establishment, but Crown acknowledges that access to parts of Central Barangaroo which are, as at the Commencement Date, occupied by another contractor and access for Site Establishment and Early Works is subject to those areas becoming vacant.
- (b) The Authority must notify Crown when the areas occupied by another contractor become vacant (as contemplated by clause 14) as soon as practicable after they are vacated and, in any event, prior to the Hotel Approval Date. The parties acknowledge that the Authority will use all reasonable endeavours to give Crown access to Central Barangaroo in accordance with the Staging Plans by no later than [REDACTED].

### **4.2 Right to carry out Early Works before the Effective Date**

Crown, LLMP and the Authority acknowledge that, prior to the Conditions being satisfied, and without limiting any party's right to find that the terms of the Approvals for Mod 8 or the Hotel Resort DA (or both) contain Unacceptable Conditions, as applicable to that party, Crown may, as from the Hotel Approval Date carry out Early Works on the Crown Site in accordance with this deed, but subject to Crown complying with clauses 4 and 14.

#### 4.3 Security for Early Works and Site Establishment

Crown must not commence any Site Establishment and Early Works, prior to the Effective Date, unless Crown has provided:

- (a) a Bank Guarantee (which must not have an expiry date which is earlier than 3 years after the date of the Bank Guarantee) to LLMP, for \$ [REDACTED] to secure Crown's Make Good obligations; and
- (b) a copy of that Bank Guarantee to the Authority.

#### 4.4 Costs of Site Establishment and Early Works

All Site Establishment and Early Works must be paid for by Crown, irrespective of whether this deed is terminated, in addition to any Works to Make Good.

#### 4.5 Application of Works provisions

The provisions of this deed applicable to the carrying out of Works will apply to the carrying out of Site Establishment and the Early Works (except where this deed specifically excludes a provision from applying to Site Establishment or the Early Works, as the case may be).

#### 4.6 Risk of Site Establishment and Early Works

- (a) If Crown carries out Site Establishment or Early Works, it does so entirely at its own risk and, without prejudice to any other provisions of this deed and despite any approvals given by the Authority or LLMP, releases:
  - (i) the Authority from any and all liability in relation to:
    - A. Crown carrying out any Site Establishment or Early Works except to the extent caused by the reckless or negligent act of the Authority or the Authority's Employees and Agents;
    - B. Crown lodging the Early Works DA pursuant to the Concept Plan Approval in effect as at the Commencement Date;
    - C. any [REDACTED] arising as a result of the Application or Approval for the Early Works DA;
    - D. any delay occasioned to the Crown Works as a result of:
      - 1) Site Establishment;
      - 2) the lodging of the Early Works DA;
      - 3) the Approval to the Early Works DA; or
      - 4) the carrying out of the Early Works,except to the extent caused by the reckless or negligent act of the Authority or the Authority's Employees and Agents; and
  - (ii) LLMP from any and all liability in relation to Crown carrying out Site Establishment or Early Works except to the extent caused by the reckless or negligent act of LLMP or LLMP's Employees and Agents.

- (b) Crown indemnifies:
- (i) the Authority against any liability or loss arising from, and any costs incurred by the Authority in connection with or to the extent contributed to by Crown obtaining Approvals for, or the carrying out of Site Establishment or the Early Works or being on the Staging Areas for the purposes of Site Establishment or being on the Crown Secured Areas for the purposes of carrying out the Early Works, except to the extent caused by the reckless or negligent act of the Authority or the Authority's Employees and Agents; and
  - (ii) LLMP against liability or loss arising from any costs incurred by LLMP in connection with or to the extent contributed to by Crown carrying out Site Establishment or the Early Works or being on the Staging Areas for the purposes of Site Establishment or being on the Crown Secured Area for the purposes of carrying out the Early Works, except to the extent caused by the reckless or negligent act of LLMP or LLMP's Employees and Agents.

#### 4.7 Right to carry out other Works

- (a) Crown may carry out part of the remaining Crown Works before the Effective Date provided Crown has:
- (i) carried out any Site Establishment or Early Works or both;
  - (ii) notified the Authority and LLMP in accordance with clause 3.7 that the current Approvals received at that time do not contain any Crown Unacceptable Conditions in relation to the Approval for Mod 8 and the Approval for the Hotel Resort DA;
  - (iii) given a further Bank Guarantee (which must not have an expiry date which is earlier than 3 years after the date of the Bank Guarantee) to LLMP, for an amount of \$[REDACTED] to secure Crown's Make Good obligations; and
  - (iv) given a copy of that further Bank Guarantee to the Authority.
- (b) Clause 4.7(a) does not limit:
- (i) a party's right to find that the terms of the Approvals for Mod 8 or the Hotel Resort DA (or both) subsequently contain Unacceptable Conditions due to those terms changing as a result of any Approvals to an Amendment Application or the determination of a Third-Party Appeal; or
  - (ii) Crown's right to make an Amendment Application (to which clause 3.12 would apply) if the Approval to Mod 8 or the Hotel Resort DA, or both, contains a condition which it would prefer was not included in that Approval but which it does not wish to notify is a Crown Unacceptable Condition.
- (c) Despite any other provision of this deed, if on the date which is 2 Business Days after the Effective Date (and unless a party has notified a dispute under clause 3.23(g) which has either:
- (i) not been determined in accordance with clause 3.23(h); or
  - (ii) has been determined pursuant to clause 3.23(g) that the moneys referred to in clause 4.1 of the Hotel Project Agreement are not due to be

paid or the bank guarantees to be provided in accordance with clause 4.7(a) of the Hotel Project Agreement are not due to be provided),

Crown has not:

- (iii) paid the moneys referred to in clause 4.1 of the Hotel Project Agreement to LLMP; or
- (iv) provided the bank guarantees to be provided to LLMP in accordance with clause 4.7(a) of the Hotel Project Agreement,

then Crown's right to carry out the Crown Works pursuant to clauses 4.1, 4.2 and 4.3 ceases immediately until those moneys are so paid or bank guarantees provided, as applicable.

#### 4.8 Top Up of Make Good Bank Guarantees

- (a) If the Effective Date has not occurred before the date that is 12 months after the date of Crown's notification under clause 4.7(a):
  - (i) LLMP may retain the Bank Guarantees provided under clauses 4.3 and 4.7(a);
  - (ii) Crown must provide an additional Bank Guarantee (which must not expire earlier than 3 years after the date of the Bank Guarantee) to LLMP, for the difference between the amount secured by the current Make Good Bank Guarantees and the Make Good Estimate Amount; and
  - (iii) Crown must provide a copy of that additional Bank Guarantee to the Authority.
- (b) If the Effective Date has not occurred before the date that is 24 months after the date of Crown's notification under clause 4.7(a):
  - (i) LLMP may retain the Bank Guarantees provided under clauses 4.3, 4.7(a) and 4.8(a);
  - (ii) Crown must provide an additional Bank Guarantee (which must not expire earlier than 3 years after the date of the Bank Guarantee) to LLMP, for the difference between the amount secured by the current Make Good Bank Guarantees and the Make Good Estimate Amount; and
  - (iii) Crown must provide a copy of that additional Bank Guarantee to the Authority.
- (c) If LLMP or Crown believes, acting reasonably, that the amount of the Make Good Bank Guarantees is less than or more than the likely cost of the Make Good, LLMP or Crown may, no more frequently than once in a 12 month period prior to the Effective Date, request the Quantity Surveyor (at LLMP's or Crown's cost as the case may be) to determine the Make Good Estimate Amount. If the Authority believes, acting reasonably, that the amount of the Make Good Bank Guarantees is less than or more than the likely cost of the Make Good, the Authority may direct that LLMP (at the Authority's cost) make such a request of the Quantity Surveyor.



- (d) If the Make Good Estimate Amount exceeds the amount of the Make Good Bank Guarantees, Crown must provide:
  - (i) an additional Bank Guarantee (which must not expire earlier than 3 years after the date of the Bank Guarantee) to LLMP for the difference between the amount secured by the current Make Good Bank Guarantees and the Make Good Estimate Amount; and
  - (ii) a copy of that additional Bank Guarantee to the Authority.
- (e) If the Make Good Estimate Amount is less than the amount of the Make Good Bank Guarantees, Crown:
  - (i) may provide a replacement Bank Guarantee (which must not expire earlier than 3 years after the date of the Bank Guarantee) to LLMP, for the Make Good Estimate Amount in exchange for LLMP delivering to Crown the then current Make Good Bank Guarantees to be replaced; and
  - (ii) must provide a copy of any such replacement Bank Guarantee to the Authority.

#### 4.9 Return of Make Good Bank Guarantees

- (a) If this deed is not terminated prior to the Effective Date, LLMP must return the Make Good Bank Guarantees to Crown within 15 Business Days after the Effective Date.
- (b) If the Authority directs Crown to effect the Make Good of the Crown Site, LLMP must return the Make Good Bank Guarantees to Crown within 10 Business Days of Crown completing the Make Good to the satisfaction of the Authority (acting reasonably).
- (c) If clause 4.10 applies but the Authority approves an Alternative Development Proposal under the PDA:
  - (i) which does not require any Make Good, LLMP must return the Make Good Bank Guarantees to Crown within 15 Business Days after the Application for the Alternative Development Proposal has been approved by the Authority; or
  - (ii) which requires partial Make Good, clause 4.12 applies.
- (d) Unless the return of the Make Good Bank Guarantees is expressly permitted by this deed, LLMP must not return the Make Good Bank Guarantees to Crown without the consent of the Authority.

#### 4.10 Carrying out Make Good

- (a) If:
  - (i) some or all of the Early Works are completed;
  - (ii) any Crown Works have commenced (other than the Early Works or works relating to Site Establishment);
  - (iii) this deed is terminated at any time prior to the Effective Date (including where it is so terminated under clause 3);
  - (iv) the Authority and LLMP have pursued an Alternative Development Proposal in accordance with clause 23A of the PDA and the Authority

has refused that Alternative Development Proposal or LLMP has not proceeded under an Alternative Development Proposal, both as contemplated by clause 23A of the PDA; and

- (v) the Authority directs Crown to effect the Make Good of the Crown Site, Crown must Make Good those works as soon as reasonably practicable.
- (b) Despite the provisions of the PDA (including clause 23A of the PDA) and any other provision of this deed, the Authority must in considering an Alternative Development Proposal take into account the level of completion of the structure forming part of the Crown Works as at the date of termination of this deed, and endeavour, in considering its approval or any terms of approval, to accommodate that level of completion.
- (c) Nothing in this deed requires Crown to appoint the Builder to undertake the Works to Make Good if the Builder proposes a fixed sum to carry out the Make Good in excess of the amounts secured by the Make Good Bank Guarantees provided by Crown prior to the date Crown is directed to carry out the Make Good by the Authority in accordance with this deed.
- (d) If clause 4.10(a) applies but LLMP and the Authority agree an Alternative Development Proposal which requires only partial Make Good then:
  - (i) the Authority may direct Crown to effect a partial Make Good (and such direction must include information regarding what partial Make Good works are required to be completed); and
  - (ii) Crown must undertake the partial Make Good.
- (e) LLMP must return the Make Good Bank Guarantees to Crown within 10 Business Days of Crown completing the partial Make Good to the satisfaction of the Authority (acting reasonably).
- (f) If Crown does not carry out the partial Make Good to the satisfaction of the Authority (acting reasonably) within a reasonable period after the date of the Authority's direction given in accordance with clause 4.10(d)(i) having regard to the nature of the Works to be partially Made Good, the Authority may direct LLMP to carry out the partial Make Good and the provisions of clause 4.12 will reapply to those partial Make Good works.

#### 4.11 Carrying out Make Good - LLMP

- (a) If:
  - (i) the Authority has directed Crown to effect the Make Good of the Crown Site in accordance with clause 4.10(a)(v); and
  - (ii) Crown has not Made Good the Crown Site within a reasonable period (having regard to the nature of the Works to be Made Good) after the date of the Authority's direction under clause 4.10(a)(v); and
  - (iii) the Authority has not notified LLMP that it approves an Alternative Development Proposal under clause 23A of the PDA,then, subject to the subsequent provisions of this clause 4, the Authority may issue to LLMP a notice directing LLMP to Make Good the Crown Site within a reasonable period of time having regard to the nature of the works for the Make Good.

- (b) The Authority must not issue a notice to LLMP under clause 4.11(a) while LLMP and the Authority are considering and negotiating an Alternative Development Proposal until the Authority is entitled to do so in accordance with clause 23A of the PDA and clause 4.10(a) or 4.10(d).

#### 4.12 Proceeds of Make Good Bank Guarantees

- (a) If:
- (i) the Authority has issued a notice to LLMP under clause 4.11(a) requiring LLMP to carry out Make Good;
  - (ii) LLMP has carried out Make Good Works in accordance with this deed and notified the Authority of the works completed and the amount incurred in carrying out those works; and
  - (iii) the Quantity Certifier has certified the amount notified by LLMP as being incurred in carrying out Make Good Works,
- LLMP may claim on the Make Good Guarantees to pay for all Costs associated with the Make Good certified by the Quantity Surveyor, by progress instalments (made not less than monthly).
- (b) If the cost of the Make Good or partial Make Good, as appropriate, exceeds the proceeds of the Make Good Bank Guarantees, Crown must pay LLMP the shortfall between the cost of the Make Good and the proceeds of the Make Good Bank Guarantees within 10 Business Days of receiving reasonable documentary evidence of the Costs incurred by LLMP in the Make Good.
- (c) If the cost of the Make Good is less than the proceeds of the Make Good Bank Guarantees, LLMP must pay such surplus to Crown within 10 Business Days of completing the Make Good.

#### 4.13 Replacement or Cash Deposit

- (a) If an Make Good Bank Guarantee has an expiry date, Crown must, if LLMP has not returned the Make Good Bank Guarantee to Crown in accordance with clause 4.9, provide:
- (i) LLMP with a replacement Make Good Bank Guarantee in the same amount no later than 10 Business Days prior to that expiry date, in exchange for LLMP delivering to Crown the Make Good Bank Guarantee to be replaced; and
  - (ii) the Authority with a copy of that replacement Make Good Bank Guarantee no later than 10 Business Days prior to that expiry date.
- (b) If Crown fails to provide LLMP with the replacement Make Good Bank Guarantee as required, LLMP:
- (i) may call on the full amount of the expiring Make Good Bank Guarantee without notice to Crown;
  - (ii) must hold the amount of that Make Good Bank Guarantee as a cash deposit (**Cash Deposit**) in a separate bank account in the name of LLMP (**Cash Deposit Account**) (and, if LLMP calls on more than one Make Good Bank Guarantee under this clause 4.13(a), each Cash Deposit must be in a separate Cash Deposit Account); and

- (iii) may withdraw money (including accrued interest) from a Cash Deposit Account and use that money:
  - A. as if the Cash Deposit were the amount secured by the relevant Make Good Bank Guarantee to pay for costs incurred in relation to the Make Good; and
  - B. to pay all Costs and Taxes payable in connection with that Cash Deposit Account; and
  - C. must return the amount held in the relevant Cash Deposit Account (including accrued interest) on the same terms of clause 4.9 or 4.12 (as applicable) as if the amount in the Cash Deposit Account were the relevant Make Good Bank Guarantee.

#### 4.14 Status of Make Good Bank Guarantees

Despite any other provision of this clause 4, the parties acknowledge and agree that LLMP holds the Make Good Bank Guarantees and the proceeds of the Make Good Bank Guarantees (including any Cash Deposit and any amount in a Cash Deposit) on trust for LLMP and the Authority (for their respective interests pursuant to this clause 4) but on the basis that:

- (a) the Authority hereby irrevocably consents to LLMP claiming on the Make Good Bank Guarantees where it is entitled to do so in accordance with the previous provisions of this clause 4;
- (b) if:
  - (i) the Authority has directed LLMP to Make Good the Crown Site in accordance with clause 4.11 but LLMP has failed to Make Good the Crown Site within a reasonable period of time having regard to the nature of the works for the Make Good; or
  - (ii) an LLMP Insolvency Event occurs and the Make Good has not been carried out and completed,
 (collectively the **Make Good Default Events**), within 3 Business Days after the occurrence of a Make Good Default Event:
  - (iii) LLMP must deliver the Make Good Bank Guarantees to the Authority together with notices of assignment in favour of the Authority signed by LLMP to each bank which issued the Make Good Bank Guarantees;
  - (iv) where clause 4.13 applies, LLMP must pay the proceeds of the Make Good Bank Guarantees or the Cash Deposit Account to the Authority; and
  - (v) if directed by the Authority, LLMP must:
    - A. assist the Authority to obtain replacement Make Good Bank Guarantees in favour of the Authority;
    - B. claim against the Make Good Bank Guarantees and pay the proceeds to the Authority; or
    - C. otherwise comply with the Authority's directions in relation to the Authority's interest in the Make Good Bank Guarantees; and

- (c) the Authority must apply the proceeds of the Make Good Bank Guarantees which it receives pursuant to this clause 4.14 towards the cost of the Make Good and (without prejudice to the Authority's rights in relation to LLMP's failure) LLMP has no further obligation to complete the Make Good.

#### **4.15 Termination before Effective Date and survival of clauses**

Clauses 4.6, 4.9, 4.10, 4.11, 4.12, 4.13 and 4.14:

- (a) apply where this deed is terminated before the Effective Date; and
- (b) survive termination of this deed.

#### **4.16 Nature of make good**

- (a) Where this deed is terminated either:

- (i) before the Effective Date; or
- (ii) pursuant to clause 3,

the Authority may, subject to the provisions of this clause 4, direct Crown to carry out the Make Good Works.

- (b) Where the deed is terminated either:

- (i) after the Effective Date; or
- (ii) other than pursuant to clause 3,

the Authority may, subject to the provisions of clause 39.1, direct Crown to carry out the Make Good Works.

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### **5. Objectives and risks**

#### **5.1 Barangaroo Project Objectives**

The Authority's objective for the Barangaroo Project is to position Barangaroo as the next global reference point in urban waterfront renewal and provide an important example of leadership in balancing economic, environmental and community responsibilities.

The Authority's objectives include the following elements:

- (a) Economic

- (i) strengthen Sydney's position as a globally competitive city – attracting inward investment and exporting financial services;
- (ii) create awareness of Sydney as a location for new regional and global headquarters, with long term benefits to the economy;
- (iii) provide new opportunities for companies to locate to a city that is consistently "top ten" for liveability;
- (iv) create a source of funds to assist with the creation and ongoing maintenance of a significant new harbour headland and foreshore Public Domain;



- (v) achieve best value for money consistent with the economic, environmental and social objectives through providing opportunities for participation by the private sector;
- (b) Environment
  - (i) realise the opportunity to create a harbour headland park that responds to the natural attributes of Sydney Harbour with an archipelago of green headlands on the western harbour;
  - (ii) create a new environmentally and ecologically sustainable city precinct bringing together world leading design and innovation in environmental building design;
  - (iii) create the opportunity for world class architectural and urban design outcomes that enhance Barangaroo, respect the built surrounds, engage the Sydney CBD with the harbour's edge and provide a new façade expressing design excellence to the western edge of the city;
  - (iv) provide the opportunity for world leading precinct scaled sustainability innovations in the fields of water cycle management, reduction in greenhouse gas emissions and improved technology in waste management;
  - (v) address the Contamination and the Significant Contamination in the Declaration Area, and the Contamination in the other parts of the Site;
  - (vi) adopt world leading public transport targets that reduce car travel into the CBD, limit on site car parking and provide safe and efficient connections to a range of transport modes;
- (c) Community
  - (i) maintain and reinforce Sydney as the major point of commercial and cultural exchange within Australia and the Asia-Pacific Region, supporting the diversity of people, culture and ideas that has enriched and now defines the character of Sydney;
  - (ii) return and reconnect Barangaroo to the people of Sydney by re-establishing physical and social connections severed in recent history, opening the foreshore to the community and providing places for gathering and interaction;
  - (iii) provide new community and cultural facilities programmed to allow for engagement, activation and interaction with both local, metropolitan and regional users; and
  - (iv) allow for the creation of innovative facilities for the benefit of the Sydney metropolitan population and its visitors.

## 5.2 Crown Site Project Objectives

The Authority's objectives for the design and delivery of the Crown Project are to:

- (a) create an iconic gaming, hotel, residential, retail and entertainment precinct that establishes a world benchmark in urban waterfront design integrating new harbour foreshore public domain with buildings exhibiting design excellence of the highest order;

- (b) provide a restricted gaming facility which complies with world's best standard for VIP gaming casinos in relation to sustainability obligations and a hotel resort (including residential) which complies with the standards for environmental sustainability for Barangaroo under this deed; and
- (c) provide a development product which attracts domestic and overseas visitors and creates jobs for local communities to ensure an active population presence within Barangaroo.

### 5.3 Crown Project Risks

Unless otherwise provided in this deed or the other Project Documents, as between Crown and the Authority, Crown accepts all risks in connection with the Crown Project, including as to:

- (a) carrying out all elements of the Crown Project;
- (b) the condition of the Site and the Crown Essential Infrastructure Areas as from the Commencement Date;
- (c) whether or not the Site and the Crown Essential Infrastructure Areas are suitable for the Crown Project and the Works;
- (d) Environmental Liabilities;
- (e) whether the actual Cost of the Crown Project is greater than the Cost of the Crown Project as estimated by Crown;
- (f) whether the actual revenue and profit derived by Crown from the Crown Project is less than the revenue and profit from the Crown Project estimated by Crown;
- (g) following receipt of the Approvals for the Mod 8 and the Hotel Resort DA, obtaining any further Approvals and Modifications; and
- (h) following receipt of the Approvals for the Mod 8 and the Hotel Resort DA, obtaining all necessary additional consents or approvals from Public Authorities.

### 5.4 Risk of other developments

- (a) Crown acknowledges that the Authority:
  - (i) will continue to consider its development options for other potential development sites within Barangaroo and the release of any additional development sites within Barangaroo will be at the Authority's sole discretion in terms of timing and process; and
  - (ii) subject to this deed, is entitled to pursue any other developments within or outside Barangaroo excluding the Crown Site, during the construction phase.
- (b) The parties acknowledge and agree that, subject to the terms of this deed, nothing in this clause 5.4 in any way limits or fetters:
  - (i) Crown's rights at law to object or to take proceedings in relation to any other developments or applications for other developments outside the Crown Site; or
  - (ii) LLMP's rights at law to object or to take proceedings in relation to any other developments or Applications within the Crown Site.

(c) LLMP and Crown:

- (i) acknowledge that the Integrated Hotel Resort and the LLMP Residential Buildings are in close proximity to each other; and
- (ii) agree to act reasonably and in good faith to work together cooperatively and consult with each other to limit the adverse impact the Integrated Hotel Resort and the LLMP Residential Buildings and their respective uses may have on each other.

(d) Notwithstanding clause 77 of the Building Management Statement,

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(f) Generally:

- (i) LLMP acknowledges that the prominence and iconic stature of the Integrated Hotel Resort on Sydney Harbour and associated guest experience is of critical importance to Crown; and

- (ii) Crown acknowledges that preservation and optimisation of the development value opportunity at Barangaroo is of critical importance to LLMP.
- (g) LLMP and Crown agree to meet and discuss any proposed Application in good faith, which either LLMP or Crown reasonably considers contravenes the principles in either clauses 5.4(f)(i) or (ii).
- (h) LLMP and Crown acknowledge that uses proposed under Mod 8 include:
  - (i) for the Integrated Hotel Resort; residential, retail and tourism (including gaming); and
  - (ii) for the LLMP Residential Buildings; residential, retail, key worker housing, community and commercial (office).
- (i) LLMP and Crown must consult each other, each act reasonably and in good faith, and must obtain the other's prior written consent prior to any Application being lodged with the Authority by LLMP or Crown for its approval under the PDA or under this deed or with any Consent Authority which introduces some other use not referred to in clause 5.4(h) in respect of their respective buildings referred to in that clause.
- (j) Where an Application is made or a development is undertaken in Stage 1B (by LLMP) which did not otherwise expressly require Crown's approval under this clause 5.4 but nevertheless is reasonably considered by Crown to materially adversely affect the Integrated Hotel Resort, LLMP and Crown each agree to act reasonably and in good faith to seek to resolve the issue without causing unreasonable loss of value, delay or cost to either LLMP or Crown.
- (k) Where an Application is made or a development is undertaken by Crown which did not otherwise expressly require LLMP's approval under this clause 5.4 but nevertheless is reasonably considered by LLMP to materially adversely affect its developments on Barangaroo South, LLMP and Crown each agree to act reasonably and in good faith to seek to resolve the issue without causing unreasonable loss of value, delay or cost to either LLMP or Crown.
- (l) Unless this deed is terminated earlier in accordance with its terms, this clause 5.4 survives:
  - (i) as long as the PDA remains on foot; and
  - (ii) irrespective of whether a Lease has been granted.

## 5.5 Central Barangaroo Sight Lines

- (a) Crown and LLMP acknowledge that the optimisation of development at Central Barangaroo is of critical importance to the Authority.
- (b) The Authority acknowledges that retention of sight lines across Central Barangaroo from the Harbour Bridge to the Sydney Opera House (and including the Harbour Bridge to the Sydney Opera House):
  - (i) in the case of LLMP, from the residential towers to be constructed on Stage 1B; and
  - (ii) in the case of Crown from the Integrated Hotel Resort to be constructed on the Crown Site,
 is of critical importance for Crown and LLMP.

- (c) Prior to considering or approving any application which provides for development different to that provided for in the Concept Plan Approval as at the Commencement Date as it relates to (in part or in whole) Central Barangaroo, the Authority will discuss and negotiate in good faith with Crown and LLMP equally, to agree any changes to that application so as to retain the sight lines referred to in clause 5.5(b), while at the same time optimising the development opportunities for Central Barangaroo.
- (d) The Authority confirms that any agreement between the NSW Government, the Authority or any other Public Authority:
  - (i) and Crown on height restrictions and/or sight lines across Central Barangaroo must be offered to LLMP on an equivalent basis; and
  - (ii) and LLMP on height restrictions and/or sight lines across Central Barangaroo must be offered to Crown on an equivalent basis.

## 5.6 No reliance on materials provided

The Authority does not warrant the accuracy or completeness of any materials provided to Crown by the Authority. Crown warrants that, as between Crown and the Authority, it has:

- (a) made its own assessment of any materials so provided and their accuracy; and
- (b) not relied on any materials so provided in entering into this deed,

and Crown may not make any claim against the Authority in connection with any materials so provided including in connection with their accuracy or completeness.

## 5.7 Authority exercising statutory powers

- (a) Nothing in any Project Document operates to restrict or otherwise affect the Authority's statutory discretion in exercising its powers as a statutory authority.
- (b) If there is any conflict between the unfettered discretion of the Authority in the exercise of such powers, and the performance of the Authority's obligations in a Project Document, the former prevails.
- (c) Crown agrees that the Authority is not liable for, and releases the Authority from, liability or loss arising from, and Costs incurred in connection with, the Authority's proper exercise of its powers as a statutory authority.

## 5.8 Stages 1B and 1C Public Domain Works

- (a) The Authority and LLMP disclose to Crown that the plans and specifications for the Stages 1B and 1C Public Domain Works are not yet agreed under the PDA. The Authority and LLMP must progress the development and approval of the Stages 1B and 1C Public Domain Works in accordance with the PDA and must disregard and will not take into account any potential proposal by Crown to enhance the Stages 1B and 1C Public Domain Works under clause 5.10.
- (b) Prior to agreeing the plans and specifications for the Stages 1B and 1C Public Domain Works, in accordance with the PDA:
  - (i) the Authority and LLMP must consult with Crown;
  - (ii) LLMP must provide a copy of the Stages 1B and 1C Public Domain Works plans and specifications to Crown at the same time as they are provided to the Authority; and



- (iii) the Authority, LLMP and Crown must meet within 20 Business Days after the date on which plans and specifications are provided to the Authority and Crown by LLMP to discuss those Stages 1B and 1C Public Domain Works and the plans and specifications.
- (c) Once the plans and specifications for the Stages 1B and 1C Public Domain Works have been finalised and approved under the PDA and by all relevant Public Authorities, LLMP must provide a copy of the plans and specifications to the Authority and Crown and those plans and specifications will comprise the plans and specifications for the Works Portions comprising to the Stages 1B and 1C Public Domain Works under the PDA.

## 5.9 Budgets and Standards for Public Domain

- (a) The parties acknowledge and agree that:
  - (i) the Crown Public Domain Standards Plan shows the indicative standard for the proposed Crown Public Domain;
  - (ii) the Stages 1B and 1C Public Domain Works are subject to a planning, development, consultation and approval process to be initiated by LLMP and approved by the Authority through the process set out in the PDA for Unscoped Barangaroo Works, but will be of no lesser standard than the standard shown in the Crown Public Domain Standards Plan;
  - (iii) it is their intention that the Stages 1B and 1C Public Domain Works (which includes the Crown Public Domain and the Crown Essential Public Domain) will be designed, constructed and delivered to the standards referred to in clause 5.9(a)(ii);
  - (iv) the incorporation of the standards referred to in clause 5.9(a)(iii) will ensure that the Stage 1B and 1C Public Domain Works will be of a similar quality to the Stage 1A Public Domain; and
  - (v) based on the information available to them at the Commencement Date, they are not aware of any reason why the intention referred to in clause 5.9(a)(iii) cannot be achieved.
- (b) Within 60 Business Days after the Commencement Date, LLMP must submit to the Authority a budget for Unscoped Barangaroo Works in accordance with the PDA and a high level brief description of the scope covered to enable review of the budget, for:
  - (i) Stages 1B and 1C Public Domain Works (**Stages 1B and 1C Public Domain Budget**); and
  - (ii) those parts of the Stages 1B and 1C Public Domain Works which comprise:
    - A. the Crown Public Domain (**Crown Public Domain Budget**); and
    - B. the Crown Licensed Area Base Public Domain Works.
- (c) The Stages 1B and 1C Public Domain Budget and the Crown Public Domain Budget shall budget for expenditure on the relevant parts of the Public Domain to achieve a design intent and standard consistent with the relevant standards referred to in clause 5.9(a).

- (d) The Authority must not approve a Stages 1B and 1C Public Domain Budget or Crown Public Domain Budget (as relevant) which does not satisfy clause 5.9(c).
- (e) While the Authority will review the Stages 1B and 1C Public Domain Budget and Crown Public Domain Budget in parallel, if there is any delay in the approval of the Stages 1B and 1C Public Domain Budget, this is not to delay consideration and approval of the Crown Public Domain Budget.
- (f) LLMP's proposed design for the Stages 1B and 1C Public Domain Works (which includes the Crown Essential Public Domain), shall be developed in consultation with the Authority and Crown, and provided that:
- (i) the estimated maintenance cost and economic life cycle of the Works contemplated by that design is consistent with the Authority's overall requirements for the public domain of Barangaroo South; and
  - (ii) the capped cost of the Works contemplated by that design is not more than 100% of the cost of those items allowed in the Stages 1B and 1C Public Domain Budget and the Crown Public Domain Budget (as relevant),
- then the Authority must approve that design and LLMP must deliver those works as approved under the PDA.
- (g) The Authority agrees that it will not reduce the Crown Public Domain Budget once approved under this clause 5.9.
- (h) The parties recognise that completion of the Crown Essential Public Domain Works is important to Crown being able to operate the Hotel Resort Separable Portion and agree:
- (i) they will work together in a consultative and collaborative way to each perform their respective obligations to facilitate the completion of the Crown Essential Public Domain Works on or before the Date for Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract;
  - (ii) to facilitate the completion of the Crown Essential Public Domain Works, LLMP and Crown may agree that Crown (rather than LLMP) will undertake the Crown Licensed Area Base Public Domain Works once the scope and budget for those works is agreed under clause 5.9(b)(ii); and
  - (iii) if LLMP and Crown agree that Crown will undertake the Crown Licensed Area Base Public Domain Works, LLMP must notify the Authority as soon as practicable after the agreement is made with Crown and before the relevant works are commenced, in which event:
    - A. the Authority consents to Crown undertaking the works in accordance with the scope and budget agreed under clause 5.9(b)(ii); and
    - B. the works will no longer form part of any LLMP Milestone; LLMP Works or Step-in Component.
- (i) The cost of the Crown Essential Public Domain Works (including the Crown Licensed Area Base Public Domain Works) will be paid for by the Authority or LLMP, as applicable, pursuant to the PDA, provided that the Authority will not pay for any acceleration costs agreed between LLMP and Crown.

- (j) For the removal of doubt, the parties agree that this clause 5.9 does not apply to improvements to the area licensed to Crown under the Long Term Licence which are to be constructed by Crown but does apply to the Crown Licensed Area Base Public Domain Works. The improvements to be constructed by Crown will be dealt with in accordance with the Long Term Licence.

## 5.10 Enhancements to Crown Public Domain

- (a) Crown may request the Authority's approval (which may be given or withheld in its discretion) to any enhancements to the Stages 1B and 1C Public Domain Works and such request must be accompanied by:
- (i) full plans and specifications of the proposed works;
  - (ii) an itemised estimate of the costs of maintaining those enhancements for the life cycle of each asset including manufacturers' recommendations;
  - (iii) an estimate of the costs of carrying out the works required for those enhancements; and
  - (iv) the proposed timing for the delivery of the proposed works.
- (b) Crown must consult with LLMP prior to providing to the Authority any of the materials referred to in clause 5.10(a), and LLMP may communicate with the Authority and Crown any concerns it has, acting reasonably, regarding those materials or the proposed Stages 1B and 1C Public Domain Works.
- (c) The Authority must take into account all matters reasonably raised by LLMP, and notify Crown within 20 Business Days after receipt of the information referred to in clause 5.10(a) whether or not it approves the enhancements proposed, giving reasons in the case of any refusal of approval.
- (d) Where the Authority has not approved the proposed enhancements under clause 5.10(c) and Crown wishes to proceed with the enhancements, Crown must amend the material provided under clause 5.10(a) to address the reasons for refusal given by the Authority under clause 5.10(c) and resubmit it to the Authority and provide a copy to LLMP. Crown must consult with LLMP in relation to those amended materials.
- (e) The Authority must notify Crown within 10 Business Days after receipt of the information, if any, referred to in clause 5.10(d) whether or not it approves the proposed amended enhancements and provided that the amendments submitted by Crown properly address the reasons given by the Authority under clause 5.10(c) to the satisfaction of the Authority (acting reasonably), the Authority must approve the proposed Crown Enhancement Works.
- (f) Any enhancements approved by the Authority for the Stages 1B and 1C Public Domain Works in accordance with clauses 5.10(c) or 5.10(e) shall be **Crown Enhancement Works** and shall be undertaken by LLMP pursuant to the PDA but at Crown's cost, including any incremental cost of obtaining any Approvals required for the Crown Enhancement Works beyond the Approvals necessary for the Stages 1B and 1C Public Domain Works.
- (g) On and from completion of the Crown Enhancement Works, the Authority will own, maintain and insure the Crown Enhancement Works as Public Domain Works.

## 5.11 Crown Essential Public Domain Works

- (a) The parties acknowledge and agree that it is essential for the opening of the Integrated Hotel Resort that the Crown Essential Public Domain Works are

completed on or before Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract.

- (b) Subject to any changes required by the Authority in accordance with the PDA, the standard of finish applicable to each element of the Crown Essential Public Domain Works is as set out in the Crown Public Domain Standards Plan.
- (c) LLMP must prepare the Barangaroo Works Detailed Design, the Barangaroo Works Performance Specification and Cost Estimates for the Crown Essential Public Domain Works and submit them to the Authority for approval in accordance with the PDA and for review by Crown in sufficient time to enable them to be Approved and constructed by the Date for Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract.
- (d) Once approved, LLMP must give a copy of each of the Barangaroo Works Detailed Design, the Barangaroo Works Performance Specification and Cost Estimates for the Crown Essential Public Domain Works to Crown within 5 Business Days after it is approved.
- (e) The Authority must approve or refuse approval to the plans and specifications for the Crown Essential Public Domain Works in accordance with the PDA, but on a priority basis, expeditiously and without delay.
- (f) The parties will work together in a consultative and collaborative way to facilitate the completion of the Crown Essential Public Domain Works on or before the Date for Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract.
- (g) Subject to clause 5.11(b), LLMP must construct the Crown Essential Public Domain Works to the standard referred to in Crown Public Domain Standards Plan.
- (h) The cost of the Crown Essential Public Domain Works will be paid for by the Authority or LLMP, as applicable, pursuant to the PDA, provided that the Authority will not pay for any acceleration costs agreed between LLMP and Crown.

## 5.12 Crown Essential Infrastructure

- (a) The parties recognise that completion of Crown Essential Infrastructure is important to Crown being able to operate the Hotel Resort Separable Portion and agree they will work together in a consultative and collaborative way to facilitate the completion of the Crown Essential Infrastructure on or before the Date for Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract.
- (b) The Crown Essential Infrastructure Applications which LLMP submits to the Authority for Approval under the PDA must meet the standards for each element of Crown Essential Infrastructure set out in the Crown Essential Infrastructure Annexure.
- (c) LLMP must deliver at LLMP's cost, the Crown Essential Infrastructure in accordance with the terms of the Applications as approved by the Authority under the PDA and in accordance with the PDA.

## 5.13 Clip On Boardwalk

- (a) The parties acknowledge that the plans and specifications submitted to the Authority as part of the Hotel Resort DA provide for the construction of a clip on boardwalk (**Clip On Boardwalk**) on the Foreshore Walk adjacent to the Crown Site abutting the Southern Cove and North of the concrete landing area which would result in the width of the Foreshore Walk in that area being approximately 30 metres.

- (b) Crown has proposed that it does not build the Clip On Boardwalk and instead funds Public Domain Works up to the deemed cost of the Clip On Boardwalk being \$[REDACTED]. The Authority has not agreed to that proposal and discloses that any such arrangement would require the approval of the board of directors of the Authority.
- (c) After the Commencement Date, Crown may submit a proposal for the Authority's consent to:
- (i) delete the Clip On Boardwalk from the Crown Works;
  - (ii) contribute in lieu the sum of \$[REDACTED] towards the cost of Public Domain Works located in parts of the Public Domain which are likely to be viewed by the public as being associated with the Crown Project;
  - (iii) specify items which Crown proposes are to be funded from the moneys referred to in clause 5.13(c)(ii) (which the Authority agrees will not be upgrading existing infrastructure which is already proposed to be provided as part of the Public Domain Works under the PDA); and
  - (iv) an itemised cost estimate of the items proposed by Crown under clause 5.13(c)(iii) which must be at least \$[REDACTED].
- and Crown must consult with LLMP in relation to those items and provide as a part of its submission written confirmation from LLMP of the amount for which it will construct and complete those items.
- (d) The Authority's approval to the items of Public Domain Works contemplated by this clause may be given or withheld in its sole and unfettered discretion.
- (e) The Authority must notify Crown and LLMP within 30 Business Days after receipt of Crown's proposal submitted under clause 5.13(c) whether it approves or refuses its approval:
- (i) to the deletion of the Clip On Boardwalk; and
  - (ii) to the items to be funded from the sum of \$[REDACTED].
- giving reasons in the case of any refusal of approval.
- (f) If the Authority refuses approval to any part of Crown's proposal submitted under clause 5.13, Crown must amend its proposal, in consultation with LLMP (who must provide a revised cost estimate) and resubmit it to the Authority and provide a copy to LLMP. Clauses 5.13(a), (b), (c), (d) and (e) will then reapply except that the time for the Authority's approval in clause 5.13(e) will be 15 Business Days.
- (g) Crown acknowledges that if the Authority does not agree to the deletion of the Clip On Boardwalk, Crown remains obliged as part of its obligations under this deed to build the Clip On Boardwalk as part of the Crown Works under this deed at its cost.
- (h) In relation to any construction of the Clip On Boardwalk:
- (i) the Authority will grant a licence to use such parts of the Public Domain as are reasonably required for the construction of the Clip On Boardwalk;
  - (ii) the Authority must assist LLMP in obtaining rights of access to those parts of Sydney Harbour required for the construction of the Clip On Boardwalk;



- (iii) LLMP must construct the Clip On Boardwalk in accordance with the PDA as if the Clip On Boardwalk were part of the Barangaroo Works but entirely at the cost of Crown;
  - (iv) Crown must obtain all required Approvals for the Clip On Boardwalk at its cost, but the Authority and LLMP must assist Crown in obtaining the consent of Roads and Maritime Services to the erection of the Clip On Boardwalk; and
  - (v) it is acknowledged that Roads and Maritime Services may not agree to the erection of the Clip On Boardwalk in Sydney Harbour.
- (i) On and from completion of the Clip On Boardwalk, the Authority will own the Clip On Boardwalk and will be responsible for, and bear the cost of, its maintenance and insurance as part of the Public Domain.
  - (j) If the Authority agrees to the deletion of the Clip On Boardwalk and the items to be paid for by Crown in lieu of the expenditure of \$[REDACTED] on the Clip On Boardwalk:
    - (i) the Authority must direct LLMP to install the items as agreed in accordance with the PDA as part of the Barangaroo Works in positions within the area referred to in clause 5.13(c)(ii);
    - (ii) LLMP must use best endeavours to obtain all necessary Approvals for the items agreed, install the items agreed as part of the Barangaroo Works under the PDA in the positions referred to in this clause and those items agreed at a cost of at least \$[REDACTED];
    - (iii) the items must be paid for by Crown (and the Authority will not contribute to any amount in excess of \$[REDACTED]); and
    - (iv) on and from completion, the Authority will own the items so installed and be responsible for, and bear the cost of, their maintenance and insurance as part of the Public Domain.

## 5.14 Pontoon

- (a) LLMP and Crown propose to develop the Pontoon and the Authority has no objection in principle to that proposal on the terms set out in this clause 5.14, subject to:
  - (i) the Authority approving the plans and specifications for the Pontoon;
  - (ii) consideration by the Authority of the impact of the Pontoon in the context of the overall amendments to the Southern Cove precinct, following consultation with the design panel appointed by the Authority; and
  - (iii) the Authority not being liable for any costs whatsoever in relation to the design, required Approvals or construction of the Pontoon, and it is agreed between LLMP and the Authority that the Pontoon is not part of the Unscoped Barangaroo Works under the PDA.
- (b) LLMP and Crown may request the Authority's approval for the erection of the Pontoon and any such request must be accompanied by:
  - (i) full plans and specifications for the proposed works;
  - (ii) an itemised estimate of the cost of maintaining the Pontoon for the life cycle of the Pontoon, including where applicable, manufacturer's recommendations;
  - (iii) an estimate of the cost of carrying out the works required for the Pontoon; and

- ## 5.15

## **6. Crown payments**

### **6.1 Public Authority Levies**

In consideration for the right granted to Crown to undertake the Crown Project in accordance with this deed, without limiting clause 6.2 but subject to clause 27.5, Crown must pay all Public Authority Levies (but excluding any Cost or levy imposed by any Public Authority arising out of the Authority's exercise of its rights under clause 30.7).

### **6.2 Outgoings and other liabilities**

- (a) Subject to clause 6.7, in consideration for the right granted to Crown to undertake the Crown Project in accordance with this deed as from the date access is granted, and to the extent it is granted, to the Crown Secured Areas or parts thereof under clause 14 and then, during the Development Period, Crown:
- (i) must pay on time all Outgoings whether imposed on the Authority, LLMP or the Crown Secured Area and, if required by the Authority, produce to the Authority the receipts for those payments within 20 Business Days after the respective due dates for payment;
  - (ii) unless otherwise provided in this deed, must pay all other Costs that are directly incurred in respect of Crown Secured Area as if Crown were the owner of Crown Secured Area, and the Authority has no responsibility in that regard; and
  - (iii) takes, and is subject to, the same responsibilities and liabilities in regard to Crown Secured Area including in respect of:
    - A. persons and property; and
    - B. capital and structural works, repairs and maintenance,

which Crown would take and be subject to if Crown were the owner of Crown Secured Area.

- (b) If Crown does not pay the amounts payable under this clause 6.2 when they become due, the Authority may, if it thinks fit, pay the same and Crown must reimburse the Authority on demand for any sum or sums so paid.
- (c) Crown agrees that where a Relevant Law Change occurs, it must pay to the Authority such amounts equivalent to those which it would have paid to the Council of the City of Sydney (in respect of rates) or the NSW Office of State Revenue (in respect of land tax) but for that Relevant Law Change in respect of Barangaroo. Such payments are to be made at the same time as LLMP would have otherwise made such payments to the City of Sydney or the NSW Office of State Revenue (as the case may be).

### **6.3 Payment of Outgoings despite termination**

The Outgoings payable by Crown pursuant to clause 6.7 are payable notwithstanding that this deed may have been terminated before the Outgoings for any particular period prior to the date of termination are capable of being calculated. In that case, the Authority's reasonable estimate of the Outgoings for that period, as between the Authority and Crown, will be taken to be the actual Outgoings payable by Crown under clause 6.2 without any further adjustment.

### **6.4 Authority's right to reimbursement**

Subject to clause 6.7, Crown must reimburse the Authority on demand for any moneys paid by the Authority in respect of any liability expressly imposed on Crown under this deed, notwithstanding that any Law imposes that liability on the Authority.

### **6.5 Indemnity for refund**

Crown indemnifies the Authority against any liability or loss arising from, and any Costs incurred in connection with, any claim by Crown (or any person claiming through Crown) for refund or repayment of any amount payable by Crown under this clause 6, other than a right for refund or repayment, specifically provided for in this deed or at law.

### **6.6 Additional payment**

- (a) Until such time as the Authority gives Crown written notice that it accepts the offer referred to in clause 7.1(a), Crown must pay to the Authority amounts equivalent to the amounts that Crown would have been required to pay the Authority pursuant to clause 7.2 if the Authority had given Crown written notice that it had accepted that offer, at such times, and in such a manner, as contemplated in clause 7.2 and disregarding clause 7.1(c).
- (b) Any amounts payable under clause 6.6(a) will be payable by Crown in addition to any other amounts payable pursuant to clause 6.
- (c) If the Authority gives Crown written notice that it accepts the offer referred to in clause 7.1(a) after Crown has paid any amount to the Authority pursuant to clause 6.6(a), then any amount paid by Crown pursuant to clause 6.6(a) will be taken to be in part satisfaction of Crown's obligations to pay contributions under the Barangaroo Contributions Plan and clause 7.2.

### **6.7 Integrated Hotel Resort GFA**

Despite any other provision of this deed, or the PDA, 15,000m<sup>2</sup> of the GFA of the Integrated Hotel Resort is to be excluded for the purposes of calculating any fees and levies which are charged to Crown by the Authority or are reimbursable by Crown to the Authority, either directly or via LLMP, except:

- (a) fees in relation to Applications for Approvals;
- (b) Estate Levies; and
- (c) Outgoings or other fees or charges levied by another Public Authority attributable to the Crown Site or based on actual usage by or services provided to the Integrated Hotel Resort, provided that such fees or charges are of a type which are usually or customarily levied on or charged to landowners in the City of Sydney, such as Council rates, water rates, land tax or fees for waste removal,

and noting that the exclusion of 15,000m<sup>2</sup> from the GFA of the Integrated Hotel Resort was taken into account when Crown and the Authority agreed the Crown Development Costs Amount for the purposes of clauses 6, 7 and 8.

## **7. Offer - Developer Contributions**

### **7.1 Offer**

- (a) Crown irrevocably offers to the Authority that it will be bound by the provisions of clauses 7.2 to 7.5 as they apply to the Crown Site, if the Barangaroo Contributions Plan is prepared and approved by the Authority and approved by the Minister.
- (b) The Authority may accept Crown's irrevocable offer by giving Crown written notice that the Barangaroo Contributions Plan is prepared and approved by the Authority and approved by the Minister.
- (c) If the Barangaroo Contributions Plan is never prepared and approved by the Authority and approved by the Minister, clauses 7.2 to 7.5 never operate.

### **7.2 Developer Contribution**

Crown must pay to the Authority a Developer Contribution equivalent to 1% of the Crown Development Costs Amount (being \$[REDACTED]) on or before the Contribution Payment Date.

### **7.3 Inconsistency**

If the Barangaroo Contributions Plan is inconsistent with this clause 7 in any respect, the Authority and Crown must act reasonably to agree and document changes to this clause 7, so that this clause 7 is consistent with the Barangaroo Contributions Plan.

### **7.4 Acknowledgements**

Except as otherwise provided in this deed, Crown acknowledges and agrees that the Authority:

- (a) has not made any warranty or representation that the Developer Contribution must, or will, be used for, or expended on, a particular purpose by any Public Authority to which the Authority transmits the Developer Contribution;
- (b) has no obligation to use or expend the Developer Contribution for a particular purpose, except as required by the Barangaroo Contributions Plan; and
- (c) is not required to repay to Crown, and Crown is not entitled to a repayment of, the Developer Contribution.

### **7.5 Security**

For the avoidance of doubt, Crown's obligations under this clause 7 are included in the Crown Guaranteed Obligations.



## 7.6 Satisfaction of part PDA Developer Contribution obligations

- (a) For so long as this deed is not terminated, the obligations of Crown under this clause 7 are in substitution for any obligation of LLMP under the PDA to pay any Developer Contributions under the PDA in relation to the Works Portion which comprises the Crown Works.
- (b) If this deed is terminated, the obligations of LLMP in relation to Developer Contributions under the PDA apply in full.

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## 8. Public Art and Cultural Development Contribution

### 8.1 Public Art and Cultural Development Contribution

- (a) The Authority and LLMP have together prepared the Draft Barangaroo Public Art and Cultural Plan in order to ensure cohesive delivery of Integrated Public Art across the whole of Barangaroo. The Authority must notify Crown when the Draft Barangaroo Art and Cultural Plan has been approved by the Department of Premier and Cabinet.
- (b) Crown must:
  - (i) provide the Public Art and Cultural Development Contribution in the manner described in clauses 8.1(c) to 8.11; and
  - (ii) carry out Works in accordance with the Barangaroo Public Art and Cultural Plan,in the manner described in this clause 8.
- (c) The Public Art and Cultural Development Contribution must be provided by Crown in respect of the Crown Works as follows:
  - (i) payment to the Authority of an amount equivalent to 0.5% of the Crown Development Costs Amount (being \$[REDACTED]) to be spent by the Authority on public art and/or cultural development facilities, programs and initiatives with not less than 0.25% to be spent within the vicinity of the Crown Site and the balance within Stage 1;
  - (ii) the carrying out of Works at a cost of no less than an amount equivalent to 0.2% of the Crown Development Cost Amount (being \$[REDACTED]), to facilitate Integrated Public Art in the façade and/or internal public spaces of the Building within the Crown Site, as contemplated by clause 8.3; and
  - (iii) the carrying out of Works at a cost of no less than an amount equivalent to 0.3% of the Crown Development Costs Amount (being \$[REDACTED]), to facilitate Integrated Public Art within external public spaces within the Crown Site as contemplated by clause 8.4.
- (d) The amounts referred to in clauses 8.1(c)(i) may also be used to fund:
  - (i) the costs of the Arts and Culture Panel;
  - (ii) the costs of preparing the Building Integrated Art Plan and the External Integrated Art Plan; and
  - (iii) provided there is a reasonable connection between the fee or cost and the Integrated Public Art, any one or more of the following:
    - A. the fees payable with respect to any Application for;

- B. the costs of preparing, including relevant consultant's fees, any Application for;
- C. the costs of installing; and
- D. the costs incurred in the project management of,

any of the Works funded by the Public Art and Cultural Development Contribution,

to the intent that none of:

- (iv) the 0.25% of the public art and cultural development component to be spent in the vicinity of the Crown Site referred to in clause 8.1(c)(i);
- (v) the 0.2% of the Crown Development Cost Amount referred to in clause 8.1(c)(ii); or
- (vi) the 0.3% of the Crown Development Cost Amount referred to in clause 8.1(c)(iii),

is to be expended on any administration costs associated with the management of the public art for Barangaroo.

## 8.2 Public art programs

- (a) In respect of the Crown Works, Crown must pay to the Authority an amount equivalent to 0.5% of the Crown Development Costs Amount (being \$ [REDACTED] on or before the Contributions Payment Date (being the sum referred to in clause 8.1(c)(i)).
- (b) The Authority must spend:
  - (i) not less than 50% of any amount received under this clause 8.2 on public art and/or cultural development facilities, programs and initiatives within the vicinity of the Crown Site; and
  - (ii) the balance of any amount received under this clause 8.2 on public art and/or cultural development facilities, programs and initiatives within Barangaroo,

although the timing and allocation of any such expenditure is at the sole discretion of the Authority.
- (c) The scope and quantum (subject to that quantum being not less than 50% of the amount received under clause 8.2) on public art and/or cultural development facilities, programs and initiatives within the vicinity of the Crown Site will be determined in the first instance by the Arts and Culture Panel.
- (d) Crown acknowledges that as at the Commencement Date, there is a proposal being considered by the Premier for the installation of a significant piece of art which may be in or near the Southern Cove and that the moneys referred to in clause 8.2(b)(i) and 8.2(c) can be applied towards that piece of art.
- (e) Subject to clauses 8.2(b), 8.2(c) and 8.8(d), Crown may make submissions to the Arts and Culture Panel in relation to the scope of the works and quantum to be spent within the vicinity of the Crown Site. Unless the works and quantum has already been approved by the Premier or the Arts and Culture Panel, the Arts and Culture Panel must take any submission made by Crown into account.

### 8.3 Public space of buildings

- (a) In sufficient time to ensure that it can comply with the following provisions of this clause 8.3, Crown must prepare a Building Integrated Art Plan for the Crown Works, for an anticipated cost of no less than an amount equivalent to 0.2% of the Crown Development Costs Amount (being \$[REDACTED]) (being the sum referred to in clause 8.1(c)(ii)).
- (b) No later than 6 months after Substantial Commencement of the Crown Works, Crown must provide to the Authority a Building Integrated Art Plan for the Crown Works.
- (c) The Building Integrated Art Plan must:
  - (i) detail Works Crown intends to undertake to facilitate Integrated Public Art in the façade and/or internal public spaces of the Building, for an anticipated cost of no less than an amount equivalent to 0.2% of the Crown Development Costs Amount (being \$[REDACTED]);
  - (ii) include a maintenance plan, together with an estimate of the Costs which are likely to be incurred pursuant to that plan, for the maintenance of the relevant art which will be installed pursuant to the Building Integrated Art Plan;
  - (iii) detail a timetable by which those Works are to be completed, including an Integrated Art Final Completion Date, which must occur on or before the date which is 6 months after the Date of Practical Completion of the whole of the Crown Works; and
  - (iv) be consistent with the Barangaroo Public Art and Cultural Plan.
- (d) The Building Integrated Art Plan in respect of the Crown Works may contemplate Crown undertaking Works to facilitate Integrated Public Art in the façade and/or internal public spaces of the Building within the Crown Site or outside of the Crown Site (including the Crown Public Domain).
- (e) Crown must have regard to the comments of the Authority in finalising its Building Integrated Art Plan and use all reasonable endeavours to obtain the Authority's approval to the Building Integrated Art Plan, no later than the Crown Works Commencement Date. The Authority must act reasonably and in a timely manner.
- (f) Crown may amend a Building Integrated Art Final Plan from time to time, provided that:
  - (i) Crown consults with the Authority with respect to any such amendment and procures the Authority's approval of the amended Building Integrated Art Final Plan, it being agreed that the Authority must act in a reasonable and timely manner; and
  - (ii) at all times the Building Integrated Art Final Plan details Works Crown intends to undertake to facilitate Integrated Public Art in the façade and/or internal public spaces of the Building within the Land, for an anticipated cost of no less than an amount equivalent to 0.2% of the Crown Development Costs Amount (being \$[REDACTED]).
- (g) Crown must carry out and complete the Works referred in the Building Integrated Art Final Plan, in accordance with the timetable set out in the Building Integrated Art Final Plan, and in any event by no later than the Integrated Art Final Completion Date, extended to accommodate any extensions in time granted to Crown under clause 19.

- (h) No later than 20 Business Days after the Integrated Art Final Completion Date, Crown must provide the Authority with a statement (**Internal Costs and Works Statement**) which:
- (i) provides full details of Works undertaken by Crown pursuant to the Building Integrated Art Final Plan, to a level of detail reasonably satisfactory to the Authority;
  - (ii) is accompanied by a certificate executed by the Project Director or a director of Crown, certifying that the statement accurately provides full details of the Works undertaken by Crown pursuant to the Building Integrated Art Final Plan, and full details of the costs incurred by Crown in undertaking those Works; and
  - (iii) provides full details of costs incurred by Crown in undertaking those Works, along with documents and records to reasonably verify those Works, including a certificate from the Quantity Surveyor.
- (i) If the total costs referred to in the Internal Costs and Works Statement are less than an amount equivalent to 0.2% of the Crown Development Costs Amount (being \$[REDACTED]), Crown must pay the difference as a payment to the Authority, at the same time that Crown provides the Internal Costs and Works Statement to the Authority.
- (j) Crown must:
- (i) act reasonably and co-operate with the Authority;
  - (ii) provide to the Authority all information reasonably requested by it; and
  - (iii) answer any questions reasonably asked by the Authority.
- in relation to the Internal Costs and Works Statement (and supporting documents and records) provided to the Authority.

## 8.4 External public spaces

- (a) In sufficient time to ensure that it can comply with the following provisions of this clause 8.4, Crown must prepare an External Integrated Art Plan for the Crown Works, for an anticipated cost of no less than an amount equivalent to 0.3% of the Crown Development Costs Amount (being \$[REDACTED]) (being the sum referred to in clause 8.1(c)(iii)).
- (b) No later than 20 Business Days after Substantial Commencement of the Crown Works, Crown must provide to the Authority an External Integrated Art Plan for the Crown Works.
- (c) The External Integrated Art Plan must:
- (i) detail Works Crown intends to undertake to facilitate Integrated Public Art in external public spaces within the Crown Site, for an anticipated cost of no less than an amount equivalent to 0.3% of the Crown Development Costs Amount (being \$[REDACTED]);
  - (ii) include a maintenance plan, together with an estimate of the Costs which are likely to be incurred pursuant to that plan, for the maintenance of the relevant art which will be installed pursuant to the External Integrated Art Plan; and

- (iii) detail a timetable by which those Works are to be completed, including an Integrated Art Final Completion Date which must be later than the date which is 6 months after the Date of Practical Completion of the whole of the Crown Works.
- (d) An External Integrated Art Plan prepared in respect of the Crown Works may contemplate the undertaking of Works to facilitate Integrated Public Art in external public spaces within parts of the Crown Site outside of the Crown Works (including the Crown Public Domain).
- (e) Crown must have regard to the comments of the Authority in finalising its External Integrated Art Plan and use all reasonable endeavours to obtain the Authority's approval to the External Integrated Art Plan, no later than 6 months after Substantial Commencement of the Crown Works. The Authority must act reasonably and in a timely manner.
- (f) Crown may amend the External Integrated Art Final Plan from time to time, provided that:
  - (i) Crown consults with the Authority with respect to any such amendment and procures the Authority's approval of the amended External Integrated Art Final Plan, it being agreed that the Authority must act in a reasonable and timely manner; and
  - (ii) at all times the External Integrated Art Final Plan details Works Crown intends to undertake to facilitate Integrated Public Art within external public spaces within the Crown Site, for an anticipated cost of no less than an amount equivalent to 0.3% of the Crown Development Costs Amount (being \$[REDACTED]).
- (g) Crown must carry out and complete the Works referred to in an External Integrated Art Final Plan, in accordance with the timetable set out in that External Integrated Art Final Plan, and in any event by no later than the Integrated Art Final Completion Date, extended to accommodate any extensions of time granted to Crown under clause 19.
- (h) No later than 20 Business Days after the Integrated Art Final Completion Date, Crown must provide the Authority with a statement (**External Costs and Works Statement**) which:
  - (i) provides full details of Works undertaken by Crown pursuant to the External Integrated Art Final Plan, to a level of detail reasonably satisfactory to the Authority;
  - (ii) is accompanied by a certificate executed by the Project Director or a director of Crown, certifying that the statement accurately provides full details of the Works undertaken by Crown pursuant to the External Integrated Art Final Plan, and full details of the costs incurred by Crown in undertaking those Works; and
  - (iii) provides full details of costs incurred by Crown in undertaking those Works, along with documents and records to reasonably verify those Works, including a certificate from the Quantity Surveyor.
- (i) If the total costs referred to in the External Costs and Works Statement are less than an amount equivalent to 0.3% of the Crown Development Costs Amount (being \$[REDACTED]), Crown must pay the difference as a payment to the Authority, at the same time that Crown provides the External Costs and Works Statement to the Authority.



- (j) Crown must:
  - (i) act reasonably and co-operate with the Authority;
  - (ii) provide to the Authority all information reasonably requested by it; and
  - (iii) answer any questions reasonably asked by the Authority,
  - (iv) in relation to the External Costs and Works Statement (and supporting documents and records) provided to the Authority.

## 8.5 Integrated Public Art

Crown must, in respect of each piece of Integrated Public Art:

- (a) provide to the Authority for approval an Artist's Brief, which must set out:
  - (i) the scope of the commission for the Integrated Public Art;
  - (ii) the commissioning process to be followed in respect of the Integrated Public Art;
  - (iii) the project budget for the Integrated Public Art;
  - (iv) the location at which the Integrated Public Art will be installed;
  - (v) the technical and operational requirements of the Integrated Public Art;
  - (vi) a requirement for the artist not to enforce any Moral Rights that artist may have, now or in the future, in any design work in which copyright subsists, so that the Authority may freely exercise its rights pursuant to the licence granted under clause 33.2(a), in respect of the Integrated Public Art;
  - (vii) a requirement for the artist to sign the Moral Rights Letter of Consent comprising Annexure 17, amended to include a certificate of authenticity;
  - (viii) a program for the delivery and installation of the Integrated Public Art (which must be consistent with the Internal Integrated Art Plan or External Integrated Art Plan, as the case may be); and
  - (ix) the selection criteria to be applied in selecting an artist to create the Integrated Public Art and the responsibilities that will be imposed on the artist;
- (b) keep the Authority informed of progress in selecting an artist to create the Integrated Public Art and the progress of the creation and installation of the Integrated Public Art;
- (c) within a reasonable time after:
  - (i) the selection of the artist to create the Integrated Public Art has been carried out, and
  - (ii) the artwork proposal in respect of the Integrated Public Art is sufficiently developed,
 provide to the Authority a maintenance plan, together with an estimate of the Costs which are likely to be incurred pursuant to that plan, for the maintenance of the Integrated Public Art;

- (d) act reasonably and co-operate with the Authority, provide to the Authority all information reasonably requested by the Authority, have regard to the comments of the Authority in finalising the Artist's Brief and selecting an artist and otherwise use all reasonable endeavours to obtain the Authority's approval to the Artist's Brief and the artist. The Authority must act reasonably to consider, and if thought fit, approve the Artist's Brief and the artist within 90 Business Days of request by Crown;
- (e) ensure that the Integrated Public Art is installed in accordance with the Artist's Brief (including in accordance with the timetable set out in that Artist's Brief, extended to accommodate any extensions in time which would be granted to Crown under clause 19), but in all circumstances no later than the date which is 6 months after the Date of Practical Completion of the whole of the Crown Works; and
- (f) provide to the Authority a copy of all Moral Rights letters of consent signed by the artists pursuant to this clause 8.5 as soon as those signed letters of consent are received from the those artists.

## 8.6 Security for Integrated Public Art in external public spaces

If Works are required to facilitate the installation of Integrated Public Art within external public spaces forming part of the Public Domain outside the Crown Site, Crown must rectify any damage occasioned to the Public Domain as a result of the installation of any Integrated Public Art and Crown will, on the reasonable request of the Authority, provide to the Authority reasonable security by way of a security bond or bank guarantee in respect of the carrying out of such Works.

## 8.7 Audit

- (a) The Authority may elect to cause an audit of:
  - (i) the Internal Costs and Works Statement (and supporting documents and records) provided to the Authority;
  - (ii) the External Costs and Works Statement (and supporting documents and records) provided to the Authority; and
  - (iii) Crown's books of account and other records relating to the Works undertaken by Crown pursuant to the Building Integrated Art Final Plan or the External Integrated Art Final Plan, and costs incurred by Crown in undertaking those Works (and in this regard the Authority or an Authorised Officer of the Authority must give Crown at least 2 Business Days prior notice that it wishes to inspect Crown's books of account and other records, and Crown must make its books of account available for the Authority or the Authority's auditor or Authorised Officer during business hours).
- (b) Crown must act reasonably and co-operate with the Authority or the Authority's auditor or Authorised Officer, and provide to the Authority or the Authority's auditor or Authorised Officer all information reasonably requested by the Authority or the Authority's auditor or Authorised Officer and answer any questions reasonably asked by the Authority or the Authority's auditor or Authorised Officer for the purposes of the Authority's audit.
- (c) If the Authority conducts an audit pursuant to clause 8.7(a) and that audit reveals that:
  - (i) the total costs incurred by Crown as referred to in an Internal Costs and Works Statement is different from the amount determined by the Authority's auditor as the total costs actually incurred by Crown in carrying out the relevant Works; or

- (ii) the total costs incurred by Crown as referred to in an External Costs and Works Statement is different from the amount determined by the Authority's auditor as the total costs actually incurred by Crown in carrying out the relevant Works;

then within 5 Business Days after the discrepancy being so notified to Crown, the appropriate adjustments will be made.

- (d) The auditor appointed to carry out the audit under clause 8.7(a) must:
  - (i) be an accountant of at least 10 years' professional standing;
  - (ii) have not undertaken any professional services for the Authority or Crown (and must not be employed or a partner in, any firm connected with the Authority or Crown) within the previous 24 months from the date of the appointment to audit;
  - (iii) agree to keep confidential all information disclosed in the audit other than to the parties; and
  - (iv) complete the audit within 30 Business Days following the auditor's appointment.

## **8.8 Arts and Culture Panel**

- (a) The Authority has established under the PDA a committee (to be known as the Arts and Culture Panel) to:
  - (i) advise the Authority in relation to the Barangaroo Public Art and Cultural Plan including any amendment to it;
  - (ii) advise the Authority in relation to any maintenance plans provided by Crown;
  - (iii) advise the Authority how and when the amounts received under clause 6 of the PDA and this clause 8 are to be spent; and
  - (iv) make recommendations to the Authority in relation to any approvals to be given or withheld by the Authority under clauses 8.3 and 8.4.
- (b) The Authority will determine the life and the constitution of the Arts and Culture Panel.
- (c) The Arts and Culture Panel may request information from Crown in the same manner as the Authority may do so under this clause 8 and Crown must provide such information to, and co-operate with, the Arts and Culture Panel in accordance with this clause 8 as if such request had been made by the Authority.
- (d) Crown acknowledges that when the Authority decides to grant or withhold its approval to any matter referred to or contemplated by this clause 8, it must take into account any recommendations from the Arts and Culture Panel.
- (e) The Authority will use all its reasonable endeavours to procure that Crown is given notice of meetings of the Art and Culture Panel and that Crown is able to have a representative attend those meetings as an observer.

## **8.9 Arts and Culture Panel and Crown must co-operate**

The Authority and Crown agree it is in the interest of the Crown Project, that the processes contemplated by this clause 8 be dealt with as efficiently as commercially practicable.

Accordingly, each of the Authority and Crown will (and the Authority will procure that the Arts and Culture Panel will) seek to make and comply with the requests for further information referred to in this clause 8 as promptly as possible to enable the additional information to be provided by Crown in a manner to minimise the effect of any delays pursuant to this clause 8 will have on compliance with the Milestone Schedule.

#### **8.10 Crown not to remove Integrated Public Art**

- (a) Crown must not cause or permit any Integrated Public Art to be demolished, removed from its place of installation or in any way obscured without the prior consent of the Authority which must not be unreasonably withheld or delayed if the removal or obscuring is temporary and is for the purpose of development, maintenance or repair.
- (b) Crown and the Authority agree that all Leases of Premises and subleases under those Leases which incorporate Integrated Public Art must include provisions prohibiting any tenant from causing or permitting any Integrated Public Art to be demolished, removed from its place of installation or in any way obscured without the prior consent of the Authority, which must not be unreasonably withheld or delayed if the removal or obscuring is temporary and is for the purposes of development, maintenance or repair.

#### **8.11 Security**

For the avoidance of doubt, Crown's obligations under this clause 8 are included in the Crown Guaranteed Obligations.

#### **8.12 Satisfaction of part of PDA art obligations**

- (a) For so long as this deed is not terminated, the obligations of Crown under this clause 8 are in substitution for and satisfy in all respects, any obligation of LLMP under the PDA to pay any Public Art and Cultural Development Contribution under the PDA in relation to the Works Portion which comprises the Integrated Hotel Resort.
- (b) If this deed is terminated, the obligations of LLMP in relation to public art under the PDA apply in full.

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### **9. Preparation of further Applications**

#### **9.1 Crown to prepare Applications**

- (a) This clause 9 does not apply to Mod 8, the Hotel Resort DA or the Early Works DA (or any SEARS Applications relating to those Applications).
- (b) Except as otherwise provided for in this deed, Crown agrees to prepare at its Cost all other Applications required for the Crown Works.
- (c) For the avoidance of doubt, the parties agree that this clause 9 does not apply to any fit-out works to be undertaken by on or behalf of Crown, any tenant or subtenant of the Integrated Hotel Resort (except clause 9.8 as it applies to retail tenants).

#### **9.2 Design responsibility**

Crown agrees that it:

- (a) has designed or will procure the design of the Crown Works;

- (b) will procure, that the design responsibilities are performed with the skill, care and diligence expected of a professional designer experienced in projects of a similar nature to the Crown Project; and
- (c) will ensure that each member appointed to Crown's design team performs its design responsibilities with the skill, care and diligence expected of a professional designer experienced in carrying out those responsibilities.

### 9.3 Consultation

Crown must:

- (a) consult and discuss with all relevant Public Authorities (other than the Authority),
- (b) notify the Authority of any material comments any relevant Public Authority makes in respect of the proposed terms and conditions of a Significant Application;
- (c) have reasonable regard to any reasonable comments or suggestions any relevant Public Authority may make in respect of:
  - (i) the proposed terms and conditions of an Application;
  - (ii) terms and conditions the relevant Public Authority indicates may be imposed on any consent; and
  - (iii) terms and conditions the relevant Public Authority indicates are required as a matter of policy or as a matter of best industry practice,
 in a manner which would be reasonably expected of an Integrated Hotel Resort developer owner and operator such as Crown, with respect to a project, the size and nature of the Crown Works, the subject of the relevant Application; and
- (d) (unless otherwise agreed) give the Authority at least 3 Business Days' notice, but where not possible a reasonable period (having regard to the nature of the meeting) of notice of any proposed meeting with a relevant Public Authority (giving details of the time, date and the matters to be discussed) and must give the Authority the opportunity to attend and participate at such meeting.

### 9.4 Proposed Premises Plan

- (a) Simultaneously with preparing an Application which may change the Proposed Premises Plan, Crown must also prepare an updated Proposed Premises Plan (progressed to the extent it is able to be at that time) which shows the boundaries of that proposed Premises in comparison to the rest of the Crown Site.
- (b) Where an updated Proposed Premises Plan is required to be prepared under clause 9.4(a), Crown must lodge that draft plan with the Authority for its approval, with a copy to LLMP, at or about the same time as lodgement of that Application with the Authority for its approval.

### 9.5 Requirements for proposed Applications

Crown agrees to ensure that each proposed Application:

- (a) is developed to a level necessary to support an Application for the relevant Approval;



- (b) is consistent with:
  - (i) the Barangaroo Approval Documents to the extent they apply to the Crown Site;
  - (ii) the Detailed Plans and Specifications; and
  - (iii) any relevant Significant Application which has been approved by the Authority under the PDA, previously approved by the Authority under this deed, or for which Approval has been obtained in accordance with this deed;
- (c) complies with all Environmental Laws;
- (d) is accompanied by an updated Proposed Premises Plan where clause 9.4 applies;
- (e) is accompanied by a certificate signed by the Project Director or a director of Crown that either
  - (i) for a Significant Application:
    - A. there is no Significant Project Issue; or
    - B. a notice and reasonable details of any Significant Project Issue,
  - relating to the relevant Application; and
  - (ii) for an Application that is not a Significant Application, that the Application complies with the requirements of this clause 9.5 and confirming it is not a Significant Application; and
- (f) which is an Application for a retail tenancy fitout Crown must provide a Fitout Statement duly completed and executed,

and that documentation must be provided to the Authority in sufficient time before the Application is intended to be lodged with the relevant Consent Authority.

## 9.6 Authority's review of Applications and Application Plans

Crown acknowledges and agrees that:

- (a) the Authority:
  - (i) is not obliged to critically analyse the Applications;
  - (ii) has not critically analysed the Detailed Plans and Specifications;
  - (iii) is not responsible for any errors, omissions or non-compliance with any Law or the requirements of any Public Authority by reason of not critically analysing the Applications or the Detailed Plans and Specifications; and
  - (iv) is not liable for any liability, loss or Cost incurred by Crown because of the Authority not critically analysing the Application or the Detailed Plans and Specifications; and
- (b) no comment, review or information supplied to Crown by the Authority alters or alleviates Crown's obligation to design, construct and complete the Crown Works or otherwise undertake the Crown Works in accordance with the requirements of this deed.

## 9.7 Crown relies on own skill and judgment

Neither the requirement to obtain the Authority's consent or approval under this deed, nor any consent or approval given by the Authority, imposes any duty, obligation or liability upon the Authority or LLMP in relation to the design or construction of the Crown Project. Crown acknowledges that:

- (a) it is relying on its own skill and judgment, and that of Crown's Employees and Agents, in relation to the Crown Works and the Crown Project and is not relying upon the skill and judgment of the Authority or any of the Authority's Employees and Agents or LLMP or any of LLMP's Employees and Agents or related bodies corporate (other than the Builder); and
- (b) any consent or approval of the Authority is intended as a procedure to enable the Authority to protect its rights, and perform its obligations, as owner of the Crown Site and as a statutory authority (including compliance with the Approvals and the Final Plans and Specifications) and does not relieve Crown of its obligations under this deed.

## 9.8 Tenant Fitout Applications

Despite the previous provisions of this clause 9, the Authority will not refuse approval to an Application for fitout of a retail tenancy if Crown provides to the Authority:

- (a) a copy of the relevant Application; and
- (b) a Fitout Statement duly completed and executed by Crown.

# 10. Project Specific Climate Positive Work Plan and Social Sustainability

## 10.1 Requirement to achieve Green Star rating

- (a) Subject to clause 10.1(b), Crown must ensure that the Integrated Hotel Resort (excluding, or including, at the election of Crown, the Restricted Gaming Facility) achieves the Green Star Rating, provided that such rating will only be applied under this clause to the Integrated Hotel Resort (excluding, or including, at the election of Crown, the Restricted Gaming Facility) if Crown and the Authority agree that that rating represents world's best practice standards for hotels after taking into account the matters and implementing the processes contemplated in this clause 10 and in each and every case, that achievement is validated through assessment by the GBCA to the extent possible.
- (b)
  - (i) Crown will use its best endeavours to develop a customised rating tool for the Integrated Hotel Resort (excluding, or including, at the election of Crown, the Restricted Gaming Facility) which is substantially consistent with the obligations imposed upon it by clause 10.1(a) and to have that customised rating tool approved by GBCA and approved by the Authority acting reasonably.
  - (ii) Once the customised rating tool has been approved by both GBCA and the Authority, Crown must have the customised rating tool registered with GBCA.
  - (iii) Following the customised rating tool being registered with GBCA, Crown will satisfy its obligations under clause 10.1(a) if it achieves 6 star certification with the customised rating tool approved and registered in accordance with this clause 10.1(b).

- (c) Crown must also ensure that:
  - (i) the Crown Works are registered with the GBCA at the earliest opportunity and a copy of the certification agreement entered into by Crown is lodged with the Authority;
  - (ii) the Authority receives a copy of the submission to be made by Crown to the GBCA in respect of the certification or validation process for its review, at least 5 Business Days before it is submitted to the GBCA;
  - (iii) it considers (acting reasonably) any comments reasonably made by the Authority in connection with the submission provided to it pursuant to clause 10.1(c)(ii); and
  - (iv) the Authority receives a copy of the results of that submission.
- (d) For the avoidance of doubt, neither the Authority nor LLMP is entitled to rely on a non-compliance with this clause 10.1 as a Crown Trigger Event.
- (e) If at any relevant time the GBCA ceases to exist, Crown agrees that any obligation on Crown under this clause 10.1 with respect to certification by the GBCA will operate as follows:
  - (i) where a body replaces the GBCA and applies a rating or accreditation or similar system which is equivalent to the Green Star Rating system developed by the GBCA, the reference to the GBCA will be a reference to that other body instead, and the reference to Green Star Rating system will be a reference to that other system instead; or
  - (ii) where no body replaces the GBCA or the replacement body does not apply a rating or accreditation or similar system which is equivalent to Green Star Rating system (as the case may be) developed by the GBCA, the reference to obtaining a certificate from the GBCA will be a reference to obtaining a written opinion from an independent expert nominated by Crown and approved by the Authority as having expertise in certifying similar rating systems as to the star rating which would have been achieved under the rating system had the GBCA still existed.

## 10.2 Compliance with NABERS

- (a) Subject to clause 10.2(b), Crown must use all reasonable endeavours to ensure compliance by the hotel operations conducted in the Hotel Resort Separable Portion with the Required NABERS Rating by the Climate Positive Relevant Date.
- (b) If it has not already done so prior to the Commencement Date Crown must work with OEH for approval for adjustments and rules for the NABERS Hotel Rating to suit the Hotel Resort Separable Portion excluding restaurants and other facilities agreed to be excluded by OEH as part of its ruling for the purposes of such NABERS rating because it is acknowledged that the NABERS Hotel Rating applies to hotels rather than integrated hotel resorts.

## 10.3 Building Management Statement and Green Utilities

- (a) The Authority, Crown and LLMP have agreed the forms of the:
  - (i) the Barangaroo Management Plan;
  - (ii) the Deed Poll; and
  - (iii) the Building Management Statement for Stage 1,

as annexed to this deed.

- (b) LLMP and the Authority acknowledge and agree that:
  - (i) Crown has been separately negotiating the Supply Agreements for the Integrated Hotel Resort;
  - (ii) subject to clause 10.20, Crown does not propose to enter into any Supply Agreement for the photovoltaic cells located on the Integrated Hotel Resort; and
  - (iii) the terms and conditions of supply of the Supply Agreements for the Integrated Hotel Resort may vary from those provided for in the Supply Agreements for other parts of Stage 1.
- (c) Without limiting the preceding provisions of this clause 10.3, LLMP must do everything able to be done by it to procure that the Building Management Statement is not amended in a material way from the form attached to this deed, without Crown's approval, not to be unreasonably withheld or delayed.
- (d) Crown acknowledges that upon the Building Management Statement for Stage 1 being registered on the title of the Site and subject to the terms of this deed, Crown will as from the Lease Commencement Date be bound by, and will comply with, the provisions of that Building Management Statement as it applies to the Crown Site as provided for in the Leases.
- (e) Crown acknowledges and agrees that it must at its cost and risk:
  - (i) in undertaking the Crown Project:
    - A. meet or exceed the Climate Positive Requirements at the Climate Positive Relevant Date (or such other date as is specified in the Project Specific Climate Positive Work Plan); and
    - B. do all that is required to be done to ensure that everything contemplated by the Project Specific Climate Positive Work Plan is undertaken and completed in accordance with that plan and this deed; and
  - (ii) as from the Lease Commencement Date, comply with the Barangaroo Management Plan to the extent it is applicable to the Crown Project.

#### **10.4 Preparation of Project Specific Climate Positive Work Plan**

Crown must prepare a Project Specific Climate Positive Work Plan in accordance with the requirements of this clause 10 and having regard to the Climate Positive Requirements.

#### **10.5 Outline of Project Specific Climate Positive Work Plan**

The Project Specific Climate Positive Work Plan must describe in detail all material things to be done by Crown to ensure that in undertaking the Crown Project, the Climate Positive Requirements, the Social Sustainability Requirements and world's best practice for VIP gaming casinos in relation to sustainability obligations are met or exceeded no later than the Date of Practical Completion of the whole of the Crown Works or as otherwise required by this deed. These details must include the following:

- (a) a requirement for Crown to keep the Authority informed as to its progress in achieving the Climate Positive Requirements, the Social Sustainability

Requirements and world's best practice for VIP gaming casinos in relation to sustainability obligations;

- (b) a requirement that if the Authority is not satisfied as to Crown's progress, an opportunity for the Authority to serve notice on Crown requiring Crown to either:
  - (i) provide reasonable details to the Authority of the additional actions which will be taken by Crown to achieve the Climate Positive Requirements, the Social Sustainability Requirements and world's best practice for VIP gaming casinos in relation to sustainability obligations no later than the Climate Positive Relevant Date (or such other date as is specified in the Project Specific Climate Positive Work Plan); or
  - (ii) provide reasons as to why no such additional actions are required or whether additional action should be undertaken (and if so, the process for taking such action); and
- (c) reasonable details regarding how Crown proposes to satisfy the Social Sustainability Requirements.

## 10.6 Detail of Project Specific Climate Positive Work Plan

- (a) The Project Specific Climate Positive Work Plan must:
  - (i) confirm how the Crown Project will be undertaken to ensure that:
    - A. the Climate Positive Requirements, and the requirements of clauses 10.12 and 10.14 will be met or exceeded; and
    - B. world's best practice for VIP gaming casinos in relation to sustainability obligations will be met or exceeded for the Restricted Gaming Facility,by no later than the Date of Practical Completion of the whole of the Crown Works or as otherwise required by this deed (or such other date as is specified in the Project Specific Climate Positive Work Plan);
  - (ii) provide for Crown to generally liaise with and provide information to the Authority to ensure that the Authority has sufficient detail to enable it to monitor the development of and compliance with the Project Specific Climate Positive Work Plan; and
  - (iii) provide details of those elements described in the outline table of contents provided in Annexure 12.
- (b) The parties agree that:
  - (i) the draft and the approved Project Specific Climate Positive Work Plan must:
    - A. be consistent with; and
    - B. not contain any requirements which are more onerous, or are in addition to, the Climate Positive Requirements and the Social Sustainability Requirements; and
  - (ii) the Authority must not withhold its consent or require Crown to amend, reconsider or update a draft or approved Project Specific Climate



Positive Work Plan where to do so would be inconsistent with principle set out in clause 10.6(b)(i).

## 10.7 Approval by the Authority

- (a) Crown must lodge with the Authority for its approval a draft of the Project Specific Climate Positive Work Plan (accompanied by the Project Specific Climate Positive Supporting Documentation) either at the same time as it lodges the first Application for construction certificates (other than in respect of Early Works) for the Crown Project with the Authority for approval or at any other time agreed by the Authority.
- (b) The parties anticipate that, unless the Authority determines otherwise, the Authority will not approve an Application for a construction certificate (other than in respect of Early Works) (assuming a draft Project Specific Climate Positive Work Plan has been lodged (or should have been lodged pursuant to clause 10.7(a)) unless that draft (or updated draft) Project Specific Climate Positive Work Plan has also been approved by the Authority.
- (c) Within 10 Business Days after receiving the draft Project Specific Climate Positive Work Plan, the Authority may:
  - (i) request (acting reasonably having regard to the contents of any draft Project Specific Climate Positive Work Plan being considered by the Authority) additional Project Specific Climate Positive Supporting Documentation; or
  - (ii) subject to clause 10.6(b), seek amendments to the draft Project Specific Climate Positive Work Plan,and Crown must provide to the Authority such additional Project Specific Climate Positive Supporting Documentation as soon as reasonably practicable after any such request and must consider any requested amendments in good faith.
- (d) Provided that Crown has complied with its other obligations pursuant to this clause 10, the Authority must give or refuse its approval to a draft Project Specific Climate Positive Work Plan as soon as reasonably practicable and no later than 60 Business Days after the Authority receives:
  - (i) a copy of the draft Project Specific Climate Positive Work Plan (together with a request for approval of that plan); and
  - (ii) all Project Specific Climate Positive Supporting Documentation (including any additional Project Specific Climate Positive Supporting Documentation reasonably requested by the Authority).
- (e) The Authority must not unreasonably refuse its consent to a Project Specific Climate Positive Work Plan.
- (f) If the Authority requests Crown to reconsider or amend a draft Project Specific Climate Positive Work Plan, subject to clause 10.6(b), Crown must consider in good faith any such request. If Crown, acting reasonably, considers appropriate, it must amend the draft Project Specific Climate Positive Work Plan and re-submit that draft plan to the Authority for its approval as soon as reasonably practicable after receiving the Authority's request.
- (g) If a draft Project Specific Climate Positive Work Plan has been resubmitted to the Authority pursuant to clause 10.7(f), then the provisions of clauses 10.7(c) to 10.7(g) are repeated and apply until the Authority approves the draft Project Specific Climate Positive Work Plan.

- (h) Once the draft Project Specific Climate Positive Work Plan is approved by the Authority, that plan will be treated as the Project Specific Climate Positive Work Plan for the purposes of this deed.

## 10.8 Certification of Project Specific Climate Positive Work Plan

Simultaneously with the lodgement of any draft (or updated draft) Project Specific Climate Positive Work Plan with the Authority for its approval, Crown must also provide to the Authority a report prepared by Crown (accompanied and supported by reports from relevant Expert Sustainability Certifiers) which certifies that the proper implementation of, and compliance by Crown with, the Project Specific Climate Positive Work Plan will ensure that in undertaking the Crown Project:

- (a) the Climate Positive Requirements and the Social Sustainability Requirements are met or exceeded; and
- (b) world's best practice for VIP gaming casinos in relation to sustainability obligations are met or exceeded for the Restricted Gaming Facility,

no later than the Date of Practical Completion of the whole of the Crown Works or any other date required by this deed (as the case may be).

## 10.9 Updated Project Specific Climate Positive Work Plan

- (a) Crown may update the Project Specific Climate Positive Work Plan from time to time. Once updated the Project Specific Climate Positive Work Plan must be lodged with the Authority for its approval.
- (b) Any updated draft Project Specific Climate Positive Work Plan must be prepared taking into account all of the requirements for the Project Specific Climate Positive Work Plan Requirements (outlined in clauses 10.5 and 10.6).
- (c) Once Crown has prepared and lodged an updated draft of the Project Specific Climate Positive Work Plan with the Authority for its approval, the provisions of clauses 10.7(c) to 10.7(h) apply in relation to that updated draft plan.
- (d) Unless the Authority directs Crown to do otherwise, simultaneously with lodgement by Crown of any Significant Application for the Crown Works with the Authority for approval, Crown must confirm that:
- (i) in its opinion, if relevant, the Works the subject of the relevant Application will satisfy the relevant requirements of the Project Specific Climate Positive Work Plan which must be confirmed by the Expert Sustainability Certifier and if there are no relevant requirements of the Project Specific Climate Positive Works Plan, then there will be no need for any confirmation to be obtained from the Expert Sustainability Certifier; and
- (ii) no update to the then current Project Specific Climate Positive Works Plan is needed or, if it is needed, update the current Project Specific Climate Positive Works Plan and comply with clauses 10.9(b) and 10.9(c) in relation to such update.

## 10.10 Certification of Implementation of Project Specific Climate Positive Work Plan

- (a) On the date which is 6 months after the Authority's approval of the first draft Project Specific Climate Positive Work Plan and every 6 months thereafter, Crown must provide to the Authority and LLMP a detailed report (supported by certification reports from relevant Expert Sustainability Certifiers provided annually) in relation to

the status of the implementation of the Project Specific Climate Positive Work Plan by Crown including identifying (as at the date of that report):

- (i) those sections of the Project Specific Climate Positive Work Plan being fully complied with and implemented;
  - (ii) those sections of the Project Specific Climate Positive Work Plan not being fully complied with and the extent of that non-compliance;
  - (iii) the effect on the Climate Positive Requirements of any non-compliance with the Project Specific Climate Positive Work Plan;
  - (iv) any foreseeable non-compliance or non-implementation of any part of the Project Specific Climate Positive Work Plan;
  - (v) in respect of each actual or foreseen non-implementation or non-compliance of any part of the Project Specific Climate Positive Work Plan, a cure plan which proposes to remedy (and mitigate the effects of) any actual or foreseen failure to implement or comply with any part of the Project Specific Climate Positive Work Plan and which includes:
    - A. a detailed program to remedy and mitigate the effects of any non-compliance or non-implementation and to prevent recurrence of the events which led to such non-compliance or non-implementation; and
    - B. full details of all that must be done in relation to the proposed remedial and mitigation proposals.
- (b) If at any time there is non-compliance or non-implementation of the Project Specific Climate Positive Work Plan by Crown and the Authority requests that plan to be updated to include a cure plan to address that non-compliance or non-implementation (and otherwise which addresses those matters contemplated in clause 10.10(a)(v)), then Crown must promptly prepare an appropriately updated Project Specific Climate Positive Work Plan and lodge that plan with the Authority for its approval and the provisions of clauses 10.7(c) to 10.7(h) apply in relation to that updated draft plan.
- (c) Crown must as reasonably requested by LLMP:
- (i) provide LLMP specific information to assist that LLMP has sufficient understanding of the performance of the Climate Positive Benchmarks in respect of water to enable LLMP to comply with the Climate Positive Work Plan and meet or exceed its obligations under the PDA; and
  - (ii) provide LLMP with the following information reasonably requested by LLMP to assist LLMP with its reporting obligations under clause 9 of the PDA:
    - A. the ecological footprint and carbon footprint;
    - B. 20% of skilled trade work on the Crown Site being done by apprentices;
    - C. Crown Project staff undertaking a core skills training program (or equivalent sustainability training); and
    - D. training numbers through the Barangaroo Skills Exchange contemplated under clause 9.18 of the PDA.

- (d) In complying with LLMP's reporting obligations under clause 9 of the PDA, LLMP is entitled to rely on, and include in its report to be provided to the Authority under clause 9.9 of the PDA, the most recent information it has received from Crown under this clause 10.10(c).

## 10.11 Achieving Climate Positive Benchmarks

If Crown fails to achieve any Climate Positive Benchmark to the reasonable satisfaction of the Authority by the Climate Positive Relevant Date then, without prejudice to any other remedy which may be available to the Authority, Crown must pay to the Authority within 20 Business Days of any demand by the Authority, in the case of:

- (a) water, the amount calculated as follows:

$$LD = \$ \text{[REDACTED]} \times \frac{1}{n}$$

Where:

LD = the amount payable by Crown

n = the total number of Buildings in Stage 1 containing 10,000m<sup>2</sup> or more GFA; and

- (b) waste, the amount calculated as follows:

$$LD = \$ \text{[REDACTED]} \times \frac{1}{n}$$

Where:

LD = the amount payable by Crown

n = the total number of Buildings in Stage 1 containing 10,000m<sup>2</sup> or more GFA.

## 10.12 Achieving specific Climate Positive Initiatives

- (a) Crown agrees that:

- (i) it will use its best endeavours to achieve the targets referred to in the table below (Column A) by the respective dates specified for those targets referred to in the table below (Column C); and
- (ii) if it fails to achieve a target referred to in the table below (Column A), it must pay to the Authority the amount, or where relevant, the relevant proportion of the amount set opposite that target (Column B), when measured in accordance with Column C:

Target Column A	Liquidated damages Column B	When measured Column C
Green Star Rating	$LD = \$ \text{[REDACTED]} \times \frac{1}{n}$ <p>Where:</p> <p>LD = the amount payable by Crown</p> <p>n = the total number of Buildings in Stage 1</p>	2 years after Practical Completion of the whole of the Crown Works

Target Column A	Liquidated damages Column B	When measured Column C
	containing 10,000m <sup>2</sup> or more GFA (proposed to be 8 as at the Commencement Date)	
Engage an external internationally recognised sustainability consultant (on terms reasonably acceptable to the Authority) to provide independent certification as required by this deed.	$LD = \$ \blacksquare \times \frac{A}{B}$ <p>Where:</p> <p>LD = the amount payable by Crown</p> <p>A = the total GFA comprised within the Building</p> <p>B = the total GFA comprised within Stage 1</p>	2 months after the Commencement Date
Provide relevant information to LLMP to complete ecological and carbon footprint reports and assessments	$LD = \$ \blacksquare \times \frac{1}{n}$ <p>Where:</p> <p>LD = the amount payable by Crown</p> <p>n = the total number of Buildings in Stage 1 containing 10,000m<sup>2</sup> or more GFA (proposed to be 8 as at the Commencement Date)</p>	31 December 2018
<p>(a) Crown will reduce the embodied carbon emissions per square metre of the Integrated Hotel Resort (excluding the Restricted Gaming Facility) as at the date occurring 6 months after the Date of Beneficial Use and Occupation of the Hotel Resort Separable Portion by at least 20% compared to "standard construction practice" as at the Commencement Date.</p> <p>(b) For the purposes of calculating the emissions in paragraph (a) above:</p> <p>a. all emissions generated from offsite disposal of excavated material during the construction phase are to be excluded; and</p> <p>b. all emissions generated from basement works associated with the</p>	$LD = \$ \blacksquare \times \frac{1}{n}$ <p>Where:</p> <p>LD = the amount payable by Crown</p> <p>n = the total number of Buildings in Stage 1 containing 10,000m<sup>2</sup> or more GFA (proposed to be 8 as at the Commencement Date)</p>	6 months after the Date of Beneficial Use and Occupation of the Hotel Resort Separable Portion



Target Column A	Liquidated damages Column B	When measured Column C
Integrated Hotel Resort Building are to be included.		
The achievement of the Environmental Initiatives	$LD = \$ \times \frac{1}{n}$ <p>Where:</p> <p>LD = the amount payable by Crown</p> <p>n = the total number of Buildings in Stage 1 containing 10,000m<sup>2</sup> or more GFA (proposed to be 8 as at the Commencement Date)</p>	2 years after Practical Completion of the whole of the Crown Works

### 10.13 Partial refund on non-compliance

The Authority agrees to pay to Crown not less than 75% of the funds paid to the Authority under clauses 10.11 and 10.12 in respect of Crown's failure to achieve one or more of the Climate Positive Requirements or the Social Sustainability Requirements in the manner set out in the Project Specific Climate Positive Work Plan, provided that the Authority is satisfied (acting reasonably) that Crown has subsequently achieved that Climate Positive Requirement or Social Sustainability Requirement (as the case may be) (or such other requirement as the Authority (acting reasonably) agrees) in the manner set out in the Project Specific Climate Positive Work Plan (albeit outside the timeframe contemplated).

### 10.14 Other Climate Positive Acknowledgements

The parties acknowledge and agree that the Restricted Gaming Facility:

- (a) is exempt from the Climate Positive Requirements; but
- (b) must achieve world's best practice for VIP gaming casinos in relation to sustainability obligations.

### 10.15 Social sustainability

Crown must deliver the community and learning and skilling programs, outlined in the Social Sustainability Schedule, or other relevant programs as agreed and within time frames approved, by the Authority (acting reasonably) from time to time but such time frames must be no earlier than the relevant target timeframes set out in the Social Sustainability Schedule.

### 10.16 Expert Sustainability Certifiers

- (a) At the same time as Crown seeks the approval of a person to act as an 'Expert Sustainability Certifier' from the Authority, it must disclose to the Authority whether or not that person is 'strategically aligned' or otherwise has ongoing relations with, or provides substantial services to, Crown, the Crown Guarantor, any Related Entity of Crown or the Crown Guarantor or the Builder.
- (b) If Crown discloses to the Authority that a person whom it is seeking approval to act as an 'Expert Sustainability Certifier' is 'strategically aligned' or otherwise has ongoing relations with, or provides substantial services to, Crown, the Crown

Guarantor, any Related Entity of Crown or the Crown Guarantor or the Builder (or otherwise the Authority reasonably believes that such person has such alignment, relations or arrangements), then Crown must prove to the Authority's reasonable satisfaction that such alignment, relations or arrangements will not compromise the 'independence' of that person when carrying out the relevant Expert Sustainability Certifier duties.

### 10.17 Key Worker Housing

At the request of Crown and to satisfy precinct wide obligations in relation to Key Worker Housing under the PDA, LLMP must, at its cost and risk, provide Key Worker Housing within Stage 1 (but not in the Integrated Hotel Resort) for an amount equal to 2.3% of residential GFA of the Integrated Hotel Resort as provided for in the Approval for Mod 8.

### 10.18 Waste processing and disposal

Without derogating from Crown's other obligations under this deed, Crown agrees to act reasonably in considering any proposal the Authority may put to it in relation to innovative solutions for waste processing and disposal, including any person whom the Authority may recommend as the 'Approved Operator' for the purposes of the waste processing and disposal agreement to be entered into as required by this deed as part of Crown achieving the Climate Positive Requirements.

### 10.19 Apprentices and Training

Crown must engage the Builder on the basis that in carrying out the Crown Works, the Builder must, and must procure that its subcontractors do, comply with the requirements of the PDA in relation to Works being carried out on Stage 1 in relation to the use of apprentices and the provision of training.

### 10.20 Photovoltaic Cells

Crown must provide 250m<sup>2</sup> of photovoltaic cells within the Integrated Hotel Resort

### 10.21 Allocation of liability and release

(a) The Authority acknowledges and agrees that:

- (i) LLMP is not liable for (and is accordingly released from any liability arising from) any loss arising from, and any Costs incurred in connection with:
  - A. Crown's obligations under this clause 10; and
  - B. non-compliance with LLMP's obligations under clause 9 of the PDA or any documents (including the Climate Positive Work Plan) prepared pursuant to clause 9 of the PDA, to the extent that non-compliance arises, or to the extent it is contributed to, by a breach by Crown of its obligations under this clause 10; and
- (ii) for so long as this deed is not terminated, the obligations of Crown under this clause 10 and Schedule 4 are in substitution for, and satisfy in all respects the sustainability obligations in the PDA in respect of the Works Portion for the Integrated Hotel Resort and so far as the sustainability obligations under the PDA are being achieved Works Portion by Works Portion, Stage 1 as a whole, if the sustainability obligations for all Works Portions within Stage 1 (other than Works Portions for the Integrated Hotel Resort) are achieved;

- (iii) there is no requirement for further sustainability obligations for Stage 1 to compensate for the approach to sustainability agreed under this clause 10 including:
  - A. the exclusion of the Restricted Gaming Facility from sustainability obligations under this deed;
  - B. the Climate Positive Waste Principles under this deed;
  - C. the obligations imposed on Crown in relation to photovoltaic cells under this deed; and
- (iv) if this deed is terminated, the obligations of LLMP in relation to clause 9 of the PDA apply in full.
- (b) The Authority acknowledges and agrees that Crown is not liable for (and accordingly released is from any liability arising from) any breach of:
  - (i) LLMP's obligations under clause 9 of the PDA;
  - (ii) LLMP's obligations under clause 10.17; and
  - (iii) Crown's obligations under this clause 10 to the extent that breach is caused or to the extent it is contributed to, by a breach by LLMP of its obligations under the PDA or this deed.

## **11. Consent to Applications**

### **11.1 Dealing with Modification Applications**

- (a) This clause 11 does not apply to Mod 8, the Early Works DA, the Hotel Resort DA or any Amendment Applications (or the SEARS Applications for those Applications).
- (b) This clause 11 and clause 12 apply to any Applications other than Mod 8, the Early Works DA, the Hotel Resort DA and any Amendment Applications (and the SEARS Applications for those Applications).
- (c) After the Effective Date, the Authority and LLMP may each in its discretion refuse to consent to any Modification Application which Crown proposes to submit or requests LLMP to submit.

### **11.2 Authority's approval of Applications**

- (a) The Authority and Crown agree that all Applications must first be approved by the Authority prior to being lodged with the relevant Consent Authority for approval except applications for:
  - (i) Construction Certificates;
  - (ii) Occupation Certificates;
  - (iii) Complying Development Certificates;
  - (iv) licences and approvals under the Liquor Act 2007 (NSW);
  - (v) licences, permits and approvals under the Gaming Legislation;
  - (vi) any variations of Application referred to in subparagraphs (i) to (v) of this clause;

- (vii) any fit-out works to be undertaken by or on behalf of Crown, any tenant or subtenant; or
- (viii) which the Authority agrees in writing that its approval is not required in respect of an Application or class of Applications.
- (b) Crown must provide to the Authority, complete copies of all Applications within 10 Business Days after they are lodged for Approval with the Consent Authority or other relevant approval body.
- (c) Despite any other provision of this deed, in respect of any time period within which the Authority must approve an Application, that time period will not commence until the Authority has received all information in respect of that Application that Crown is required to provide to the Authority under this deed.
- (d) Crown acknowledges and agrees that whenever the Authority has the right under this deed to request further information or documentation from Crown, Crown is required to provide that information or documentation to the Authority.

### **11.3 Applications must be lodged with the Authority**

- (a) Crown must lodge all Applications (other than those referred to in clauses 11.2(a)(i) to 11.2(a)(viii) (both inclusive)) with the Authority for approval, not less than:
  - (i) 20 Business Days, in the case of a Significant Application (with a copy also to LLMP); and
  - (ii) 10 Business Days, in the case of all other Applications,
 prior to the date the Application is intended to be lodged with the Consent Authority.
- (b) Crown must have reasonable regard to any reasonable comments or suggestions that the Authority may make in respect of the proposed terms and conditions of any Significant Application.
- (c) Notwithstanding clause 11.2(b), Crown is not required to incorporate or accommodate any suggestions or comments of the Authority which would require changes to the design documents that form part of any Application, where those suggestions or comments are inconsistent with the Detailed Plans and Specifications, unless they are only inconsistent due to the subject matter of the Application being inconsistent with the Detailed Plans and Specifications.
- (d) The Authority may withhold its consent to an Application:
  - (i) if the Application does not comply with clause 9.5;
  - (ii) where a Significant Project Issue relates to an Application, in its sole and unfettered discretion (despite any other provision of this deed);
  - (iii) as permitted under clause 11.1(c); or
  - (iv) otherwise on reasonable grounds or impose reasonable conditions on its consent to an Application.
- (e) If the Authority withholds its consent (acting reasonably unless it is entitled by this deed to withhold its consent in its sole and unfettered discretion), it will promptly notify Crown of its reasons.

- (f) If the Authority does not grant or refuse consent to an Application or a Significant Application (as the case may be) in accordance with clause 11.3, then Crown may notify a dispute in accordance with clause 35, provided that:
  - (i) the provisions of clause 35.4 will not apply;
  - (ii) the parties agree that the dispute must be referred to a relevant expert for determination, who must be an appropriately qualified architect; and
  - (iii) if the Authority does not grant or refuse its consent within the applicable Application Approval Timeframes referred to in clause 11.5, then clause 11.5(c) will apply.
- (g) Crown must lodge with the Consent Authority each Significant Application, in the form which has been approved by the Authority, as soon as practicable (and in any event, within 5 Business Days) after obtaining the Authority's approval.
- (h) Where the Authority's signing of the Application is required as the owner of the relevant part of the Land (and the Authority has approved that Application where required under this deed), the Application must be signed within 3 Business Days after it being approved by the Authority.

#### 11.4 Crown to keep the Authority informed of timing

Crown agrees to keep the Authority informed regarding the likely timing of lodgement with the Authority, and the contents, of all Applications which this deed contemplates will be lodged with the Authority.

#### 11.5 Timing for the Authority consent

- (a) Subject to clause 11.5(b), the Authority's consent to an Application must be given or refused in relation to that Application, within the following timeframes (**Application Approval Timeframes**), calculated from the date following the date on which the Authority receives the documentation required for that Application under clause 9.5:
  - (i) in respect of Significant Applications, 15 Business Days and in respect of any part of that Application relating to:
    - A. design, plans and drawings, a further 5 Business Days;
    - B. the environmental assessment, 7 Business Days after the expiry of the 5 Business Days referred to clause 11.5(a)(i)A; and
    - C. technical reports, 3 Business Days after the expiry of the 5 Business Days referred to clause 11.5(a)(i)A,
 such that the 15 Business Day timeframe referred to above will be extended to take into account the Authority's entitlement to the above minimum time periods;
  - (ii) 10 Business Days in respect of Applications (other than Significant Applications) relating to Integrated Public Art; and
  - (iii) 5 Business Days in respect of Applications not relating to any matter referred to in clauses 11.5(a)(i) or 11.5(a)(ii) above, including Applications relating to:
    - A. basement and access arrangements for the Crown Project;



- B. signage for the Crown Project;
- C. Public Domain;
- D. demolition and (to the extent any Applications are required for) Site Establishment for the Crown Project;
- E. events and programmes associated with the Crown Project;
- F. (to the extent any Applications are required for) temporary structures and uses associated with the Crown Project; and
- G. tenant fitout works for retail tenancies,

as extended or varied in accordance with clause 11.5(b).

- (b) Despite any other provision of this deed, if the Authority receives more than one Significant Application from LLMP or Crown for its review and consent at any time during an Application Approval Timeframe, then the relevant Application Approval Timeframe relevant to those Significant Applications is extended by 10 Business Days for each Significant Application that the Authority receives during the Application Approval Timeframe.
- (c) If the Application is not approved or refused by the Authority within the applicable Application Approval Timeframe, then Crown may give notice to the Authority requesting that the Authority notify Crown of its determination within 5 Business Days of receiving a notice under this clause. If the Authority's determination is not so received, Crown may notify a dispute under clause 35.

## 11.6 Capacity of the Authority and conditional consents

Crown acknowledges that in giving or refusing its consent to an Application in accordance with this deed, the Authority is not acting in the capacity of a Consent Authority

## 11.7 Approval of Proposed Premises Plan

- (a) Where applicable, Crown must submit any updated Proposed Premises Plan to the Authority in accordance with clause 9.4 and must obtain the Authority's approval to that plan.
- (b) The Authority will act reasonably when granting or refusing approval to any updated Proposed Premises Plan taking into account the reasonable requirements of occupiers and users of the Premises and the requirements of occupiers and users of the Public Domain or other areas in the vicinity of the Premises. The Authority must grant or refuse its approval to the updated Proposed Premises Plan within the Application Approval Timeframe for the Significant Application to which it relates.
- (c) If the Authority makes recommendations to Crown in relation to an updated Proposed Premises Plan, Crown agrees to have reasonable regard to that recommendation, amend the updated Proposed Premises Plan accordingly and resubmit that updated Proposed Premises Plan to the Authority for its approval.
- (d) Once any updated Proposed Premises Plan has been approved by the Authority, that plan is a Proposed Premises Plan for the purposes of clause 20.1(a).

## 11.8 Authority not liable in connection with consents

Except to the extent that the Authority is in breach of any provision of this deed (other than clause 11.5), Crown releases the Authority from, and agrees that the Authority is not liable for,

liability or loss arising from, and any Costs incurred in connection with, the Authority rejecting or consenting to an Application or any delay in giving or refusing that consent.

## **11.9 LLMP may proceed with balance of Stage 1**

Despite a party finding that the terms of any Approval contains Unacceptable Conditions, subject to the terms of this deed, LLMP may proceed with all other parts of the development of Stage 1 which it is lawfully entitled to carry out in accordance with the PDA.

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## **12. Approvals**

### **12.1 Obtaining other Approvals**

Crown agrees that in addition to the Approvals to Mod 8, the Early Works DA and the Hotel DA and any other Approvals specifically contemplated by this deed (other than any Approvals which LLMP must promptly obtain for the LLMP Works in accordance with the terms of the PDA), it must:

- (a) obtain all other required Approvals promptly; and
- (b) ensure that those Approvals are consistent with the Barangaroo Approval Documents and all other applicable Approvals.

### **12.2 Copies of Applications, Approvals and associated documents**

Crown must promptly give the Authority a copy of:

- (a) each Application as lodged with any Consent Authority;
- (b) all significant correspondence between Crown (or any person on behalf of Crown) and any Consent Authority in connection with any Application, proposed Application, Approval or proposed or draft determination of any Application;
- (c) all environmental assessment requirements issued by the Secretary in relation to the Crown Project and any Application;
- (d) all submissions received, and any report provided to Crown by the Secretary;
- (e) any response to issues raised in submissions, preferred project report and Revised Statement of Commitments or other document provided by Crown, to the Secretary;
- (f) all written submissions in relation to any Application which are received by Crown or of which it has a copy; and
- (g) all Approvals received in relation to any Application.

### **12.3 Unacceptable Conditions in Approvals to a Significant Application**

- (a) The following provisions will apply if any Approval to a Significant Application contains Unacceptable Conditions or if it becomes apparent that an Approval to a Significant Application will issue with Unacceptable Conditions, but do not apply to any Approval for Mod 8, the Early Works DA, the Hotel Resort DA or an Amendment Application (or the SEARS Applications relating to any of the same), (to which clause 3 applies).

- (b) Within 15 Business Days after Crown either receiving an Approval to a Significant Application or becoming aware that an Approval to a Significant Application will issue with Crown Unacceptable Conditions, Crown must notify the Authority and LLMP:
- (i) of that occurrence and where the Approval has issued, provide a copy of that Approval to the Authority and LLMP; and
  - (ii) whether or not, in Crown's opinion, any conditions in that Approval may constitute Crown Unacceptable Conditions.
- (c) Within 20 Business Days after complying with clause 12.3(b), Crown must notify the Authority of its concluded view as to whether or not any conditions in that Approval to a Significant Application constitute or are likely to constitute Crown Unacceptable Conditions. If Crown has concluded that the Approval to a Significant Application contains or is likely to contain one or more Crown Unacceptable Conditions, then Crown must also in that notice provide reasonable details:
- (i) to support its opinion having regard to the matters to be taken into account in determining whether a condition of that Approval to a Significant Application is a Crown Unacceptable Condition; and
  - (ii) of the course of action it proposes to adopt to modify those Unacceptable Conditions.
- (d) Within 20 Business Days from the later of the Authority receiving:
- (i) notification of any Crown Unacceptable Condition pursuant to clause 12.3(c); and
  - (ii) the Approval for the Significant Application,
- the Authority may notify Crown and LLMP whether it is of the opinion that the Approval for the Significant Application contains or is likely to contain an Authority Unacceptable Condition, providing reasonable details to support its opinion, having regard to the matters to be taken into account in determining whether a condition is an Authority Unacceptable Condition.
- (e) Within 20 Business Days from the later of LLMP receiving:
- (i) notification of any Crown Unacceptable Condition pursuant to clause 12.3(c); and
  - (ii) the Approval for the Significant Application,
- LLMP may notify Crown and the Authority whether it is of the opinion that the Approval for the Significant Application contains or is likely to contain an LLMP Unacceptable Condition, providing reasonable details to support its opinion, having regard to the matters to be taken into account in determining whether a condition is an LLMP Unacceptable Condition.
- (f) If:
- (i) the Authority notifies Crown that there are Authority Unacceptable Conditions; or
  - (ii) LLMP notifies Crown that there are LLMP Unacceptable Conditions,

Crown must:

- (iii) prepare an Application to modify that Approval for the Significant Application; or
- (iv) lodge an appeal in relation to that Approval for the Significant Application,

and must not carry out any part of the Crown Works which are the subject of the condition of the Approval for the Significant Application which the Authority or LLMP has notified is an Unacceptable Condition until the Approval is determined on conditions which the Authority and LLMP notify, each acting reasonably, do not give rise to Unacceptable Conditions or the Authority and LLMP have waived their respective rights in relation to those conditions in writing.

- (g) If the Authority does not give a notice under clause 12.3(d) within 20 Business Days after receiving the Approval, Crown may give notice to the Authority requesting that the Authority notify Crown of any Authority Unacceptable Condition in accordance with clause 12.3(d). If the Authority does not give a notice under clause 12.3(d) within 5 Business Days of receiving Crown's notice under this clause, Crown may notify a dispute in accordance with clause 35.
- (h) If Crown wishes to make an application to modify an Unacceptable Condition in relation to an Approval to which this clause 12 applies, clause 10.3 and this clause 12 will re-apply.

#### **12.4 Crown must comply with all Approvals**

Crown must, subject to the terms of this deed, comply on time with all relevant Approvals and all Laws in connection with the carrying out of the Crown Works and the construction and use of the Crown Site.

#### **12.5 Changes to Approvals and the Final Plans and Specifications**

If changes to the Approvals and the Final Plans and Specifications are required under a Law, then subject to clauses 9, 10.3 and this clause 12, Crown must at its own cost:

- (a) cause the Works to be redesigned to accommodate the changes;
- (b) obtain all necessary Approvals for the changes; and
- (c) incorporate those changes into the Works.

#### **12.6 LLMP and Authority not liable**

Except to the extent that the Authority or LLMP (as the case requires) is in breach of any provision of this clause 12 and subject to any other express provision of this deed, Crown releases each of the Authority and LLMP from, and agrees that neither the Authority nor LLMP is liable for, liability or loss arising from, and any Costs incurred in connection with:

- (a) any conditions attaching to an Approval; or
- (b) anything contained in the Approvals and the Final Plans and Specifications.

#### **12.7 Copies of Final Plans and Specifications**

Crown must give the Authority, the Independent Certifier and LLMP:

- (a) a consolidated set of the Final Plans and Specifications for the Crown Works promptly after Crown receives any Construction Certificate for the Crown Works or,

if no Construction Certificate is required by Law, prior to commencement of any works on the Crown Site; and

- (b) written details of any changes to the Final Plans and Specifications (including copies of the changed plans and specifications), promptly after Crown receives any other Approval.

## 12.8 POEO Act Licence

Crown, LLMP and the Authority acknowledge and agree that:

- (a) the Authority holds the POEO Act Licence which applies to Barangaroo;
  - (b) the POEO Act Licence regulates all activities on Barangaroo including the Crown POEO Works, the Relevant POEO Works and the Other POEO Works;
  - (c) Crown must not commence any Crown Works or do anything on the Crown Site which constitutes work or an activity which requires authorisation under the POEO Act unless and until a variation of the POEO Act Licence authorising that work or activity has been obtained by the Authority in accordance with this clause;
  - (d) Crown must cooperate and liaise with the Authority, and comply with any reasonable directions of the Authority, in relation to compliance with the conditions of the POEO Act Licence;
  - (e) Crown must comply with, and carry out and fulfil the conditions and requirements of the POEO Act Licence in so far as they relate to the Crown POEO Works, including any variation of the POEO Act Licence, as if Crown was the licensee under the POEO Act Licence;
  - (f) Crown must put in place, or comply with any management procedures, protocols or systems relating to compliance with the POEO Act Licence as reasonably required by the Authority in respect of the Crown POEO Works;
  - (g) Crown must provide to the Authority all information and documents necessary in order to permit the Authority to comply with its obligations under the POEO Act Licence and the POEO Act in respect of the POEO Act Licence, and in this regard must promptly respond to any request by the Authority for such information or documents;
  - (h) subject to clause 12.8(i), the Authority must apply for one or more variations to the POEO Act Licence to the extent that any variations are required to permit the carrying out of the Crown POEO Works;
  - (i) to the extent that any variations to the POEO Act Licence are required to permit the carrying out of the Crown POEO Works, Crown must:
    - (i) at its cost prepare any application for the variation;
    - (ii) obtain the prior written approval of the Authority to the variation application (which approval must not be unreasonably withheld);
    - (iii) respond to any requests for information from the Authority in connection with the application for variation;
    - (iv) make any changes reasonably required by the Authority to the application for variation;
- on demand, reimburse any costs incurred by the Authority in its consideration and approval of the variation application; and



- (vi) pay all fees and charges associated with any such variation within 10 Business Days after the demand;
- (j) except to the extent prohibited by law, Crown indemnifies the Authority against any claim or loss the Authority suffers or incurs arising out of or in any way in connection with a failure by Crown to comply with its obligations under clauses 12.8(c) to 12.8(g) and 12.8(i) to the extent only that such failure results in the Authority becoming liable for Relevant Monies.

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## **13. Contractors, Independent Certifier and Project Team**

### **13.1 Appointment of Builder**

- (a) Without limiting clause 4.10(c), Crown will appoint LLB under the Building Contract as the Builder to undertake the Crown Works excluding:
  - (i) the work described in Annexure 8 to the Building Contract titled "List of Exclusions"; and
  - (ii) such work which falls within the definition of Excludable Work in the Building Contract which Crown deems necessary or appropriate to omit from the Crown Works from time to time in accordance with the Building Contract.
- (b) Subject to clause 13.2, the Authority hereby consents to that appointment.
- (c) Crown will not appoint any person as a Builder for any part of the Crown Works not being carried out by LLB under the Building Contract or any builder in substitution for LLB without the prior approval of the Authority (which approval must not be unreasonably withheld).
- (d) Crown warrants to the Authority that any replacement of the Builder will be a person that Crown is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Builder's obligations under the proposed Building Contract in relation to the Crown Works.

### **13.2 Providing information about Building Contract**

Before entering into a Building Contract, Crown must give the Authority a copy of the proposed Building Contract and evidence satisfactory to the Authority that the Building Contract includes provisions:

- (a) requiring the Builder to comply with:
  - (i) this deed; and
  - (ii) the Code; and
- (b) requiring the Builder to complete the Crown Works as described in clause 13.1(a) by a date which is consistent with Crown's obligations to achieve Practical Completion under this deed; and
- (c) prohibiting the Builder from assigning the Building Contract or any payment, right, benefit or interest under it without the consent of the Authority (which consent must not be unreasonably withheld or delayed).

### 13.3 Provisions in third party contracts

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

- (a) require that, if the Authority exercises a right to terminate this deed, Crown and the contractor must, at the election of the Authority, promptly execute a deed of novation novating the contract in favour of the Authority; and
- (b) are sufficient to enable Crown to grant the licence required under clause 33.

### 13.4 Appointment of PDA Certifier - LLMP Works

- (a) Subject to clause 13.4(b), LLMP must appoint the Independent Certifier as the PDA Certifier in connection with the LLMP Works and (despite the terms of the PDA) that appointment must be substantially in the form of the Independent Certifier's Deed, amended:
  - (i) to reflect the appointment by LLMP rather than by Crown; and
  - (ii) to include provisions with the effect that if the Independent Certifier is dismissed, LLMP must dismiss the PDA Certifier and LLMP must appoint the replacement Independent Certifier as the PDA Certifier as soon as practicable after that dismissal.
- (b) LLMP's obligation to appoint the Independent Certifier under clause 13.4(a) is subject to the Independent Certifier accepting that appointment. LLMP must use reasonable endeavours to procure that the Independent Certifier accept the appointment.
- (c) If the Independent Certifier has been appointed under the PDA in connection with a Works Portion which includes the LLMP Works, that appointment satisfies the requirements under this clause 13.4 to appoint the Independent Certifier as the PDA Certifier.

### 13.5 Quality assurance systems

- (a) Crown must carry out or procure that the Crown Works are carried out in accordance with quality assurance systems conforming to the ISO 9000 or AS3900 series of standards.
- (b) Crown must ensure that all major contractors engaged in respect of the Crown Works have certified quality assurance systems and have achieved substantial implementation of a quality assurance system conforming to the ISO 9000 series.

### 13.6 Crown liable for acts of contractors

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

### 13.7 Choice of Independent Certifier

- (a) At any time Crown may nominate up to 3 persons who it believes each have the necessary expertise, experience and resources to carry out the responsibilities and functions of the Independent Certifier for the purposes of the Crown Works, and request by notice, with a copy to LLMP, the Authority to approve each of those 3 persons (which approval must not be unreasonably withheld).

- (b) If the Authority does not approve any of 3 such persons, Crown may either appoint one of the approved persons or nominate a replacement person(s) similarly qualified to replace the person or persons not approved by the Authority and then of the 3 approved persons Crown may nominate any one of those persons to be the Independent Certifier for the purposes of the Crown Works.

### **13.8 Appointment of Independent Certifier - Crown Works**

Prior to the commencement of the Crown Works, Crown must (if it has not already done so) appoint the Independent Certifier in connection with the Crown Works and that appointment must be substantially in the form of the Independent Certifier's Deed. If the Independent Certifier is dismissed then Crown must appoint another Independent Certifier as soon as practicable after that dismissal.

### **13.9 Project Team**

Crown must:

- (a) procure that Crown's obligations in relation to the Crown Project and its obligations under the Project Documents are managed by the Project Director;
- (b) submit for the approval of the Authority, such approval not to be unreasonably withheld or delayed with a copy to LLMP, the name of the person Crown nominates from time to time to undertake the obligations of the Project Director;
- (c) subject to clause 13.9(d), utilise and retain the services of those individuals and organisations that comprise the Project Team;
- (d) consult with, and obtain the prior written approval of, the Authority, such approval not to be unreasonably withheld or delayed, to any change regarding the Project Team and the scope of services being provided by those Project Team members; and
- (e) notify the Authority, with a copy to LLMP, of any changes to the Project Team.

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## **14. Commencement of Works and Access**

### **14.1 Access to Premises and Construction Zone Licence and Construction Zone Sub-Licence**

- (a) In consideration of LLMP agreeing to pay the Authority a licence fee of \$[REDACTED] and surrendering the licence referred to in clause 14.1(a)(ii):
  - (i) the Authority hereby grants LLMP, and Crown consents to the grant, and LLMP accepts the grant, of a Construction Zone Licence over the Crown Secured Area on the terms set out in this clause 14 and Annexure 1 effective on and from the Commencement Date; and
  - (ii) LLMP hereby surrenders the licence granted to it by the Authority in relation to the area specified in Annexure K of the PDA as it applies to the Crown Secured Area effective on and from the Commencement Date.
- (b) In consideration of Crown agreeing to pay LLMP a licence fee of \$[REDACTED], LLMP hereby grants to Crown, and the Authority consents to the grant, and Crown accepts the grant, of a Construction Zone Sub-Licence over the Crown Secured Area on the terms set out in this clause 14 and Annexure 2.

- (c) Upon expiration of the Construction Zone Sub-Licence with respect to part of the Crown Secured Area, Crown will be responsible to ensure it is able to gain access to those Premises through LLMP and not require the Authority to grant any access licence for the Premises.
- (d) If this deed is terminated, the licence surrendered under clause 14.1(a)(ii) is reinstated and the Authority grants LLMP, and LLMP accepts the grant, of the licence in relation to the area specified in Annexure K of the PDA over the Crown Secured Area effective on and from the date of termination of this deed and otherwise on the same terms as the original licence.
- (e) Clause 14.1(d) survives the termination of this deed.

## 14.2 Staging Sub-Licence

- (a) The parties acknowledge that the Authority has granted the Staging Licences to LLMP under the PDA, but they have agreed by this deed to amend the plans annexed to the Staging Licences so that they are in the form contained in Annexure 3.
- (b) In consideration of Crown agreeing to pay a licence fee of \$[REDACTED] to LLMP, LLMP grants, the Authority consents to the grant, and Crown accepts the grant, of separate Staging Sub-Licences of the Staging Areas, and for the term specified in the relevant Staging Sub-Licence.
- (c) Crown acknowledges that the BDA Development Blocks are being used by other parties as at the Commencement Date.
- (d) If any part of a BDA Development Block becomes available for use by Crown for Site Establishment, the Authority will notify Crown of the part of the BDA Development Block which is to become so available and the date on which Crown can take access on the terms of the Staging Sub-Licences.
- (e) Despite clauses 14.2(c) and 14.2(d), Crown is not entitled to occupy any part of the BDA Development Blocks until it has complied with clauses 14.3 and 14.4.
- (f) Upon request from the Authority, Crown and LLMP must act reasonably in:
  - (i) reviewing and agreeing a realignment of the northern boundary of the Staging Areas to move it closer to the boundary between BDA Development Block 7 and BDA Development Block 6 before commencement of any Crown Works, subject to the total area of the Staging Area not being reduced;
  - (ii) discussing and negotiating in good faith any realignment of any other areas in the drawings forming part of the Staging Plans if requested by the Authority, subject to the total area of the Staging Area not being reduced;
  - (iii) reviewing and varying the Staging Areas, if there is a divergence from the Development Program of more than 6 months in the timing for completion of the Crown Works, subject to the total areas of those Staging Areas remaining the same;
  - (iv) reviewing and varying the area of the Crown Secured Area to facilitate the construction by others of the waterside infrastructure, including construction access and access to provide services required in connection with the installation and construction of that waterside infrastructure; and

- (v) reviewing and varying the use applicable to the area of a Staging Sub-Licence provided that:
  - A. the Development Program must be updated to reflect the timing impact, if any, of any such change of use within 10 Business Days after such change is agreed; and
  - B. in no circumstances is Crown entitled to an extension of time to any Milestone due to, or to the extent contributed to by, changes to the Development Program pursuant to this clause.

#### 14.3 Terms of Crown access to the Crown Secured Area

- (a) Subject to clauses 14.4 and 38, LLMP must ensure that Crown has access to the Crown Site from the date on which Crown is entitled to such access under this deed and any construction zone licence which has been granted to LLMP under the PDA, (but not the Construction Zone Licence granted under clause 14.1(a)) in relation to the Crown Site will be deemed to be partially surrendered as from the earlier of:
  - (i) in relation to Early Works, 2 Business Days after the notice from Crown is received by the Authority and LLMP under clause 14.5(a);
  - (ii) in relation to the balance of the Crown Works, the Crown Works Commencement Date; and
  - (iii) such other date agreed between LLMP, Crown and the Authority (all acting reasonably).
- (b) Crown acknowledges that:
  - (i) access to the Crown Secured Area is shared in accordance with the Construction Zone Plans and the Staging Plans;
  - (ii) the Authority and LLMP are entitled to continue to use the Site (other than the Crown Secured Area) for their own purposes; and
  - (iii) access to the Crown Secured Area confers on Crown a right only to such use and control as is necessary to:
    - A. enable it to satisfy its obligations under clause 26.1; or
    - B. subject to the provisions of this deed, carry out the Early Works or the balance of the Crown Works, as the case may be, (and to authorise Crown's Employees and Agents including the Builder, to execute the balance of the Crown Works, or the Early Works, as the case may be, and to enter into sub-sub-licences for that purpose),
 and for any other purpose agreed by the Authority.
- (c) The grant of the Construction Zone Sub-Licence pursuant to this clause 14 does not give Crown a general right of occupation of the Crown Secured Area.
- (d) If this deed is terminated, the construction zone licences surrendered under clause 14.3(a) are reinstated and the Authority grants LLMP, and LLMP accepts the grant of a construction zone licence over the Crown Site on and from the date of termination of this deed on the terms set out in the PDA.
- (e) Clause 14.3(d) survives termination of this deed.



#### 14.4 Pre-conditions to commencement of Crown Works

Crown must not commence Site Establishment or Construction Staging on the Staging Areas or physical construction on the Crown Site:

- (a) before the notices contemplated under clause 14.5(a) have been given in accordance with that clause; and
- (b) until:
  - (i) Crown has notified the Authority, with a copy to LLMP, that all Approvals necessary for commencement of the Site Establishment, Early Works or other Crown Works, as applicable, have been obtained and has provided the Authority, with a copy to LLMP, with copies of those Approvals;
  - (ii) except in the case of the Site Establishment and the Early Works (and without prejudice to the Authority's rights under the other provisions of this deed), the Authority, acting reasonably, is satisfied that the Approvals contain no Authority Unacceptable Conditions that have not been waived or it is deemed that there are no Authority Unacceptable Conditions pursuant to clause 3.16;
  - (iii) Crown has complied with clause 4.3;
  - (iv) the Authority, acting reasonably, is satisfied that Crown has complied with such requirements of the Code as are required to be complied with prior to the commencement of the Site Establishment, Early Works or other Crown Works;
  - (v) in relation to the Crown Works (not being Site Establishment or Early Works), evidence has been provided to the reasonable satisfaction of the Authority that Crown has entered into a Building Contract for the construction of the Crown Works as described in clause 13.1(a), and the date by which the Crown Works are to be brought to Beneficial Use and Occupation (as that term is defined in the Building Contract) by virtue of that contract is consistent with Crown's obligations under this deed to bring the Crown Works to Practical Completion by the Last Date for Practical Completion;
  - (vi) Crown has provided a copy of the WH&S Plan in accordance with clause 29.2;
  - (vii) except in the case of Site Establishment, Crown has provided an up to date Development Program to the Authority and LLMP in accordance with this clause 14; and
  - (viii) Crown has effected the insurances referred to in clause 28 and provided the Authority with evidence, as reasonably required by the Authority, of such compliance; and
- (c) if a Crown Event of Default has occurred and has not been rectified,

and if Crown has notified the Authority and LLMP of a Crown Unacceptable Condition, it must cease any construction unless the Authority and LLMP agree that it is not required to do so.

#### 14.5 Notice of Date for Commencement of Site Establishment, Early Works and Crown Works

- (a) Subject to Crown complying with all of the requirements of clause 14.4, Crown must give the Authority and LLMP 5 Business Days' notice of the date on which it wishes

to commence Site Establishment, the Early Works or the balance (being the entire balance) of the Crown Works, specifying the date it expects to commence those works.

- (b) Crown must not give the Authority and LLMP a notice under clause 14.5(a) until it believes, acting reasonably, that all of the pre-conditions in clause 14.4(b) have been satisfied.
- (c) Crown may change the date in its notice to the Authority and LLMP under clause 14.5(a) one or more times by giving a further notice to the Authority and LLMP.

#### **14.6 Restriction on entry after Crown Works Commencement Date**

Subject to clause 30.5, no person may enter the Crown Secured Area unless he or she fully complies with all site safety requirements implemented by Crown or the Builder, including:

- (a) the WH&S Plan;
- (b) any safe work method statement;
- (c) any clothing requirements;
- (d) any supervision requirements; and
- (e) any safety directions issued by Crown or the Builder.

#### **14.7 Separable Portions**

- (a) The Authority and LLMP agree that Crown may carry out the Crown Works in Separable Portions being:
  - (i) the Hotel Resort Separable Portion; and
  - (ii) the Residential Separable Portion.
- (b) The Authority consents to the use and occupation of the Hotel Resort Separable Portion prior to the use and occupation of the Residential Separable Portion if:
  - (i) the Date of Practical Completion of the Hotel Resort Separable Portion has occurred or the Lease of the Hotel Resort Separable Portion has commenced;
  - (ii) Crown has provided to the Authority a copy of any Occupation Certificate in relation to the Hotel Resort Separable Portion and all other permits and approvals required at Law for use and occupation of the Hotel Resort Separable Portion;
  - (iii) the Crown Site has been subdivided into 2 stratum lots comprising the Hotel Resort Separable Portion and the Residential Separable Portion;
  - (iv) the Hotel Resort Lease has been granted; and
  - (v) all structural and façade works to the Residential Separable Portion are complete and the only works remaining to be done to the Residential Separable Portion are internal or fitout type works.

## 14.8 Development Program

- (a) Crown must provide the Development Program to the Authority within 60 days after the Commencement Date and regularly update the Development Program so that it reflects:
  - (i) any delays occasioned to the Crown Works and Construction Staging in respect of the Milestone Dates and the progress in achieving the Vacation Dates;
  - (ii) any extensions of time granted in accordance with this deed; and
  - (iii) changes to the Remediation and Vacation Works Program as are relevant to the Crown Works and notified to Crown.
- (b) If Crown wishes to amend the sequencing of the Construction Staging as set out in the Development Program in such a way that would adversely affect Crown's progress in achieving Vacation of a BDA Development Block by a Vacation Date or the Independent Certifier's ability to assess and determine extensions of time in accordance with clause 19, it must provide a revised Development Program to the Authority for its approval not to be unreasonably withheld.
- (c) If the parties have not agreed the amendments proposed by Crown under clause 14.8(b) within 10 Business Days after receipt by the Authority of the revised Development Program for Crown, either party may request the Independent Certifier (with a copy of that request to be provided to the other party) to make the determination referred to in clause 14.8(b) in relation to the amended Development Program and the provisions of clause 14.8(b) will reapply to that determination.
- (d) Crown and the Authority agree that in making his determination under clause 14.8(c), the Independent Certifier may consult with the Remediation QS.
- (e) The Authority and Crown must each pay half of the costs of the Independent Certifier and, if applicable, the Remediation QS in making any determination under this clause 14.8.

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## 15. Crown Management Committee

### 15.1 Outline of Crown Management Committee's responsibilities

The Crown Management Committee will:

- (a) be formed to represent the Authority and Crown in the implementation and delivery of the Crown Project;
- (b) comprise:
  - (i) two members appointed by the Authority; and
  - (ii) two members appointed by Crown,it being agreed that any one member appointed by either the Authority or Crown can exercise all of the rights and powers of both members appointed by the Authority or Crown, as the case may be, including under clause 15.2;
- (c) invite representatives from LLMP to attend all or parts of the Crown Management Committee meetings on a permanent basis and, if so invited, LLMP must procure that a representative of LLMP will attend all (or parts as directed by Crown) of the Crown Management Committee meetings;

- (d) monitor the progress of the Crown Project and Crown's performance of its obligations under this deed;
- (e) be a management forum for Significant Project Issues; and
- (f) be responsible for such other matters as are provided for in this deed or otherwise agreed by the Authority and Crown in writing from time to time.

## **15.2 Department of Premier and Cabinet attendee**

Crown and the Authority agree that a senior executive of the NSW Department of Premier and Cabinet will be entitled (but not obliged) to attend all meetings of the Crown Management Committee and to receive copies of all minutes, agendas, reports and other materials provided to the Crown Management Committee in the same form and at the same time as members of the Crown Management Committee. That attendee will have observer and participant status (but without a right to make decisions, approvals or consents for the purposes of clause 15.11) at all meetings of the Crown Management Committee.

## **15.3 Powers of Crown Management Committee**

The Crown Management Committee may:

- (a) call for, receive and consider the Crown Management Committee Reports in accordance with clause 15.4;
- (b) require Crown to, and in that event Crown agrees, to use reasonable endeavours to procure the following to attend a meeting of the Crown Management Committee:
  - (i) a representative of any Builder;
  - (ii) a representative of any Independent Certifier; and
  - (iii) any member of Crown's Project Team;
- (c) make recommendations to the Authority or Crown on Significant Project Issues as they relate to the Crown Works, and the parties agree that such recommendations must be considered by the relevant parties in good faith; and
- (d) do such other things as Crown and the Authority agree in writing from time to time.

## **15.4 Crown Management Committee Reports**

- (a) Crown must prepare and provide to the Crown Management Committee and to LLMP:
  - (i) the Crown Management Committee Reports at the intervals and with such content and particulars as are set out in Annexure 19 (in both paper and electronic formats); and
  - (ii) such other reports or materials in connection with the Crown Project as reasonably requested by the Crown Management Committee.
- (b) Any Crown Management Committee Report or such other report required to be given by Crown to the Crown Management Committee:
  - (i) must be provided at meetings of the Crown Management Committee, in the format, and cover such matters, as reasonably required by the Crown Management Committee;
  - (ii) does not entitle Crown to an extension of time; and

- (iii) does not reduce or compromise Crown's obligations to achieve and deliver all the relevant works and events referred to in, and within the relevant time contemplated by, the Milestone Schedule.
- (c) An extract of all provisions relevant to the Crown Project, from all reports required to be given by LLMP to the Management Committee under the PDA must be provided to the Crown Management Committee at the same time as LLMP is obliged to provide copies of those reports to the Management Committee under the PDA. The LLMP attendee will also, if requested, provide an oral report in regard to the progress of and all material matters concerning the LLMP Works at Crown Management Committee meetings.
- (d) For the purposes of this deed, any written information or document given to a member of the Crown Management Committee appointed by the Authority during a meeting of the Crown Management Committee or which is included in material which is tabled at a meeting of the Crown Management Committee, will be deemed to have been given to the Authority.

## 15.5 Exception Reporting

In addition to the reports required to be provided by Crown pursuant to clause 15.4, Crown must also provide to the Crown Management Committee additional reports detailing all matters relating to the progress of the Crown Project or the Crown Works, which may materially adversely impact the progress of achieving the Milestones by the Milestone Dates, such reports to be provided within 20 Business Days after the relevant event occurs.

## 15.6 Appointment of Authority members

The Authority:

- (a) is entitled to appoint:
  - (i) two members of the Crown Management Committee; and
  - (ii) an alternate member for each such member to exercise some or all of the appointed member's powers,
 on such terms and conditions as the Authority thinks fit and as set out in writing;
- (b) is entitled to remove or replace any member of the Crown Management Committee, or alternate member, appointed by the Authority; and
- (c) must, within 20 Business Days of the relevant event, appoint a person to replace any member of the Crown Management Committee, or alternate member, appointed by the Authority who dies, resigns, is removed from or otherwise vacates their membership of the Crown Management Committee.

## 15.7 Appointment of Crown members

Crown:

- (a) is entitled to appoint:
  - (i) two members of the Crown Management Committee; and
  - (ii) an alternate member for each such member to exercise some or all of the appointed member's powers,
 on such terms and conditions as Crown thinks fit and as set out in writing;



- (b) is entitled to remove any member, or alternate member of the Crown Management Committee, appointed by Crown; and
- (c) must, within 20 Business Days of the relevant event, appoint a person to replace any member of the Crown Management Committee, or alternate member, appointed by Crown who dies, resigns, is removed from or otherwise vacates their membership of the Crown Management Committee.

## **15.8 Instrument of appointment, removal or replacement**

An instrument of appointment, removal or replacement of a member of the Crown Management Committee, including an alternate member:

- (a) must be in writing signed by an Authorised Officer of the party which is entitled to make the appointment or effect the removal or replacement; and
- (b) is effective when the instrument of appointment, removal or replacement is tabled at a meeting of the Crown Management Committee or when sent to the Authority or Crown, as applicable.

## **15.9 Tenure of appointment**

Unless otherwise specified in the instrument of appointment, a member of the Crown Management Committee holds that position until he or she dies, resigns or is removed from or otherwise vacates his or her membership of the Crown Management Committee under this deed or until the Crown Management Committee is disbanded by the written agreement of the Authority and Crown, or this deed is terminated.

## **15.10 Vacation of membership**

A person vacates their membership of the Crown Management Committee if the member:

- (a) resigns from the Crown Management Committee by notice in writing to:
  - (i) the Authority; and
  - (ii) Crown,
 or on such other basis as the Crown Management Committee accepts; or
- (b) is absent without the consent of at least 2 other members of the Crown Management Committee from more than 3 meetings of the Crown Management Committee held during a period of 12 consecutive months.

## **15.11 Crown Management Committee's decisions**

The Authority and Crown agree that, in respect of the exercise of the powers of the Crown Management Committee set out in this deed, all decisions, approvals and consents of the Crown Management Committee must be made by two members of the Crown Management Committee, one of whom must have been appointed by the Authority and the other of whom must have been appointed by Crown.

## **15.12 Meetings of Crown Management Committee**

A meeting of the Crown Management Committee will be subject to the following:

- (a) the Crown Management Committee will meet not less than quarterly and at such other times as may be required;

- (b) unless the requirement for this notice is waived by all members of the Crown Management Committee, a meeting will be properly convened if the Authority or Crown has given at least 5 Business Days written notice to the members of the Crown Management Committee, provided such notice contains reasonable details of the business to be considered and voted upon at that meeting;
- (c) the quorum for any meeting of the Crown Management Committee is two voting members of which one must have been appointed by Crown and the other must have been appointed by the Authority;
- (d) if no quorum is present within half of one hour of the time appointed for that meeting then the meeting will stand adjourned until the next Business Day to the same time and place. If at such adjourned meeting no quorum is present, then for the purposes of this deed the Crown Management Committee will be deemed to have failed to make a determination on the matters the subject of that adjourned meeting;
- (e) resolutions will be taken to be properly passed by a meeting of the Crown Management Committee in each of the following circumstances:
  - (i) where each member of the Crown Management Committee attending the meeting agrees that the meeting has been properly convened even if sufficient notice of the meeting has not been given as required by this clause 15.12; or
  - (ii) a form of resolution has been signed by each member of the Crown Management Committee, and for this purpose, a form of resolution will be deemed to have been signed by members of the Crown Management Committee if an email is received by any member of the Crown Management Committee or any person nominated by any person of the Crown Management Committee for such purpose, purporting to have been sent by another member of the Crown Management Committee confirming that another member has approved that resolution; and
- (f) the Authority will arrange for minutes to be kept of all meetings and proceedings of the Crown Management Committee and will circulate copies of those minutes to all members not less than 5 Business Days after the relevant meeting, such minutes to be approved at the next Crown Management Committee meeting. All such secretariat functions will be provided by the Authority at its expense.

## 16. Barangaroo Developers' Forum

### 16.1 Barangaroo Developers' Forum

- (a) If requested by the Authority, the provisions of this clause 16 apply and the parties must participate in a group (**Barangaroo Developers' Forum**) established by the Authority comprising a number of the following:
  - (i) a representative of the Authority;
  - (ii) a senior management representative of LLMP;
  - (iii) senior management representatives of the developers of other development projects in Barangaroo including Crown; and
  - (iv) any other person reasonably required from time to time by the Authority.
- (b) LLMP and Crown must appoint a senior management representative to attend any meetings held by the Barangaroo Developer's Forum but Crown and LLMP are not required to have their representatives attend meetings of the Barangaroo Developer's Forum more frequently than quarterly.

## 16.2 Barangaroo Developers' Forum functions

The functions of the Barangaroo Developers' Forum include:

- (a) strategic planning and co-ordination of the developments in each of the development projects;
- (b) forming advisory policy for the Authority in relation to minimising the conflict between developments in Barangaroo including forming policy on:
  - (i) cultural, civic and community space including museums, art galleries, enterprises, key worker housing, low rent accommodation, artist residences, student accommodation, education and community meeting spaces;
  - (ii) restaurants, entertainment and residential developments in Barangaroo to ensure a range of type, style, standard and mix of facilities, cost, target market and image; and
  - (iii) the co-ordination of developments in Barangaroo in accordance with the objectives set out in the PDA, the Barangaroo Management Plan and this deed; and
- (c) the management and operation of Barangaroo including:
  - (i) sustainability of, and within, the precinct;
  - (ii) traffic and access issues; and
  - (iii) the co-ordination of common services;
- (d) marketing and promotion of Barangaroo; and
- (e) any other matter reasonably raised by the Authority or any developer of a part of Barangaroo.

## 16.3 Decisions of Barangaroo Developers' Forum

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

## 16.4 Barangaroo Developers' Forum meetings

- (a) Subject to clause 16.4(b), the Barangaroo Developers' Forum will meet whenever reasonably required by the Authority.
- (b) If LLMP and Crown's representatives attend meetings of the Barangaroo Developers' Forum, each of LLMP and Crown must:
  - (i) meet all costs of its personnel and involvement in the Barangaroo Developers' Forum; and
  - (ii) act in good faith with the Authority when dealing with the Barangaroo Developers' Forum.

## 17. Remediation

### 17.1 Contamination and Remediation Works

- (a) (i) [REDACTED]
- (ii) Crown and LLMP confirm to the Authority that the only works relating to Remediation which are proposed to be carried out by, or on behalf of, Crown are those parts of the Other Remaining Remediation Works which relate to the Crown Site.
- (b) Without limiting clause 24.1 or clause 25.3, Crown, the Authority and LLMP acknowledge that:
- (i) parts of Barangaroo, including the Crown Site, are Contaminated and LLMP has been appointed by the Authority under the PDA to carry out the Remediation of those areas in accordance with the PDA;
- (ii) Crown is aware of all the relevant Remediation and other provisions of the PDA [REDACTED]
- (iii) the Remediation Works, the Other Remaining Remediation Works and the Other Remediation Works (as defined in the PDA) will continue to be carried out in respect of the Crown Site or other parts of Barangaroo after the Commencement Date;
- (iv) Crown has made its own arrangements with LLMP and LLB in relation to the Remediation of the Crown Site; and
- (v) as between the Authority and LLMP:
- A. LLMP is responsible for Remediation of the Crown Site in accordance with the terms of the PDA; and
- B. the Authority [REDACTED] has other obligations to LLMP in respect of Remediation in accordance with the terms of the PDA; and
- (vi) nothing in this clause 17 amends the rights and obligations of LLMP or the Authority under the PDA in respect of the Remediation Works, the Other Remaining Remediation Works or the Other Remediation Works, but for so long as this deed remains on foot, the parties agree to supplement those provisions of the PDA as set out in the succeeding provisions of this clause 17.

### 17.2 Release and indemnity

- (a) [REDACTED] Crown hereby acknowledges that the Authority has no liability to Crown or the Crown Guarantor in relation to any of the matters disclosed in clause 17.1(b) and releases the Authority from all claims, losses, expenses,

damages and liability of any nature which Crown may incur as a result of, or contributed to by

- (i) the Crown Site or any other part of Barangaroo being Contaminated;
- (ii) in respect of any Contaminant present in, on, over or under, emanating from or migrating to or from, the Crown Site or any other part of Barangaroo;
- (iii) the Remediation Works, the Other Remaining Remediation Works or the Other Remediation Works being carried out; or
- (iv) the Remediation Works, the Other Remaining Remediation Works or the Other Remediation Works not being carried out in accordance with the PDA.

except to the extent caused or contributed to by the Authority or the Authority's Employees and Agents.

- (b) [REDACTED] Crown indemnifies the Authority from and against any claim, action, damage, loss, liability or Cost incurred in connection with:

- (i) any arrangement Crown has made with LLMP or LLB in relation to the Remediation of the Crown Site;
- (ii) any part of the Crown Site being Contaminated;
- (iii) any Contaminant present in, on, over or under the Crown Site or emanating from or migrating from the Crown Site to any other part of Barangaroo; or
- (iv) the Subcontracted Remediation Works (as defined in clause 17.3(a)), being carried out or not being carried out in respect of the Crown Site,

except to the extent caused or contributed to by the Authority or the Authority's Employees and Agents.

- (c) LLMP acknowledges and agrees that the indemnities it gave in favour of the Authority under clauses 16.35, 48.2 and 48.3 of the PDA remain binding on it in accordance with their terms and are not abrogated by this clause 17.

### 17.3 Application of Remediation on Crown Site to PDA

- (a) Each of the parties acknowledges that LLMP intends to subcontract part of the Other Remaining Remediation Works in respect of the Crown Site to Crown, and Crown, in turn, intends to enter into a Building Contract with LLB who will then enter into contracts as subcontractor of Crown with subcontractors to carry out those works (**Subcontracted Remediation Works**).
- (b) LLMP acknowledges that the arrangement referred to in clause 17.3(a) does not change its obligations in relation to the Remediation Works or Other Remaining Remediation Works under the PDA or the Authority's liability in respect of Remediation Works or Other Remaining Remediation Works under the PDA.
- (c) The Authority is not liable to pay any amount to Crown, LLB or any subcontractor engaged by or on behalf of Crown directly in relation to the Subcontracted Remediation Works.



(d)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) LLMP and Crown acknowledge and agree that:

- (i) LLMP is required to comply with the Schedule 10 process in the PDA in respect of Relevant Contracts including in respect of the sub-subcontracts entered into by Crown or LLB as subcontractor of Crown for the Subcontracted Remediation Works (the **Relevant Subcontracts**);
- (ii) the Relevant Subcontracts will be Relevant Contracts for the purposes of the PDA and subject to all of the requirements in the PDA that apply in respect of Relevant Contracts;
- (iii) the Authority's liability under the PDA in respect of the Subcontracted Remediation Works:
  - A. is limited to its liability to LLMP incurred under the PDA in respect of the Subcontracted Remediation Works;
  - B. will not exceed that liability calculated in accordance with the PDA; and
  - C. [REDACTED]

## 17.4 Remediation delays and Crown Works

- (a) The parties acknowledge that:
- (i) completion of the Crown Shared Basement Handover Works, the Crown Essential Public Domain and the Crown Essential Infrastructure is critical to Crown being able to complete the Crown Works in accordance with the Crown Milestones and use, occupy and operate the Integrated Hotel Resort; and
  - (ii) a delay in the carrying out of the Remediation Works and the Other Remaining Remediation Works may result in delays to the completion of the Crown Shared Basement Handover Works, the Crown Essential Public Domain and/or the Crown Essential Infrastructure.
- (b) Crown acknowledges that the PDA provides that, in carrying out the Remediation Works and the Other Remaining Remediation Works, LLMP and the Authority must take all reasonable steps to mitigate the cost of those Works and to mitigate the impact of any delay to those Works, having regard to, and taking into account, both LLMP's obligations under the PDA and the Authority's rights under the PDA, including the Authority's rights to direct LLMP as to the carrying out of the Remediation Works under the PDA.
- (c) In complying with their respective obligations in the PDA to mitigate costs of carrying out the Remediation Works and the Other Remaining Remediation Works, the Authority and LLMP must take into account the scheduling of the Crown Works in addition to the scheduling of the Works being carried out by LLMP to complete the Project under the PDA, but only to the extent that neither the Authority nor LLMP is under any obligation to incur any additional liability as a result of taking the scheduling of the Crown Works into account.
- (d) In seeking a costs quotation in accordance with clause 16.2(e) of the PDA from any consultant to provide services with respect to the Remediation Works or the Other Remaining Remediation Works in respect of the Crown Site, LLMP must, in addition to the matters referred to in clauses 16.2(e)(i) and (ii) of the PDA, request the consultant to provide 2 additional costs quotations being firstly, a quotation on the basis of a works program that is consistent with the works program under the PDA and secondly, a further program which is consistent with that program and with Crown meeting the Crown Milestones, noting that if the consultant is engaged on the basis of the second additional quotation, neither the Authority nor LLMP is liable to pay for any increased costs over and above what would otherwise have been incurred under the PDA had the consultant's quotation under clause 16.2(e)(i) or (ii) of the PDA or the first additional quotation been accepted.

(e)

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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Barangaroo Delivery Authority

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[REDACTED] [REDACTED]



[REDACTED]

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## Remediation QS

LLMP and the Authority will use all reasonable endeavours to procure that Crown be joined as a party to any consultancy agreement with the Remediation QS to be entered into by LLMP and the Authority in accordance with the PDA, to the extent that services relating to this deed or the Crown Site are included within the scope of services to be provided by the

Remediation QS and on the basis that if there are additional services which have to be performed by the Remediation QS because of some of the Other Remaining Remediation Works being carried out by Crown rather than by LLMP as contemplated by the PDA, any costs relating to those additional services must be paid for by Crown.

## 17.7 Remediation and Vacation Works Program

- (a) If it has not already done so, on or before the Commencement Date, LLMP must provide Crown with a copy of the draft Remediation and Vacation Works Program.
- (b) The Authority, Crown and LLMP must negotiate in good faith to agree the Remediation and Vacation Works Program (and any updates to the Remediation and Vacation Works Program) to the extent that any Milestone Date, PC Dates and Vacation Dates (as each of those terms are defined in the PDA) relate to the:
  - (i) Crown Secured Area;
  - (ii) Crown Works;
  - (iii) Milestones (under this deed); and
  - (iv) the Vacation Dates (under this deed).
- (c) Following any update to the agreed Remediation and Vacation Works Program, LLMP must provide Crown with a copy of that updated Remediation and Vacation Works Program.

## 17.8

- [REDACTED]
- [REDACTED]
- [REDACTED]

## 17.9

- [REDACTED]
- [REDACTED]

## 17.10 Delays in Hotel Opening

- (a) The Authority, LLMP and Crown acknowledge and agree that:
- (i) the opening of the Hotel Resort Separable Portion to the general public is dependent upon sufficient car parking being available for use by patrons either in the completed Crown Stage 1B Basement or by way of alternative parking arrangements; and
  - (ii) the completion and use and occupation of the Crown Stage 1B Basement is dependent upon the completion of Remediation of the Crown Site (including the lifting of the Declaration as it affects the Block 4 Declaration Area either separately, or independently irrespective of the completion of other works required to lift the Declaration in full), all of which works are required to be done by LLMP under the PDA.
- (b) The Authority, Crown and LLMP agree to:
- (i) work cooperatively together to optimise the completion of the works referred to in clause 17.10(a)(ii), but only to the extent that neither the Authority nor LLMP are under any obligation to incur additional liability under this deed or the PDA; and
  - (ii) act in good faith to explore ways that alternative car parking arrangements can be made available for Crown's patrons within Barangaroo on a temporary basis, pending the completion of the works referred to in clause 17.10(a).

## 18. Achieving Practical Completion

### 18.1 Crown must progress Crown Works

Subject to clause 19, Crown must:

- (a) carry out the Crown Works in an expeditious, proper and workmanlike manner under adequate and competent supervision, and in accordance with the best practices of the various trades involved, using good quality new materials;
- (b) carry out the Crown Works with due skill care and diligence;
- (c) ensure that the Crown Works reach Practical Completion by the Last Date for Practical Completion; and
- (d) ensure that any part of Central Barangaroo used in carrying out the Crown Works is vacated in accordance with the Staging Sub-Licence by the Vacation Date.

### 18.2 Notice of anticipated Practical Completion

- (a) At any time the Authority may, request the Independent Certifier to assess the likely date for Practical Completion of the Crown Works or a Separable Portion and following such assessment, the Independent Certifier must by notice to each of the Authority, Crown and LLMP, certify the Anticipated Date of Practical Completion; and
- (b) Crown must notify each of the Authority, LLMP and the Independent Certifier of the date on which Crown anticipates that Practical Completion of the Crown Works or a Separable Portion will be reached on both of the dates which are:
  - (i) 4 months; and



- (ii) at least 2 months,  
prior to the Anticipated Date of Practical Completion.

### **18.3 Requesting Certificate of Practical Completion**

When Crown is of the opinion that Practical Completion of the Crown Works or a Separable Portion, as the case may be, has been reached, Crown must:

- (a) request the Independent Certifier to issue a Certificate of Practical Completion in relation to the Crown Works or the Separable Portion as the case may be; and
- (b) at the same time give the Authority and LLMP a copy of that request.

### **18.4 Independent Certifier to certify**

Within 5 Business Days after the receipt of Crown's request under 18.3, the parties must procure the Independent Certifier to give Crown (with a copy to the Authority and LLMP at the same time) either:

- (a) a Certificate of Practical Completion of the Crown Works or the relevant Separable Portion certifying the Date of Practical Completion of the Crown Works or the relevant Separable Portion as the case may be; or
- (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for that certificate to be issued.

### **18.5 Carrying out required work**

On receipt of the detailed list of incomplete Crown Works or Crown Works relating to the relevant Separable Portion, as the case may be, referred to in clause 18.4(b), Crown 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 Practical Completion for the Crown Works or the relevant Separable Portion, as the case may be, and clause 18.4, and this clause 18.5 will re-apply.

### **18.6 Effect of Certificate**

The issue of a Certificate of Practical Completion for the Crown Works or a Separable Portion is evidence that Practical Completion of the Crown Works or the relevant Separable Portion has been achieved, but not an acknowledgment that Crown has otherwise complied with its obligations under this deed.

### **18.7 Requirements following issue of Certificate of Practical Completion**

Within 60 Business Days after the Certificate of Practical Completion of the Crown Works or a Separable Portion is issued, Crown must:

- (a) deliver to the relevant Consent Authority all compliance reports required to be delivered to that Consent Authority in relation to the Crown Works or the relevant Separable Portion, as the case may be; and
- (b) deliver to the Authority copies of all documents and Approvals issued by the relevant Public Authority acknowledging completion of the Crown Works or the relevant Separable Portion, and permitting use and occupation of the Integrated Hotel Resort or Separable Portion, as the case may be.

## 18.8 Providing documents to the Authority

Promptly, and in any event within 120 Business Days after Practical Completion of the Crown Works or a Separable Portion Crown must do all things required to procure the issue and delivery to the Authority of copies of the following items in relation to the Crown Works or the relevant Separable Portion:

- (a) as-built drawings;
- (b) all certificates issued by any Public Authority in relation to any part of the Crown Works or the relevant Separable Portion which have not previously been delivered to the Authority; and
- (c) a building certificate under Part 8 of the EP&A Act in respect of the Crown Works or the relevant Separable Portion.

## 18.9 Deemed Practical Completion under PDA

The date when all of the Crown Works reach Practical Completion under this deed is deemed to be the date when the Works Portion comprising the Crown Works under the PDA reaches Practical Completion for the purposes of the PDA.

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## 19. Extensions of time

### 19.1 Milestones

- (a) Crown must:
  - (i) use its best endeavours and act cooperatively with the Authority in preparing, lodging and obtaining the Authority's approval to each part of the Crown Works the subject of a Crown Milestone so that they are approved in a timely manner;
  - (ii) achieve each Crown Milestone by the relevant Crown Milestone Date shown in the Milestone Schedule;
  - (iii) provide notice to the Authority confirming that Beneficial Use and Occupation of the Hotel Resort Separable Portion under the Building Contract has been achieved, within 5 Business Days after such Beneficial Use and Occupation has been achieved; and
  - (iv) provide the Authority with copies of all Occupation Certificates and all other approvals required for the use and occupation of:
    - A. the Hotel Resort Separable Portion; and
    - B. the Residential Separable Portion.
- (b) LLMP must:
  - (i) use its best endeavours and act cooperatively with the Authority in preparing, lodging and obtaining the Authority's approval to any relevant part of the LLMP Works the subject of an LLMP Milestone so that they are approved in a timely manner; and
  - (ii) achieve each LLMP Milestone by the relevant LLMP Milestone Date shown in the Milestone Schedule.

- (c) If a Crown Step-in Notice is given, the relevant LLMP Milestones (and any Crown Milestones remaining incomplete) are extended in accordance with clause 41.3 to the Milestone Dates specified in the Certified Practical Completion Plan.
- (d) The Authority and LLMP must notify Crown promptly when any extensions of time to a Vacation Date are granted to LLMP under the PDA.
- (e) LLMP and Crown must notify the Authority promptly when any extensions of time to an LLMP Milestone are granted to LLMP under the Hotel Project Agreement.

## 19.2 Claims for extension of time – Crown Milestone Dates

The Crown Milestone Dates will be subject to extensions of time for delays in the achievement of a Crown Milestone resulting from any one or more of the following:

- (a) any [REDACTED];
- (b) Force Majeure;
- (c) an act and omission of the Authority or the Authority's Employees and Agents resulting in a breach of this deed by the Authority or because of the wrongful or reckless act of the Authority or the Authority's Employees and Agents;
- (d) the Authority exercising its rights under clause 30.7;
- (e) a delay in the Authority giving access to the Crown Secured Area to LLMP in accordance with the PDA and this deed, excluding any delay arising due to access to parts of the Staging Areas not being provided to Crown prior to [REDACTED] because those areas are being utilised by another contractor as contemplated by clause 4.1;
- (f) Crown suspending or ceasing to perform the Crown Works (in compliance with the provisions of this deed) by reason of a Native Title Application or Threatened Species Claim;
- (g) delays due to the discovery of Relics;
- (h) a Discriminatory Law coming into effect;
- (i) an event occurring which:
  - (i) is outside the control of Crown, Crown's Employee's and Agents and the Builder;
  - (ii) causes damage to or destruction of the Crown Works; and
  - (iii) entitles Crown to make a proper insurance claim under an insurance policy effected by or on behalf of Crown in accordance with clause 28;
- (j) the Independent Certifier unreasonably withholding or delaying the granting of a Certificate of Practical Completion in relation to the Crown Works or a Separable Portion; or
- (k) the occurrence of an event which results in a delay to the completion of the Remediation Works or the Other Remaining Remediation Works as they apply to the Crown Stage 1B Basement and in relation to which an extension of time to a Vacation Date was granted to LLMP under the PDA.

### 19.3 No claims for extension of time - LLMP Milestone Dates

The parties acknowledge and agree that no extensions of time are to be granted to LLMP under this deed in relation to the LLMP Milestone Dates because:

- (a) the LLMP Milestone Dates are calculated by reference to the Date for Beneficial Use and Occupation of the Hotel Resort Separable Portion; and
- (b) the Hotel Project Agreement contains an extension of time regime for the LLMP Milestone Dates.

### 19.4 No claims for extensions of time - Vacation Dates

The parties acknowledge and agree that no extensions of time are to be granted to Crown in relation to the Vacation Dates because those dates are automatically extended as the result of an extension of time being granted to LLMP in relation to a Vacation Date under the PDA, except there is no automatic extension or any other extension where that extension of time relates to a delay which was caused by Crown or Crown's Employees and Agents.

### 19.5 Conditions precedent to extensions of time

- (a) Crown may only claim an extension of time if:
  - (i) Crown gives to the Authority details of:
    - A. the number of days claimed;
    - B. the date the cause of the delay first arose; and
    - C. the date the delay ceased,within 60 Business Days after the earlier of the day Crown becomes aware, and the day Crown ought reasonably to have become aware, of the cause of the delay ceasing;
  - (ii) (and to the extent) the delay has not been caused or contributed to by the Crown or Crown's Employees and Agents (including any subcontractor);
  - (iii) Crown has used its reasonable endeavours to remedy the cause of the delay and to minimise the delay, provided Crown is not obliged to incur any Costs in doing so; and
  - (iv) Crown has actually been delayed or will be delayed or reasonably likely to be delayed in achieving the relevant Milestone by the relevant Milestone Date.
- (b) If the date of the Approval for the Early Works DA or Hotel Resort DA:
  - (i) occurs prior to [REDACTED], the Crown Milestones will be brought forward for the purposes of this deed by the number of days between the date of the Hotel Approval Date and [REDACTED]; or
  - (ii) occurs after [REDACTED], the Crown Milestones will be extended for the purposes of this deed by the number of days between the date of Hotel Approval Date and [REDACTED].

## 19.6 Concurrent delays

If more than one event set out in clause 19.2 (the occurrence of which entitles Crown to claim an extension of time) causes concurrent delays to the achievement of a Milestone, then to the extent that the delays are concurrent, Crown is not entitled to an additional extension of time.

## 19.7 Matters for consideration

In determining whether Crown is, or is likely to be, delayed in achieving a required event, the Independent Certifier:

- (a) may take into account whether Crown has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay, provided Crown is not obliged to incur any Costs in doing so; and
- (b) may not take into account whether Crown can satisfy the relevant Milestone, reach Practical Completion of the Crown Works or the relevant Separable Portion, as the case may be, by the relevant Milestone Date or Last Date for Practical Completion, without an extension of time.

## 19.8 Authority discretion

Notwithstanding that Crown is not entitled to or has not claimed an extension of time, the Authority may at any time and from time to time, extend a Milestone Date for any reason.

## 19.9 Determination of extensions of time

The Authority, Crown and LLMP acknowledge and agree that Crown will be entitled to an extension of time if, the Independent Certifier determines that Crown is entitled to an extension of time.

## 19.10 Dispute over extensions of time

If in the reasonable opinion of Crown the Independent Certifier fails to make its determination in accordance with clause 19.7 or fails to give sufficient reason for refusing to grant an extension of time then Crown may notify a dispute pursuant to clause 35.

## 19.11 Changes to the Milestone Schedule and Development Program

If Crown obtains an extension of time under this clause 19 or if the date of achievement of an LLMP Milestone is extended under the Hotel Project Agreement, then within 30 Business Days after being granted that extension of time:

- (a) Crown must:
  - (i) update the Development Program and Milestone Schedule to reflect the impact of the extension of time on the anticipated timing for achieving Practical Completion; and
  - (ii) provide a copy of the revised Development Program and Milestone Schedule to the Authority; and
- (b) LLMP must:
  - (i) update the Remediation and Vacation Works Program to reflect the impact of the extension of time on the anticipated timing for achieving the LLMP Milestone, if applicable; and
  - (ii) provide a copy of the revised Remediation and Vacation Works Program to the Authority and Crown.



## 19.12 Occurrence of event for which Crown has Insurance

- (a) If:
- (i) the Crown Works are damaged;
  - (ii) the Authority is reasonably satisfied it or Crown is entitled to receive proceeds from Crown's Insurance sufficient to reinstate the Crown Works; and
  - (iii) the time required to obtain the Insurance proceeds and reinstate the Crown Works is likely to prevent:
    - A. Crown achieving Practical Completion of the whole of the Crown Works, by the Last Date for Practical Completion; or
    - B. Crown Vacating the BDA Development Blocks in accordance with the Staging Sub-Licence by the Vacation Dates,
- the Authority must, if requested by Crown, meet with Crown and discuss in good faith any proposals advanced by Crown to deal with such circumstances and the potential delay to Practical Completion or Vacation of the BDA Development Blocks.
- (b) Crown acknowledges and agrees that nothing in clause 19.12(a) imposes any obligation on the Authority to contribute to Costs or other liabilities incurred or suffered by Crown by reason of the occurrence of any such circumstances, except to the extent that that such Costs or other liabilities are not covered by the Insurance proceeds and reason such costs or other liabilities are not covered is because the relevant damage was caused by the acts or omissions of the Authority.

## 19.13 Remedies

- (a) The parties acknowledge and agree that neither the Authority nor Crown has a remedy under this deed in relation to delays in the achievement of an LLMP Milestone because:
- (i) Crown has rights (including acceleration rights) under the Hotel Project Agreement in respect of a delay in the achievement of an LLMP Milestone; and
  - (ii) Crown has rights to issue a Crown Step-in Notice in relation to the LLMP Works in accordance with clauses 40, 41 and 42.
- (b) Crown does not have the right to an extension of time for delays to the Vacation Dates because the Staging Sub-Licences terminate on a date which is extended by extensions of time to the Vacation Dates under the PDA.
- (c)
- (i) If there is a delay in the carrying out of the Remediation Works or the Other Remaining Remediation Works, Crown may put a proposal to the Authority in relation to the possible acceleration of those Works at the cost of Crown.
  - (ii) The Authority will consider any such proposal in good faith and acting reasonably, noting that the Authority will not pay for any costs in relation to any acceleration of those works.
  - (iii) LLMP acknowledges and accepts the arrangements referred to in clauses 19.13(c)(i) and (ii). LLMP and the Authority agree that the arrangements referred to in clauses 19.13(c)(i) and (ii) do not change

## **20. Subdivision and Building Management**

### **20.1 LLMP Obligation to Subdivide**

- (a) LLMP acknowledges and agrees that not less than 1 month before the Anticipated Date of Practical Completion of the first Separable Portion and as soon as practicable following receipt of a notice received from Crown pursuant to clause 20.1(b), it must, at LLMP's cost, procure a subdivision of the Land to create the Crown Site as a separate lot or the Hotel Resort Separable Portion and the Residential Separable Portion as stratum lots in accordance with this clause 20 and consistent with the Proposed Premises Plan or as otherwise agreed by the Authority (in its sole and unfettered discretion).
- (b) Crown may, at any time after the Effective Date, upon written notice to LLMP, require LLMP to commence the actions referred to in this clause 20.1.
- (c) The Authority must promptly do all things necessary on its part to facilitate LLMP's compliance with clause 20.1(a). LLMP will pay the cost of any action that the Authority is required to take as a result of a request for subdivision by LLMP in accordance with the PDA.

### **20.2 Fundamental Requirements**

- (a) Crown acknowledges that the Authority requires as a necessary condition of subdividing the Crown Site (where such subdivision involves a strata subdivision of the Crown Site or part of it under the Strata Leasehold Act) that a single management body be created to manage and administer the Integrated Hotel Resort (including common areas or facilities, building use and other standards, cost apportionments for common areas and facilities and insurances), acknowledging that Crown and the Owners Corporation will, upon the grant of the Leases, accede to the Building Management Statement.
- (b) Crown will be taken to have satisfied its obligations under clause 20.2(a) upon the registration of the Strata Management Statement and the execution and delivery of the Deed Poll by the Owners Corporation of the strata scheme and in relation to the Residential Separable Portion and by Crown in relation to the Hotel Resort Separable Portion.

### **20.3 Notice by LLMP**

- (a) At least 4 months before the earlier of:
  - (i) the Anticipated Date of Practical Completion of the first Separable Portion; and
  - (ii) no later than 5 Business Days following receipt of a notice received from Crown pursuant to clause 20.1(b),

LLMP must give a notice to the Authority and Crown, outlining the manner in which the Land will be subdivided to create the Crown Site.

- (b) Within 5 Business Days after receipt of LLMP's notice under clause 20.3(a), Crown must notify the Authority and LLMP if it proposes to carry out a subdivision option which:
- (i) relates to a strata subdivision of any part of the Crown Site, of the general nature of the strata leasehold scheme Crown proposes to create;
  - (ii) relates to a stratum subdivision of the whole or any part of the Crown Site, of the general nature of the stratum lots to be created and which parts of the improvements they will comprise; or
  - (iii) relates to a strata subdivision and a stratum subdivision of the whole or any part of the Crown Site, of the general nature of the strata leasehold scheme Crown proposes to create, the general nature of the stratum lots to be created and which parts of the Improvements they will comprise.
- (c) If Crown Works include Improvements which will be subject to a Plan of Subdivision under the Strata Leasehold Act:
- (i) Crown must, no later than 20 Business Days prior to the Anticipated Date of Practical Completion of the first Separable Portion, provide draft Strata Documents to the Authority (if such lease or leases are required) the terms of which must be:
    - A. based on the relevant pro forma documents referred to in this deed;
    - B. amended to the extent required to make them consistent with the Hotel Resort Lease except that the Baseline Benchmark Rate applicable to the Residential Common Property Lease will be 48;
    - C. reasonable (having regard to the nature of the development) to the extent that the provisions of the instrument relate to risk to, or liabilities of, the Authority, and in such instance, those provisions may be determined by the Authority acting reasonably;
  - (ii) the Authority will execute any Strata Documents which can only be executed by the registered proprietor of the land pursuant to the Strata Leasehold Act to enable registration of the relevant Plan of Subdivision;
  - (iii) Crown must sign all Strata Documents which that legislation allows to be signed by Crown as agent of the Owners Corporation;
  - (iv) if Crown requests the Authority to execute any Strata Documents as the agent of the Owners Corporation and the Authority agrees to do so, Crown indemnifies the Authority against any liability or loss arising from, and any Costs incurred by the Authority in connection with its execution of those Strata Documents or the fact that those Strata Documents have been entered into; and
  - (v) Crown must, and must procure that the Owners Corporation of the Residential Separable Portion does, accede to the Building Management Statement.
- (d) In relation to any stratum subdivision Crown must, no later than 5 Business Days after receipt by the Authority of Crown's notice under clause 20.3(a) provide draft Stratum Documents to the Authority.

## 20.4 Preparation of Plan

- (a) LLMP must, at LLMP's cost:
- (i) engage the Surveyor to prepare the Plan of Subdivision;
  - (ii) keep the Authority and Crown informed as to progress in preparing drafts of a Plan of Subdivision and submit drafts of them (or any documents to be registered with them) on a regular basis with amendments clearly identified;
  - (iii) consult with the Authority and Crown and take into account any comments, suggestions or objections which the Authority may make (acting reasonably) in respect of the draft plans or documents.
- (b) Crown must in consultation with the Authority, prepare, and obtain the Authority's approval (which may not be unreasonably withheld or delayed) at Crown's cost to:
- (i) the Strata Documents (with all applicable Leases being based on the documents provided by Crown to the Authority under clause 20.3(c)); or
  - (ii) in the case of subdivision which will not involve subdivision under the Strata Leasehold Act, but which will involve a stratum subdivision, the Stratum Documents, which, without limitation, must address the following matters:
    - A. by-laws or rules for the use of the Improvements (which will in the first instance be provided by Crown (acting reasonably) to the Authority for its information);
    - B. any sinking fund or management fund;
    - C. management of Improvements;
    - D. garbage disposal;
    - E. maintenance of Improvements (including the appearance and presentation of the Improvements in relation to the interface of the Improvements with the public domain);
    - F. use and protection of public domain areas;
    - G. signage;
    - H. landscape and architectural standards;
    - I. any modifications and alterations to the relevant Buildings; and
    - J. accession to and compliance with the Building Management Statement for the Site,
- in each case, having regard to the terms of the Lease, the nature of the Improvements and the use to which those Improvements will be put.
- (c) LLMP must in relation to the documents provided under clause 20.4(a)(ii) and Crown must, in relation to the documents submitted under clause 20.4(b), amend the documents as requested by the Authority, acting reasonably, having regard to the nature and effect of the subdivision proposed and the Authority's requirements as set out in the Leases provided under clause 20.3(c).

- (d) LLMP and Crown must finalise the necessary Plans of Subdivision (and other documents referred to in this clause) having taken into account any reasonable comments, suggestions or objections which the Authority has made.
- (e) LLMP and Crown must submit the final draft of the relevant Plans of Subdivision (and other documents referred to in this clause) to the Authority for its approval at least 10 Business Days prior to either of them submitting the relevant Plans of Subdivision to the Consent Authority for its approval.
- (f) The Authority must approve the final drafts of the Plans of Subdivision if they are consistent with the drafts previously submitted by LLMP or Crown, as the case may be, to the Authority, amended only to the extent needed to accommodate the reasonable comments, suggestions or objections which the Authority has made and are otherwise consistent with the Proposed Premises Plan.
- (g) If the Authority does not approve the final drafts of the relevant Plans of Subdivision (or other documents referred to in this clause) within 10 Business Days after receipt of such plan or other documents (as applicable), then the matter will be deemed to be a dispute for the purposes of clause 35 and the provisions of that clause will apply.

## 20.5 Consent to Further Plans

Crown must obtain the consent of the Authority to each Plan of Subdivision in relation to, or of, the Crown Site. The Authority may only refuse its consent, acting reasonably, if:

- (a) the boundaries of the lots described in the relevant draft Plan of Subdivision are not the same as those in the Proposed Premises Plan (allowing for a reasonable margin for the exigencies of the construction process);
- (b) a Plan of Subdivision for strata subdivision under the Strata Leasehold Act is not accompanied by the Strata Documents approved by the Authority;
- (c) a Plan of Subdivision for a stratum subdivision is not accompanied by the Stratum Documents approved by the Authority;
- (d) a Plan of Subdivision is not accompanied by an easement instrument setting out appropriate easements, covenants or restrictions having regard to the nature and effect of the particular subdivision and requirements of the Authority or any Public Authorities; or
- (e) the proposed subdivision will not satisfy the requirements (other than as to timing) of clause 20.1 or LLMP or Crown has failed to comply with clause 20.3.

## 20.6 Subdivision before completion of Crown Works

- (a) The Authority acknowledges that at the time LLMP must prepare and obtain the Authority's consent to the Plan of Subdivision, the Improvements comprising the Crown Works or the relevant Separable Portion may not be sufficiently advanced to allow LLMP or Crown to determine the nature, extent or detail of the matters contemplated by clauses 20.3 or 20.4.
- (b) This clause 20.6 applies where Crown intends that the Hotel Resort Lease commence prior to Practical Completion of the Crown Works or the Hotel Resort Separable Portion. In that circumstance, the Authority agrees that despite anything to the contrary in this clause 20:

- (i) Crown and LLMP are obliged to fulfil their obligations under clause 20.3 only to an extent and level of detail commensurate with the level of advancement of the relevant Crown Works or Hotel Resort Separable



Portion at that time, provided that Crown and LLMP notify the Authority of the expected boundaries of the Improvements to be included within the Premises, by reference to the boundaries of the Premises and that those boundaries are substantially consistent with those depicted in the Proposed Premises Plan approved by the Authority pursuant to clause 11.7 or as otherwise agreed by the Authority (in its reasonable discretion); and

- (ii) the Authority must not refuse its consent under clause 20.4 if Crown and LLMP have satisfied their obligations under clause 20.6(b)(i), provided that the final draft of the relevant Plan of Subdivision (and other documents) contemplated by clause 20.4(e) is in a form and a level of detail which would be acceptable for registration at the LPI and is otherwise consistent with the Proposed Premises Plan approved by the Authority pursuant to clause 11.7.

## 20.7 Registration of Plan

If LLMP and Crown have complied with this clause 20, on approval of the relevant Plan of Subdivision by the Consent Authority, the Authority must:

- (a) (at its Cost) within 5 Business Days produce, at LPI, the certificates of title for the land to be subdivided to enable LLMP and Crown, as the case may be, to lodge and register that Plan of Subdivision (and other documents referred to in this clause) at LPI; and
- (b) (at Crown's Cost) do all other things reasonably required of it by Crown to enable Crown to register the relevant Plan of Subdivision and any Strata Documents in accordance with this clause.

## 20.8 Boundary adjustments

- (a) The Authority acknowledges that at the time of registration of the Plan of Subdivision the Improvements comprising the Crown Works may not be sufficiently advanced to achieve accurate boundary definitions of those Improvements.
- (b) If upon Practical Completion the boundaries of a lot created by subdivision do not follow the external vertical and/or horizontal planes of the Improvements designated for that lot, and LLMP confirms in writing that it is not adversely affected, the Authority agrees (at Crown's cost and risk) to do all things necessary to assist Crown in the adjustment of the boundaries of that lot so that, if appropriate, those boundaries follow the external vertical and/or horizontal planes of the Improvements designated for that lot. Without limitation:
  - (i) the Authority agrees (at Crown's cost and risk) to and Crown agrees to accept the grant of a further Lease or to respectively accept a surrender and re-grant a Lease where the boundary adjustment has to extend to the external vertical and/or horizontal planes of the Improvement; or
  - (ii) the Authority agrees (at Crown's cost and risk) to accept a partial surrender of the Lease, where the boundary of the lot extends beyond the external vertical and/or horizontal planes of the Improvement.

## 20.9 Right to Grant Easements

Without limiting the generality of clause 21.1:

- (a) subject to clause 20.9(c), the parties agree that comprehensive easements including easements for support, services and access may be required between the various lots created by subdivision under this clause 20;

- (b) subject to clause 20.9(c), the Authority agrees to grant an easement for emergency services pedestrian access and egress over that part of the public domain forming part of Central Barangaroo immediately adjacent to the Crown Site, in such dimensions as are required by Law or Approvals and subject to the Authority's approval (not to be unreasonably withheld) of the terms of that easement; and
- (c) the Authority must promptly, at the request and the Cost of Crown, grant the easements referred to in clauses 20.9(a) and 20.9(b) on terms and conditions approved by the Authority acting reasonably.

## 20.10 Particular Easements

Without limiting the generality of clauses 20.9 or 21.1 the parties agree that:

- (a) to the extent that the relevant easements have then been identified, the easements must be created on registration of the Plan of Subdivision creating the lots the subject of the easements; and
- (b) to the extent that the relevant easements have not been identified as at the time of lodgement of the Plan of Subdivision creating the Crown Site as a separate lot, the subject of the easements, the easements may be created by registration of such other instruments as are acceptable to the LPI.

## 20.11 Registration of Easements

The Authority, LLMP and Crown must at the Cost of:

- (a) Crown, in the case of easements requested by the Authority or Crown; and
- (b) LLMP, in the case of easements requested by LLMP,

co-operate with each other and do all things necessary on their respective parts, to cause the easements referred to in clauses 20.9, 20.10 and 21.1 to be registered on the folio of the register for the Premises as soon as reasonably practicable on or after the registration of the relevant Plans of Subdivision.

## 20.12 Binding Nature of Easements

Crown acknowledges and agrees that it and any tenant, licensee or occupier will be bound (or will be bound on registration of the easements) by the terms of the easements and any lease, licence or other right of occupation granted by Crown in respect of any part of the Premises and the Improvements must contain an acknowledgment from the tenant, licensee or occupier that it is bound by the terms of the easements to be granted under clauses 20.9, 20.10 and 21.1.

## 20.13 Staged Subdivision

If Crown subdivides part of the Crown Site under the Strata Leasehold Act, it must do all things reasonably necessary to ensure that any further subdivision under that Act in relation to the Crown Site can be effected, including procuring from each Owners Corporation created under the Strata Leasehold Act a certificate of support under section 57E(1)(a) of the Strata Leasehold Act for registration of a short form strata management statement as contemplated by approved Form 28 under sections 57A-57F of the Strata Leasehold Act.

## 20.14 Strata Leasehold Title

At the request and cost of Crown, the Authority will do all things reasonably required of it by Crown which can only be done by the registered proprietor of the Land to enable Crown to register a strata leasehold plan of subdivision in relation to the Residential Separable Portion.

## 21. Easements

### 21.1 Easements required by Crown

- (a) Without limiting the generality of clause 20, the parties acknowledge and agree that Crown may require easements benefiting the Crown Site or any Premises, including for:
- (i) support, Services and access between the lots created by the subdivisions under clause 20;
  - (ii) the construction, retention, maintenance, repair and use of those Services and utilities for the construction and operation of each Building;
  - (iii) structural support of any stratum areas;
  - (iv) minor encroachments;
  - (v) the ongoing construction of the Crown Works (including the use of cranes); and
  - (vi) all other easements necessary for the development of the Crown Site or the use, enjoyment and occupation of Improvements on the Crown Site,
- and accordingly the Authority, on request from Crown, but subject to clause 21.2, must:
- (vii) grant to Crown; and
  - (viii) permit any relevant providers of Services to obtain,
- on reasonable terms and at no Cost to the Authority, such easements as are reasonably required by Crown.
- (b) Crown must notify the Authority of the exact location and dimensions of any easement it requires under this clause 21.1 as soon as practicable.

### 21.2 Non-granting of easement

The Authority is not obliged to grant an easement referred to in clause 21.1 if:

- (a) that easement would materially interfere with the normal use and enjoyment of the land to be burdened; or
- (b) the Authority is not the registered proprietor of the land to be burdened by the easement.

### 21.3 Authority's entitlement to grant easements over the Crown Site

- (a) The Authority may at any time grant easements and other rights over the Crown Site and restrictions on use burdening the Crown Site (**Site Encumbrances**) provided that:
- (i) a Site Encumbrance proposed by the Authority does not adversely interfere with Crown's rights or obligations under this deed or a Lease;
  - (ii) a Site Encumbrance is required by any other Public Authority;

- (iii) the Authority notifies Crown of its intention to grant the Site Encumbrance, giving reasonable details of the proposed location and terms of the Site Encumbrance; and
  - (iv) the effect of the Site Encumbrances does not reduce the GFA available to Crown for its commercial exploitation.
- (b) If Crown reasonably believes that it has or will incur additional Costs or it may be delayed in carrying out the Crown Works by reason of any such Site Encumbrance, Crown may, by notice to the Authority (**Claim Notice**) within 20 Business Days after the Authority's notice, detailing what that the potential impact (in time and/or Costs) is likely to result from that Site Encumbrance, giving sufficient detail for the Authority to assess the reasonableness of the claim and the Costs.
- (c) The Authority must within 10 Business Days after receipt of a Claim Notice from Crown notify Crown whether it accepts or disputes the claim. Any such dispute will be resolved in accordance with clause 35.
- (d) Any amount that becomes payable by the Authority to Crown under this clause 21.3 must be paid by the Authority to Crown within 15 Business Days after the later of:
- (i) the amount of the Costs being agreed by the Authority or determined pursuant to clause 35; and
  - (ii) the grant of the Site Encumbrance.
- (e) Subject to clause 21.3(f), Crown acknowledges it will have no right to make any claims on the Authority or any other person in respect of any Costs, liabilities or damage incurred or suffered by reason of the creation of any Site Encumbrance other than as set out in the Claim Notice.
- (f) Nothing in clause 21.3(e) prevents Crown from making a further claim against the Authority arising from the Site Encumbrances, where there is a change to the nature or scope of the Crown Project after the creation of the Site Encumbrance which is initiated by the Authority.

## **21.4 Compliance with easements and restrictions**

- (a) Crown must ensure that the restrictions, stipulations, easements and covenants noted on the folio of the register as at the Commencement Date or noted after that date on the folio of the register as permitted by this clause for the Crown Site and the Site Encumbrances are observed or performed by any person who occupies the Crown Secured Area, as if that person were the registered proprietor of those premises. Crown and any person who occupies Crown Secured Area must not interfere with the Authority's performance of those restrictions, rights, stipulations, easements and covenants as registered proprietor of the Crown Site.
- (b) Crown indemnifies the Authority against any liability or loss arising from, and any costs incurred in connection with, a breach by Crown of any of the provisions of any such restrictions, stipulations, easements and covenants, except to the extent the liability, loss or costs arises from the reckless or wrongful act of the Authority or the Authority's Employees and Agents.

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## **22. Finalisation and grant of Leases**

### **22.1 Finalisation of the Strata Leases**

- (a) The Authority and Crown must as soon as practicable and by no later than the date that is 6 months prior to the anticipated Date of Practical Completion of the Residential Separable Portion, negotiate in good faith to finalise the terms of the

Strata Leases (other than the matters referred to in clauses 22.5 and 22.6 below) so that the Strata Leases are consistent with the terms of the Pro forma Hotel Resort Lease (as applicable) and include such other amendments as are reasonably requested by Crown.

- (b) Crown and the Authority must consult and discuss with LLMP and have reasonable regard to any reasonable concerns or amendments that LLMP may make in respect of the proposed terms and conditions of the revised Strata Leases to be agreed in accordance with clause 22.1(a).

## **22.2 Finalisation of ILGA Sub Lease**

- (a) The Authority and Crown agree to negotiate:
  - (i) the Restricted Gaming Facility Sub Lease based on the terms of the Draft Restricted Gaming Facility Sub Lease; and
  - (ii) a deed of consent to the Restricted Gaming Facility Sub Lease based on the Draft Deed of Consent,  
acting reasonably and in good faith.
- (b) The Authority and Crown will each act reasonably and in good faith in negotiating any amendments to the Draft Restricted Gaming Facility Sub Lease and Draft Deed of Consent required by ILGA as part of its approval of the Restricted Gaming Facility.
- (c) The Authority and Crown will each use its reasonable endeavours to have the Restricted Gaming Facility Sub Lease and the deed of consent to that sub lease agreed with each other and ILGA as soon as practicable after the Commencement Date to facilitate those documents being entered into at the same time as the Hotel Resort Separable Portion is available for use and occupation under clause 14.7(b).

## **22.3 Completion of the Leases**

Not less than 2 months prior to the anticipated Date of Practical Completion of the relevant Separable Portion, Crown must prepare the draft Hotel Resort Lease, the draft Strata Residential Lot Lease, the draft Strata Common Property Lease, the draft Restricted Gaming Facility Sub-Lease and the Long Term Licence based on the relevant Leases (as applicable and incorporating any amendments to the Strata Leases agreed in accordance with clause 22.1(a)) to complete the blanks in the Leases set out in clauses 22.4, 22.5, 22.6 and 22.8 and to accommodate the following matters:

- (a) how any requirement or commitment in the Project Specific Climate Positive Work Plan or Barangaroo Management Plan (including any Deed Poll requirements) relating to the Integrated Hotel Resort is to be incorporated into the Leases (assuming that such requirements or commitments arise or continue following Practical Completion and are not otherwise requirements or commitments that Crown must satisfy under clause 10); and
- (b) if, as at the date proposed for the grant of the relevant Lease, Practical Completion of the relevant Separable Portion has been achieved, clause 6.10 and Attachment 1 to the Hotel Resort Lease and the Strata Leases must be removed.



## 22.4 Completion of the Hotel Resort Lease

Crown must deliver to the Authority at the Authority's Solicitors' address:

- (a) a copy (and duplicate copy) of the Hotel Resort Lease by the insertion of:
  - (i) the up to date particulars of title in the Hotel Resort Lease cover sheet for the Hotel Premises;
  - (ii) the term of the Hotel Lease being a period of 99 years commencing on the Lease Commencement Date for the Hotel Resort Lease;
  - (iii) the expiry date of the Hotel Lease being 99 years from the Lease Commencement Date;
  - (iv) the current amount of the Estate Levy calculated in accordance with the definition of Estate Levy;
  - (v) the details of Crown as tenant and Crown's address and facsimile number for service of notices;
  - (vi) details of Crown's "Authorised Officer";
  - (vii) particulars of the restricted gaming licence attached to the Restricted Gaming Facility;
  - (viii) the agreed final form of the "Barangaroo Management Plan" as Attachment 4; and
  - (ix) such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Hotel Resort Lease and comply with any requisition of LPI; and
- (b) a certification addressed to the Authority by Crown's solicitor that the Hotel Resort Lease is in accordance with the terms of this deed; and
- (c) anything else the Hotel Resort Lease requires Crown to deliver to the Authority on or before the execution date of the Hotel Resort Lease.

## 22.5 Completion of the Strata Residential Lot Lease

Crown must deliver to the Authority at the Authority's Solicitors' address:

- (a) a copy (and duplicate copy) of the Strata Residential Lot Leases completed by the insertion of:
  - (i) the up to date particulars of titles in the Strata Residential Lot Leases cover sheet for each lot in the leasehold strata scheme;
  - (ii) the term of the Strata Residential Lot Leases being a period of 99 years commencing on the Lease Commencement Date;
  - (iii) the expiry date of the Strata Residential Lot Leases being 99 years from the Lease Commencement Date;
  - (iv) the up to date details of the relevant tenant, their address and facsimile number for service of notices;
  - (v) details of the tenant's "Authorised Officer"; and

- (vi) such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Strata Residential Lot Leases and comply with any requisition of LPI; and
- (b) a certification addressed to the Authority by Crown's solicitor that the Strata Residential Lot Leases are in accordance with the terms of this deed; and
- (c) anything else the Strata Residential Lot Lease requires Crown to deliver to the lessor on or before the execution date of the Strata Residential Lot Lease.

## 22.6 Completion of the Strata Common Property Lease

Crown must deliver to the Authority at the Authority's Solicitors' address:

- (a) a copy (and duplicate copy) of the Strata Common Property Lease completed by the insertion of:
  - (i) the up to date particulars of titles in the Strata Common Property Lease cover sheet for each lot in the leasehold strata scheme;
  - (ii) the term of the Strata Common Property Lease being a period of 99 years commencing on the Lease Commencement Date;
  - (iii) the expiry date of the Strata Common Property Lease being 99 years from the Lease Commencement Date;
  - (iv) the current amount of the Estate Levy calculated in accordance with the definition of Estate Levy;
  - (v) the up to date details of the relevant owner's corporation as tenant, its address and facsimile number for service of notices;
  - (vi) details of the owner's corporation's "Authorised Officer";
  - (vii) the Commencement Date;
  - (viii) the agreed final form of the "Barangaroo Management Plan" as Attachment 4; and
  - (ix) such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Strata Common Property Lease and comply with any requisition of LPI; and
- (b) a certification addressed to the Authority by Crown's solicitor that the Strata Common Property Lease are in accordance with the terms of this deed; and
- (c) anything else the Strata Common Property Lot Lease requires Crown to deliver to the lessor on or before the execution date of the Strata Common Property Lease.

## 22.7 Completion of the Restricted Gaming Facility Sublease

Crown must deliver to the Authority at the Authority's Solicitors' address:

- (a) a copy (and duplicate copy) of the Restricted Gaming Facility Sublease between:
  - (i) Crown as the sublessor;
  - (ii) Crown Sydney Gaming Pty Ltd as the sublessee; and
  - (iii) the Independent Liquor and Gaming Authority of New South Wales; and

- (b) completed by the insertion of:
- (i) the up to date particulars of title in the Restricted Gaming Facility Sublease cover sheet for the Restricted Gaming Facility Sublease;
  - (ii) the term of the Restricted Gaming Facility Sublease being a period of 98 years and 364 days;
  - (iii) the expiry date of the Restricted Gaming Facility Sublease; and
  - (iv) such other details, additions or alterations as may be necessary to complete and (if applicable) stamp the Restricted Gaming Facility Sublease and comply with any requisition of LPI.

## 22.8 Completion of Long Term Licence

Crown must deliver to the Authority at the Authority Solicitors' address:

- (a) a copy (and a duplicate copy) of the Long Term Licence in the form of the Pro forma Public Domain Licence completed by the insertion of:
- (i) the area to be the subject of the licence being as shown in the plan attached to the Pro forma Public Domain Licence;
  - (ii) a term of 10 years with eight 10 year options and one 9 year and 364 day option; and
  - (iii) the initial licence fee being:
    - A. for the areas which are identified as "Type A - Reserved / Raised Dining Areas" on the plan attached to the Pro forma Public Domain Licence, \$[REDACTED];
    - B. for the areas which are identified as "Type B - Accessible / On Grade Dining Areas" on the plan attached to the Pro forma Public Domain Licence, \$[REDACTED];
    - C. for the areas which are identified as "Landscape Area" on the plan attached to the Pro forma Public Domain Licence, no licence fee is payable; and
    - D. for the areas which are identified as "Building Entrance Transition Zones" on the plan attached to the Pro forma Public Domain Licence, no licence fee is payable,

per square metre per annum of the area the subject of the licence which is on the plan attached to the Pro forma Public Domain Licence, increased in the same proportion as the CPI number for the quarter ending immediately prior to the grant of the Long Term Licence bears to the CPI number for the quarter ending immediately before the commencement date of the Long Term Licence or 1 July 2021 whichever is the earlier; and
- (b) anything else the Long Term Licence requires Crown to deliver to the Authority on or before the execution date of the Long Term Licence.

## **22.9 Submission to Authority**

Crown must submit the Leases completed in accordance with clauses 22.1, 22.4, 22.5, 22.7, 22.6 and 22.8 as applicable to the Authority for approval which must not be unreasonably withheld or delayed.

## **22.10 Determination**

If the Authority does not approve the draft Leases submitted to it pursuant to this clause 22 within 10 Business Days after receipt of those draft Leases (and Crown and the Authority otherwise cannot reach a satisfactory compromise on the matter), then the matter will be treated as a dispute and clause 35 will apply.

## **22.11 Execution**

Once approved by the Authority (or determined pursuant to clause 35), Crown must complete the Leases by inserting the details so approved or determined as contemplated by this clause 22 and provide the Leases to the Authority duly executed by all parties to those Leases other than the Authority, together with cheques for payment of all registration fees.

## **22.12 Election**

The Authority elects that the Lease or Leases granted pursuant to this deed will be a long term lease to which ss104-115 of the Income Tax Assessment Act 1997 applies except for leases having a term of 50 years or less, if any.

## **22.13 LPI Requirements**

The Authority may require Crown to make any necessary amendments to the relevant Lease or Leases (as applicable) so that its form satisfies the requirements of LPI.

## **22.14 Registration of Leases**

The Authority and Crown agree that within 20 Business Days after the completed Leases have been received from Crown, the Authority must execute the relevant Lease or Leases (as applicable), cause those Leases to be stamped (if applicable) (at Crown's Cost but subject to clause 53.7), lodge those Leases with LPI (at Crown's Cost) for registration and do all things necessary (at Crown's Cost) to procure LPI to register those Leases.

## **22.15 Hotel Resort Lease Notice**

Crown may at any time after the Effective Date and Substantial Commencement of the Crown Works, give the Authority a notice requiring the Authority to grant the Hotel Resort Lease on a date specified in the notice, being not less than 2 months after the date of the notice.

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# **23. General requirements for carrying out Works**

## **23.1 Works to comply**

- (a) Crown must carry out or procure the carrying out of the Crown Works and ensure that the Crown Works are carried out in accordance with and will comply with:
  - (i) the Approvals, the Construction Zone Plans, the Staging Plans and the Final Plans and Specifications;
  - (ii) subject to clause 19, the dates stipulated in the Milestone Schedule for the achievement of the Milestones;

- (iii) so that those parts of the Crown Secured Area which are not part of the Crown Site are vacated on expiry of the Staging Sub-Licences;
  - (iv) so that the Pedestrian Walkway is only closed and then subsequently re-opened in accordance with the Staging Plans and by the dates specified in the Staging Plans;
  - (v) all applicable Laws;
  - (vi) the Code;
  - (vii) in relation to the Restricted Gaming Facility, world's best practice for VIP gaming casinos in relation to sustainability obligations;
  - (viii) in relation to the Integrated Hotel Resort, other than the Restricted Gaming Facility, the requirements of this deed in relation to sustainability as applicable to a hotel and residential development; and
  - (ix) this deed.
- (b) Crown and the Authority agree that should any requirement of this deed be inconsistent with any requirement under clause 23.1(a)(i) to 23.1(a)(ix) inclusive, then the latter will prevail over this deed to the extent of the inconsistency.

## **23.2 Crown's obligation for care of Crown Works**

Except as otherwise provided in this deed, Crown is responsible for the care of the Crown Works at all times.

## **23.3 Crown to rectify damage to Crown Works**

Crown must promptly notify the Authority of any material loss or material damage to or material defects of which it is aware, or ought reasonably to be aware, in the Crown Works or the Crown Site and without limiting its rights to make any claim or take any action in respect of such loss or damage or defects at its Cost, promptly rectify any loss or damage to or defects in the Crown Works and the Crown Site so that the Crown Works conform in every respect with the requirements of this deed.

## **23.4 Securing of the Crown Site**

The Authority acknowledges that Crown is not responsible nor liable in any manner whatsoever (excluding any responsibility or liability for which Crown is responsible or liable because of the wrongful or reckless acts of Crown or its officers, servants, agents or contractors) for security of or within Barangaroo, or in respect of any unauthorised entry to or misdemeanour within Barangaroo outside of the Crown Secured Area.

## **23.5 No noxious use**

Crown must not permit any illegal act, trade, business, occupation or calling at any time to be exercised carried on, permitted or suffered in or on the Crown Secured Area.



## **24. Condition of Crown Site**

### **24.1 No warranty as to purpose**

The Authority does not warrant that the Crown Site is suitable, or may be used, for any purpose. Subject to any provision of this deed, Crown represents and warrants to the Authority that:

- (a) it has made its own appraisal of, and has satisfied itself in all respects in connection with, the suitability of the Crown Site for the Crown Project and Crown's proposed use of the Crown Site;
- (b) it has had the opportunity to investigate, and has entered into this deed with full knowledge of (other than in relation to any Approval) and subject to, all prohibitions and restrictions applying to the Crown Site (including their use) under any Law and as disclosed by the Authority prior to Crown entering into this deed;
- (c) it has satisfied itself in all respects in connection with the timetable for the completion of the Crown Project, including the requirements of the Milestone Schedule;
- (d) the Encumbrances affecting the Crown Site which are registered in the folios of the register as at the Commencement Date will not prejudice Crown's ability to complete the Crown Works;
- (e) it will complete the Crown Works with due skill, care and diligence; and
- (f) it has reviewed the Barangaroo Approval Documents.

### **24.2 Site Condition**

Crown:

- (a) represents and warrants to the Authority that, because of Crown's own inspection and enquiries, Crown:
  - (i) is satisfied as to the nature, quality, condition and state of repair of the Site; and
  - (ii) accepts the Crown Site as it is and subject to all defects (latent or patent) and all dilapidation and infestation; and
- (b) subject to clause 19 and subject to any other provision in this deed to the contrary, may not make any objection or claim for compensation against the Authority, delay the carrying out of any Crown Works (such that Crown may not achieve a Milestone in accordance with the Milestone Schedule) or terminate this deed because of anything in connection with:
  - (i) any of the matters referred to in clause 24.2(a);
  - (ii) loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Crown Site except to the extent caused or contributed to by the Authority or the Authority's Employees and Agents after the Commencement Date;
  - (iii) subject to clause 17, the presence in or on the property of Contamination except to the extent any Contamination was caused or contributed to by the Authority or the Authority's Employees and Agents after the Commencement Date;

- (iv) subject to the Authority exercising its rights under clause 30.7 in accordance with clause 30.7, the condition or existence or non existence of Services; or
- (v) any action or non-action by any person.

### 24.3 Services

As between Crown and the Authority, Crown accepts all Costs and risks associated with procuring provision of Services to the Crown Site. Except to the extent of any interruption or failure caused or contributed to by the wrongful or reckless acts of the Authority or its officers, servants, agents or contractors, Crown agrees that the Authority is not liable for, and Crown releases the Authority from, any liability for any loss, injury, damage or Cost incurred by Crown or any other person at any time in connection with the existence of, interruption to, or the failure of, the Services.

### 24.4 Other activities at Barangaroo

Crown acknowledges that it is aware that:

- (a) the Crown Site is within a major event, entertainment and exhibition precinct;
- (b) entertainment and promotional events or activities and public festivals are or may be conducted at Barangaroo (including on adjoining land);
- (c) occupiers of land in the vicinity of the Crown Site may carry out other noisy activities;
- (d) roads in the vicinity of the Crown Site may be temporarily closed during periods when certain events or activities occur and for the purpose of carrying out maintenance and repair; and
- (e) the events, activities or festivals may temporarily interfere with Crown's quiet enjoyment of the Crown Site.

### 24.5 Site co-ordination - other developments

- (a) Crown:
  - (i) acknowledges that:
    - A. land adjoining the Crown Site or in the vicinity of the Crown Site may be the subject of construction activities; and
    - B. the Authority and/or LLMP may establish a process to manage site coordination issues during the construction phase of other developments within Barangaroo and during the long term operation of completed developments within Barangaroo (including the Barangaroo Developers' Forum); and
  - (ii) agrees to liaise and co-operate with, and assist the Authority and LLMP in the process referred to in clause 24.5(a)(i)B.
- (b) The Authority and LLMP each agrees to:
  - (i) use its reasonable endeavours to minimise any inconvenience to Crown caused by any such processes; and

- (ii) provide Crown, where possible, with reasonable prior notice if the processes are likely to impact on the carrying out of the Crown Works.

## **24.6 No claims**

Crown acknowledges and agrees that:

- (a) the matters referred to in clauses 24.4 and 24.5 may have an effect on the conduct of the Crown Works and the Crown Project; and
- (b) except to the extent that LLMP or the Authority (as relevant) does not comply with its obligations under clause 24.5, without prejudice to Crown's rights under clause 19, it is not entitled to object to, or make a claim against the Authority or LLMP (as relevant) because of, the occurrence of any of the matters referred to in clauses 24.4 or 24.5(a).

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## **25. Environmental, native title and heritage obligations**

### **25.1 Environmental Laws**

Without limiting clause 27.1, Crown must comply with and observe all Environmental Laws in carrying out the Project and complying with its obligations under this deed, except to the extent of any wrongful or reckless act by the Authority or any of the Authority's Employees and Agents.

### **25.2 Environmental matters**

In addition to the other requirements under this deed, Crown agrees to keep the Authority informed in connection with all aspects of the Works which could have a material impact on the Environment.

### **25.3 Environmental risk**

Crown acknowledges and agrees that subject to the provisions of this deed, Crown bears the risk of complying with all Environmental Laws and is not entitled to:

- (a) make a claim, objection or requisition against the Authority or delay, rescind or terminate any Project Document; or
- (b) request any extension of time to perform its obligations under any Project Document,

by reason of any of the matters disclosed or referred to in clause 25.1, excluding any compliance with Environmental Laws which is necessitated by Contamination to the Crown Site caused or contributed to by any wrongful or reckless act by the Authority or the Authority's Employees and Agents after the Commencement Date.

### **25.4 Finding of Relics**

Crown:

- (a) acknowledges and agrees that:
  - (i) Relics may be found on, in or under the surface of the Crown Site; and
  - (ii) as between the Authority, LLMP and Crown, any such Relics are and will remain the property of the Authority; and

- (b) must, upon the discovery of a Relic:
  - (i) promptly notify the Authority; and
  - (ii) comply with all Laws relating to the discovery of the Relic.

## 25.5 Native Title Applications and Threatened Species Claims

Crown agrees that if:

- (a) there is a Native Title Application; or
  - (b) a Threatened Species Claim is commenced,
- affecting any part of the Crown Site or the carrying out of the Crown Works, Crown must:
- (c) continue to perform its obligations under this deed and the other Project Documents unless otherwise:
    - (i) ordered by any court or tribunal; or
    - (ii) required by Law; and
  - (d) take all reasonable steps to mitigate any loss or Cost to the Authority in complying with its obligations under clause 25.5(c).

## 25.6 No claim by Crown

Except as otherwise provided in this deed, Crown may not make a claim against the Authority for any Costs, losses or damages incurred by Crown arising from or in connection with any of the matters referred to in clauses 25.4 and 25.5.

# 26. Care of surrounding areas and safety

## 26.1 Crown bears risk

- (a) As between Crown and the Authority, Crown agrees that except to the extent that such risk or Costs are caused by the Authority's or the Authority's Employees and Agents' breach of this deed or any wrongful or reckless act by the Authority or any of the Authority's Employees and Agents:
  - (i) from the Crown Works Commencement Date, it is solely responsible for, and bears all risk and Cost in relation to, the protection of people and property on the Crown Secured Area;
  - (ii) it must, to the extent consistent with the execution of the Crown Works in accordance with this deed, take reasonable steps to avoid unnecessary interference with the movement of people and vehicles in or around the vicinity of the Barangaroo precinct; and
  - (iii) it is solely responsible for, and bears all risk and Cost in relation to any nuisance or unreasonable noise and disturbance caused as a result of carrying out the Crown Works.
- (b) Crown is entitled to take, at its Cost, such action as it considers reasonably necessary to ensure the safety of persons and property within the Crown Secured Area, including removing or modifying any improvements which exist on Crown Site as at the Commencement Date (other than services which are the responsibility of any Public Authority (not being the Authority) to maintain).

## 26.2 Surrounding areas

Crown must:

- (a) use all reasonable endeavours not to cause:
  - (i) the streets adjoining the Crown Site to be in an unclean or untidy condition throughout construction of the Crown Works; or
  - (ii) any damage to the existing streets, kerbs, services and public utilities and any property located in the vicinity of the Crown Site, except as reasonably necessary for the purposes of the Crown Works;
- (b) not wash or permit the washing of concrete trucks or other vehicles or machinery employed in relation to the Crown Works in the streets or areas surrounding the Crown Site;
- (c) promptly make good any damage, caused or contributed to by Crown (or the Builder) carrying out the Crown Works, to any part of Barangaroo, including public utilities and services owned or controlled by the Authority, as soon as practicable after the damage occurs or such longer time as the Authority permits in its discretion (acting reasonably); and
- (d) on completion of the Crown Works, ensure that the access roads to the Crown Site and any adjoining structures or infrastructure, fencing, footpaths or other roadways which have been damaged by Crown or the Builder are repaired in a timely manner having regard to the future development of the Crown Project, or if repair is not possible the relevant damaged part replaced to the satisfaction of any relevant Public Authority, in compliance with all Laws and otherwise to the reasonable satisfaction of the Authority.

## 26.3 Safety of persons

Crown must:

- (a) before commencing the Crown Works ensure that appropriate safety measures including safety fencing, barriers, barricades, hoardings and protective coverings are in place to prevent public access to Crown Site; and
- (b) if required as a result of the carrying out of the Crown Works shore up, maintain, underpin and support adjoining structures (including the relevant access roads, buildings, fencing, footpaths and roadways) so as to ensure:
  - (i) stability and continued use of these structures; and
  - (ii) the safety of persons; and
- (c) cause the Crown Works to be carried out in a safe manner.

## 26.4 Noise

Crown must use its reasonable endeavours, having regard to the nature of the Crown Works, to:

- (a) ensure that any person involved in the carrying out of the Crown Works complies with any applicable Laws with respect to noise suppression methods for building or construction machinery used in carrying out the Crown Works; and
- (b) subject to Crown's rights under any Law and this deed, minimise the inconvenience or interference to any owner or occupier of adjoining land.



## **26.5 Crane usage**

- (a) Subject to clause 26.5(b), Crown must ensure that any site cranes used for construction of the Crown Works remain fully on the Crown Secured Area. Nothing in this clause restricts the boom swing of any crane being above land outside the boundaries of the Crown Secured Area subject to all necessary approvals having been obtained from the relevant Public Authorities and any relevant adjoining lessees or occupiers of relevant land to permit same.
- (b) If Crown requires to operate cranes on or over any land within Barangaroo other than the Crown Secured Area, Crown must apply to the Authority for approval. In giving or refusing its approval the Authority will take into account the Code, all other policies and regulations and the interests of the occupier of the land which may be affected and which it would be reasonable for the Authority to take into account.
- (c) If, in accordance with ordinary construction practices, Crown needs to locate any crane outside of the Land, Crown must obtain all relevant Approvals before it may do so.

## **26.6 Rights of the Authority to protect persons and property**

If Crown fails to comply with its obligations under clause 26.3, then in addition to the Authority's other remedies, the Authority may after giving reasonable written notice to Crown (except where the Authority determines that urgent action is required to protect persons or property), carry out or procure the carrying out of the necessary work. Crown must pay to the Authority on demand a sum equal to all Costs incurred by the Authority.

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## **27. Compliance with Laws**

### **27.1 Obligations of Crown**

Subject to the terms of this deed, Crown must on time comply with, and observe at Crown's expense, all Laws (excluding any judgments issued by any Court or tribunal requiring any payment or action by the Authority) in connection with:

- (a) the Crown Site;
- (b) the Crown Secured Area;
- (c) the Crown Works;
- (d) Crown's Property; and
- (e) the use or occupation of the Crown Secured Areas,

whether or not those Laws are imposed on the Authority or Crown.

### **27.2 Effect of compliance**

Crown expressly acknowledges and agrees that in complying with the Laws referred to in clause 27.1, Crown may be required to effect demolition, structural or capital works, alterations, additions and improvements to the Crown Site and the Crown Secured Area.

### **27.3 Copies of notices**

- (a) Crown must give the Authority a copy of any notice relating to the Environment or public safety of the Crown Site and the Crown Secured Area notified to, or served on, Crown or any other notice relating to the Crown Site which is materially relevant to the Authority.

- (b) The Authority must give Crown a copy of any notice relating to the Environment or public safety of the Crown Site and the Crown Secured Area notified to, or served on, the Authority or any other notice relating to the Crown Site and the Crown Secured Area which is materially relevant to Crown.

## 27.4 Acceptance of risk

As between Crown and the Authority, except in respect of:

- (a) a Discriminatory Law;
- (b) and to the extent of any other provision of this deed imposing liabilities, responsibility or obligations on the Authority or LLMP;
- (c) any breach by the Authority or LLMP of its obligations under this deed;
- (d) any wrongful or reckless act by the Authority or any of the Authority's Employees and Agents; or
- (e) the Authority exercising its rights under clause 30.7,

the effect of any Law (excluding any judgments or orders issued by any Court or tribunal requiring any payment, action or inaction by the Authority) on Crown's use of the Crown Site and the Crown Secured Area is at the sole risk of Crown.

## 27.5 Discriminatory Laws

Despite any other clause to the contrary, the Authority agrees that it must bear all time and direct cost risk associated with:

- (a) any Discriminatory Laws; and
- (b) any changes to Discriminatory Laws,

including any increased levies, imposts or charges arising from the Discriminatory Law.

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## 28. Insurances

### 28.1 Contract works insurance

- (a) Without limiting or affecting Crown's other obligations under this deed, before commencement of the Crown Works, Crown must (at its own Cost) effect and maintain or cause to be effected and maintained a contract works insurance policy or procure that a contract works insurance policy is effected and maintained.
- (b) The policy must cover the usual risks insured under a contract works insurance policy, and be subject to the usual terms and conditions that apply to such a policy.
- (c) Subject to those limitations, the risks covered under the policy shall include physical loss, damage or destruction (including by earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage) and resulting in loss or damage of:
  - (i) the Crown Works (including any associated temporary works);
  - (ii) all materials and things (including plant and equipment used in the execution of the relevant Crown Works) brought onto or in storage on the Site by Crown, Crown's Employees and Agents for the purpose of the Crown Project other than constructional plant and equipment of

contractors and subcontractors unless it is to be incorporated into the relevant Crown Works;

- (iii) the Improvements (associated with the relevant Crown Works); and
- (iv) all materials and things associated with the relevant Crown Works in storage off site or in transit to the Crown Site, or the Crown Secured Area occurring during the period when Crown is responsible for their care including under the terms of any maintenance or defects liability conditions.

## **28.2 Amount of insurance**

The insurance cover referred to in clause 28.1 must be for an amount not less than the full value of the relevant Crown Works and the Improvements (associated with the Crown Works) on a full reinstatement and replacement basis (including Costs of demolition and removal of debris and an amount necessary to cover fees to all consultants), which amount must be approved reasonably by the Authority.

## **28.3 Public liability insurance**

Without limiting or affecting Crown's other obligations under this deed, before Crown first has access to the Site, Crown must effect and maintain or cause to be effected and maintained, a policy of public liability insurance which covers:

- (a) liabilities to third parties for destruction of, physical loss of or damage to property (other than property insured under clause 28.1 and the death of, disease or illness to (including mental illness) or injury to any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance);
- (b) Crown's liability to the Authority and the Authority's liability to Crown for destruction of, physical loss of or damage to property (other than property insured under clause 28.1, but including any property of the Authority in the care, custody or control of Crown ) and the death of, disease or illness to (including mental illness) or injury to any person; and
- (c) subject to standard exclusions generally contained in policies of insurance, Crown's liabilities under clauses 26.2(c) and 44.2(a), 44.2(b) and 44.2(c).

## **28.4 Amount for public liability insurance**

The policy of public liability insurance must be written on an occurrence basis for an amount not less than \$100,000,000 (or such other reasonable amount nominated from time to time by the Authority) in respect of any one occurrence arising out of or in the course of or caused by the execution of the relevant Crown Works.

## **28.5 Employees**

- (a) Before commencing the relevant Crown Works, Crown must insure against liability for death of, or any injury, damage, expense, loss or liability suffered or incurred by any person employed or deemed to be employed by Crown including all liabilities required to be insured by the Workers Compensation Act 1987 (NSW), any other legislation relating to workers' or accident compensation in New South Wales (as well as each other state or territory where Crown's Employees and Agents normally reside or where their contract of employment was made) or imposed at common law.
- (b) The insurance cover required under this clause 28.5 must be effected and maintained for a period ending when the relevant Crown Works (including rectification work) is completed.

- (c) Crown must ensure that the Builder also insures itself (and must require the Builder to require that subcontractors or contractors engaged by it in connection with, or arising out of, the relevant Crown Works insure themselves) against all liabilities which the Workers Compensation Act 1987 (NSW) (or any other relevant workers' or accident compensation legislation or imposed at common law) requires it to insure against.

## **28.6 Workers compensation indemnity**

Crown indemnifies the Authority against any liability or loss arising from, and any costs incurred by the Authority in connection with, Crown failing to comply with Crown's obligations under the Workers Compensation Act 1987 (NSW) (and all other relevant workers' or accident compensation legislation), including as a result of:

- (a) any claim made against the Authority under section 20(1) of the Workers Compensation Act 1987 (NSW); or
- (b) any increase in the premium payable by the Authority under the Authority's own workers compensation insurance.

## **28.7 Professional indemnity insurance**

- (a) Before commencing any Crown Works, Crown must supply the Authority with evidence that each person retained by Crown in relation to professional services work provided by:
  - (i) the lead design consultant, the structural engineer and the services engineer and the Builder, if the Builder designs any part of the relevant Crown Works, have effected professional indemnity insurance policies which are subject to the usual terms and conditions that apply to such a policy and which are at least (or no less than) \$10,000,000 for any one claim or in the aggregate during any one period of insurance;
  - (ii) other relevant service providers, for an amount which is reasonable having regard to the service they have provided;
- (b) The policies effected by the persons referred to in clause 28.7(a) must be subject to the usual terms and conditions that apply to professional indemnity insurance policies and which:
  - (i) cover liability of the person providing advice or being retained by Crown arising from breach of duty owed in a professional capacity, whether owed in contract or by reason of any act or omission of that person, its employees, subcontractors, consultants or agents; and
  - (ii) must have a definition of profession wide enough to include all services to be provided by Crown in the performance of its obligations under this deed and by such other person contemplated by this clause as requiring Insurance, in both cases to the extent that the professional advice provided by the insured party is relied upon.

## **28.8 Other Insurance**

If it becomes Australian insurance industry standard practice to require that Insurance other than the types of Insurance prescribed in this clause 28 be effected and maintained for activities substantially the same as any Crown Works, the Authority may (acting reasonably) require Crown to effect, or cause to be effected and maintain such other policies as are consistent with industry practice at the time, having regard to the nature and scope of the relevant Crown Works.

## 28.9 Insurance requirements generally

- (a) All insurances which Crown effects and maintains or procures to be effected and maintained under this deed:
- (i) must be with reputable insurers (reasonably acceptable to the Authority) with a rating, at the date of effecting cover and each anniversary of that date, of A- or better by Standard and Poors or the equivalent rating with another ratings agency (reasonably acceptable to the Authority) (or in the case of workers compensation insurance, WorkCover NSW) and who are reasonably approved by the Authority;
  - (ii) (other than statutory insurances) must be on terms and conditions (including deductible amounts) approved in writing by the Authority (acting reasonably);
  - (iii) must provide in respect of the Insurance specified in clause 28.3 that:
    - A. all insurance agreements name as insureds the Authority, Crown (and Crown's Employees and Agents) if any, and operate as if there was a separate policy of insurance covering the Authority and Crown (and Crown's Employees and Agents);
    - B. the commission of a vitiating act, omission, breach or default by any one of the insured does not prejudice the insurance of any other insured; and
    - C. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds; and
  - (iv) must provide in respect of the Insurance specified in clause 28.1 that:
    - A. all insurance agreements name as insureds the Authority, and Crown (and Crown's Employees and Agents), and operate as if there was a separate policy of insurance covering the Authority, and Crown (and Crown's Employees and Agents) for their respective rights and interests;
    - B. the commission of a vitiating act, omission, breach or default by any one of the insured does not prejudice the insurance of any other insured; and
    - C. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds.
- (b) Once any insurance policy is approved by the Authority, the terms of that insurance policy must not be materially changed without the Authority's prior written approval (acting reasonably and without delay). Crown must pay the Authority for its reasonable legal and other Costs (if any) associated with determining whether or not to approve any such change.



## 28.10 Cross liability

Any Insurance required to be effected in accordance with this deed by Crown in joint names shall include a cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action against any of the persons comprising the insured;
- (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
- (c) that any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any Insurance.

## 28.11 Periods of Insurance

Crown must maintain (in relation to any Crown Works):

- (a) insurance policies that comply with clauses 28.1, 28.5 and 28.9 until the issue of the Final Certificate of the relevant Crown Works; and
- (b) an insurance policy that complies with clause 28.3 until the Date of Practical Completion of the relevant Crown Works; and
- (c) an insurance policy that complies with clause 28.7 in the first instance until the issue of the Final Certificate for the relevant Crown Works and then for a further period of 6 years after the issue of the Final Certificate for the relevant Crown Works.

## 28.12 Premiums

Crown must punctually pay or caused to be punctually paid, all premiums in respect of all Insurances that it is obliged to arrange under this clause 28 (including any increased premiums payable after claims) and all excesses it may be obliged to pay under the terms of those Insurances (except to the extent that the claim in respect of which the excess is payable, arises out of the Authority's Employees and Agents breach of this deed or wrongful or reckless act by the Authority or any of the Authority's Employees and Agents, which must be paid for by the Authority).

## 28.13 Providing information to the Authority

Before Crown commences any Crown Works and whenever requested in writing by the Authority (but no more frequently than twice each year), Crown must, in respect of each Insurance required to be effected and maintained under this clause 28:

- (a) give the Authority copies of all:
  - (i) cover notes and, other than policies that are effected under a global insurance program covering the primary insureds other business activities, policies (including schedules);
  - (ii) renewal certificates; and
  - (iii) endorsement slips,

as soon as Crown receives them from the insurer or the party effecting the required Insurances and in any event within 5 Business Days after the Authority making a request (provided always that Crown shall not be in breach of this clause if it is

unable to give the Authority a document to which the Authority is entitled under this clause solely for reasons beyond the control of Crown); and

- (b) produce evidence satisfactory to the Authority (acting reasonably) that the Insurances have been effected and maintained prior to the cover being required.

#### **28.14 Failure to produce proof of insurance**

If after being requested in writing by the Authority to do so, Crown fails to comply with its obligations to effect or cause to be effected any of the Insurances required to be effected and maintained pursuant to this clause 28 the Authority may (acting in good faith and reasonably) (after giving Crown 20 Business Days' prior notice of its intention to do so) effect and maintain the Insurances and pay the premiums. Crown must pay to the Authority on demand a sum equal to the amount paid by the Authority under this clause.

#### **28.15 Notices of potential claims**

In addition to the obligations to notify the insurer under any policy, Crown must, as soon as practicable after it becomes aware of the relevant claim, inform the Authority in writing of any claim made under the Insurances referred to in clause 28.1 which is in excess of \$[REDACTED], and must keep the Authority informed of subsequent developments concerning the claim. Crown or the nominated party may not compromise, settle, prosecute or enforce a claim which is in excess of \$[REDACTED], under Insurance taken out pursuant to clause 28.1 without the prior written consent of the Authority (not to be unreasonably withheld) or otherwise on such basis as the Authority and Crown agree in writing from time to time.

#### **28.16 Additional obligations**

In relation to the insurance policies referred to in this clause 28, Crown must:

- (a) ensure that insurance premiums are paid on time, deductibles are paid promptly and the conditions of insurance are otherwise complied with;
- (b) comply with the terms of each insurance policy and not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice in any way the cover under any Insurance or which might prejudice any claim under any insurance policy;
- (c) if necessary, rectify anything which might prejudice any insurance policy;
- (d) subject to clause 28.11, reinstate an insurance policy if it lapses;
- (e) not cancel, vary or allow an insurance policy to lapse without the prior consent of the Authority;
- (f) promptly notify the Authority in writing if an insurer gives notice of cancellation, notice of avoidance or other notice in respect of any insurance policy;
- (g) promptly notify the Authority of any event of which it is aware which results in:
  - (i) an insurance policy lapsing or being cancelled or avoided; or
  - (ii) the insurer's liability for a claim being able to be reduced (including to nil) or denied; and
- (h) give full, true and particular information to the insurer of all matters and things the non-disclosure or misrepresentation of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance policy.

## **28.17 Liabilities of Crown not affected**

The effecting of Insurances does not limit the liabilities or obligations of Crown under this deed.

## **28.18 Application of insurance proceeds**

- (a) Subject to clause 28.19, if all or any part of any Crown Works or the Improvements associated with the relevant Crown Works on the Crown Site are damaged or destroyed and Crown is obliged under this deed or elects to re-instate the relevant Crown Works or Improvement, the following provisions of this clause apply:
  - (i) all insurance proceeds, in respect of that damage or destruction must be applied to repair or reinstate the relevant Crown Works and the Improvements; and
  - (ii) if the insurance proceeds received under the insurance policies effected in accordance with this clause 28.18 in respect of the damage to or destruction of the relevant Crown Works or the Improvements are less than the Cost of repairing or replacing the relevant Crown Works or the Improvements (or those Insurances are void or unenforceable or in accordance with their terms do not cover the particular damage or destruction), Crown must complete the repair and replacement of the relevant Crown Works or the Improvements at its own Cost except to the extent that the damage or destruction, arises out of the Authority's Employees and Agents breach of this deed or wrongful or reckless act by the Authority or any of the Authority's Employees and Agents, which must be paid for by the Authority.
- (b) All Insurances required by this deed, except for the Insurance specified in clause 28.5 or clause 28.7, must be endorsed by the insurer to note and allow Crown's obligations under this clause 28.18, to the effect that compliance with the provisions of this clause will not prejudice Crown's or any other insured's right to indemnity under those Insurances.

## **28.19 Damage and destruction from uninsurable risk**

- (a) If there is damage or destruction resulting from an uninsurable risk (other than one which is attributable to the acts or omissions of Crown or Crown's Employees and Agents) Crown is not required to immediately re-instate the Crown Works or Improvement which has been damaged or destroyed but without affecting Crown's responsibilities or liabilities pursuant to any other provision of this deed.
- (b) Crown may deal with the re-building of the Crown Works as if this was a new Crown Works to which the balance of the provisions of this deed will apply, including the provisions of clause 19.
- (c) Despite the foregoing, Crown must clear the Site and make it safe as soon as reasonably practicable after the damage or destruction occurs.

## **28.20 Change in Insured Risk**

- (a) If, after the date by which Insurance is to be effected in accordance with this deed, a Change in Insured Risk occurs, Crown and the Authority will promptly meet to discuss, in good faith, the measures which should be undertaken to address the Change in Insured Risk, to place the parties, to the extent reasonably practicable, in the same positions that they would have been in had the relevant Change in Insured Risk not occurred.
- (b) If within 30 days, the parties are not able to agree on the relevant measures to be adopted, then the matter must be determined in accordance with clause 35.

- (c) For the purposes this clause 28.20, **Change in Insured Risk** means any Insurance required to be effected and maintained under this clause 28 which:
- (i) ceases to be available from insurers which satisfy clause 28.9(a)(i) (other than where due to any act or omission of Crown, Crown's Employees and Agents or any person on their behalf); or
  - (ii) is available, but the terms and conditions (including as to premiums and deductibles) on which the insurance is generally available from insurers which satisfy clause 28.9(a)(i), change such that the risk is not generally being insured against with such insurers by competent and experienced developers of developments such as the Crown Project.

## **28.21 Insurance for LLMP Works**

LLMP must, or must procure that its construction contractor for the LLMP Works does:

- (a) maintain all insurances required to be effected under the PDA in relation to the LLMP Works;
- (b) comply with the requirements of the PDA in relation to such insurances of the LLMP Works; and
- (c) promptly on request (but not more frequently than once in every period of 12 months), provide Crown with written evidence that such insurances have been effected and remain current.

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## **29 Workplace Health and Safety**

### **29.1 Appointment of principal contractor**

- (a) For the purposes of Chapter 6 of the WH&S Regulation, Crown must engage the Builder as principal contractor in the Building Contract for the Crown Works;
- (b) Crown must authorise the Builder as principal contractor, to manage and control the workplace relevant to the Building Contract and discharge the duties imposed on a principal contractor under Chapter 6 of the WH&S Regulation with respect to the Building Contract.

### **29.2 WH&S Plan**

Crown must provide to the Authority a copy of the WH&S Plan as a pre-condition to the commencement of physical construction on any Crown Works under clause 14.4.

### **29.3 Discharge of obligations**

Crown must procure that the Builder as principal contractor:

- (a) uses such workplace health and safety plans and systems as may be necessary to discharge its obligations as a principal contractor under Chapter 6 of the WH&S Regulation; and
- (b) designs and implement any such plans and systems in conformity with the general duties imposed on persons under Division 2 of Part 2 of the WH&S Act.

## **29.4 Workcover NSW WH&S audit**

Crown must:

- (a) co-operate with any Workcover NSW WH&S management system audit process; and allow access to the Authority to attend at the offices of Crown to inspect a copy of any Workcover NSW WH&S audit report within 5 Business Days after any such audit report being provided to Crown; and
- (b) procure that the Builder must similarly co-operate with any Workcover NSW WH&S management system audit process and allow access to the Authority to attend at the offices of the Builder to inspect a copy of any Workcover NSW WH&S audit report to the Authority within 5 Business Days after any such audit report being provided to the Builder.

## **29.5 Compliance**

- (a) In addition to its other obligations under this deed, Crown must comply with its obligations as a person conducting a business or undertaking that commissions a construction project under Chapter 6 of the WH&S Regulation and procure that the Builder must:
  - (i) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while doing the relevant Works comply with, the WH&S Plan and all statutory obligations of Crown or the Builder, as the case may be; and
  - (ii) comply with any reasonable direction of the Authority given following a perceived breach of the WH&S Regulation or the WH&S Plan.
- (b) Crown must procure that the Builder must take all measures required under any Law or by any relevant Public Authority to protect people and property on or adjacent to the Crown Site and the Crown Works in connection with the execution of the Crown Works.

## **29.6 Authority may carry out obligations**

If Crown or the Builder fails to comply with an obligation under this clause 29, the provisions of clause 30 apply.

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# **30. Authority's rights to enter, inspect and carry out work**

## **30.1 Authority's right to enter and inspect**

- (a) Subject to clause 30.1(b), provided the Authority (and invitees) complies with the site safety requirements referred to in clause 14.6, the Authority (and invitees) may, at its Cost, inspect the Crown Works by entering onto the Crown Secured Area.
- (b) Subject to clause 30.5, where no notice requirements or restrictions apply, the Authority (and invitees) may only exercise its right to enter onto Crown Secured Area pursuant to clause 30.1(a) after giving not less than 2 Business Days' prior notice and then only in the presence of a representative of Crown.



### 30.2 Authority's notice to remedy

- (a) If at any time prior to Practical Completion of the whole of the Crown Works, the Authority reasonably believes that any part of the Crown Works, or any materials for incorporation into the Crown Works, are materially inconsistent with:
  - (i) the Final Plans and Specifications (as amended pursuant to this deed); or
  - (ii) the requirements of this deed,then the Authority may provide Crown with a notice containing full details of any such inconsistency to the extent of the information available to the Authority.
- (b) Subject to clause 30.2(c) and 30.2(d) Crown must upon receiving a notice from the Authority under clause 30.2(a) provide the Authority with a plan for remedying any materials or workmanship identified by the Authority in its notice and implement that plan subject to the Authority's reasonable requirements and conditions.
- (c) If Crown reasonably requires any additional details to those contained in the Authority's notice under clause 30.2(a), it may request that those details be provided, and the Authority must provide those details within a further 5 Business Days after such request.
- (d) If Crown disputes the contents of any notice issued by the Authority pursuant to clause 30.2(a), then it must give the Authority a notice to that effect within 10 Business Days after the later of the date it receives that notice and the date the Authority provides further details following a request under clause 30.2(c), and the provisions of clause 35 will apply to that dispute.

### 30.3 Authority may take action

Subject to clause 30.4, the Authority:

- (a) may do anything which should have been done by Crown under this deed but which has not been done, or which the Authority reasonably considers has not been done properly;
- (b) may (and the Authority's Employees and Agents may) enter and remain on the Crown Site for so long as it is reasonably necessary for that purpose; and
- (c) must use its best endeavours not to interfere with the parts of the Crown Site not required by the Authority under this clause 30.3.

### 30.4 Notice of exercise of rights

The Authority may not exercise its rights under clause 30.3 unless:

- (a) Crown has not remedied the relevant non-compliance in accordance with any plan for remedy agreed between the Authority and Crown pursuant to clause 30.2(b) or otherwise within a reasonable time after it occurs after receiving written notice from the Authority to remedy the non-compliance; and
- (b) the Authority has first given Crown reasonable notice of its intention to do so.

### 30.5 Emergencies

If there is, or the Authority or Crown has grounds for believing there is, an emergency of any nature in connection with the Crown Site:

- (a) on becoming aware of the emergency or possible emergency, the Authority or Crown (as applicable) must as soon as practicable advise and cooperate with the other party, and keep the other party fully informed about the nature of the emergency and any actions being taken by, or on behalf of, Crown or the Authority (as applicable) to address the emergency and ameliorate any risks; and
- (b) whether or not Crown is aware of the emergency or possible emergency or is taking any action, the Authority is permitted to have reasonable access to the Crown Site, having regard to the nature of the emergency or possible emergency, and to take whatever action it considers is reasonably necessary to eliminate the emergency or assist Crown to eliminate the emergency.

### 30.6 Costs of taking action

The Authority's rights under clause 30.3 and 30.5 are in addition to any other remedies of the Authority for Crown's non-compliance. Crown must pay to the Authority on demand a sum equal to all Costs and liabilities reasonably incurred or suffered by the Authority in taking the action.

### 30.7 Authority may carry out Service works

The Authority may (at its sole Cost and risk) at any time carry out works expeditiously and in a proper and workmanlike manner to install, vary, maintain, use, repair, alter, replace and to pass or convey Services through any pipes, ducts, conduits or wires leading through the Crown Site, provided that, in carrying out those works, the Authority:

- (a) gives Crown reasonable notice of its intention to perform those works and of the access times required;
- (b) acts reasonably in taking any reasonable requirements of Crown into account;
- (c) ensures that those works comply with all Laws and the requirements of all relevant Public Authorities;
- (d) obtains all required consents and approvals in respect of those works;
- (e) causes as little inconvenience to Crown as is reasonably practicable;
- (f) does not materially and adversely affect the carrying out of the Crown Works; and
- (g) complies with the site safety requirements of clause 14.6.

### 30.8 Authority not liable

Excluding clauses 30.7 and 30.2(d), Crown:

- (a) acknowledges that it is not entitled to make a claim against the Authority, but without prejudice to Crown's rights under clause 19, including a claim for an extension of time to achieve any Milestone pursuant to clause 19.2 in respect of anything arising out of clause 30; and
- (b) agrees that the Authority is not liable for, and releases the Authority from liability and loss arising from, and Costs incurred,

in connection with, anything the Authority is permitted to do under this clause 30 (except to the extent that any such claim, liability, loss or Costs arises from the Authority failing to comply with any of its obligations under this clause 30 or by reason of any wrongful or reckless act by the Authority or any of the Authority's Employees and Agents).

### **30.9 Authority may carry out WH&S obligations**

- (a) If Crown fails to comply with an obligation under clause 29, the Authority may perform, or have performed, the obligation on Crown's behalf and Crown must pay to the Authority on demand an amount equal to the Costs incurred.
- (b) If and to the extent that the Authority (acting reasonably) considers it necessary to undertake any activity, give any direction or otherwise perform any of the works or services pursuant to clause 36.5, the parties acknowledge and agree that in doing so, the Authority is not acting as a principal contractor, nor is the Authority to be taken, for any purpose, to be the principal contractor.

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## **31. Defects Liability and Final Certificate for Crown Works**

### **31.1 Crown to rectify defects**

As soon as practicable after the Date of Practical Completion of the Crown Works or a Separable Portion, Crown must rectify any defects or omissions in the Crown Works or the relevant Separable Portion.

### **31.2 Final Certificate**

The provisions of clauses 18.2 to 18.6 as they apply to Practical Completion of the Crown Works or a Separable Portion apply *mutatis mutandis* to the issue of the Final Certificate in relation to the Crown Works or a Separable Portion as if the reference in those clauses to:

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

### **31.3 Completion of Obligations under this deed**

When:

- (a) the Effective Date has occurred;
- (b) a Final Certificate has been issued in relation to the Crown Works;
- (c) all Leases have been granted and registered in accordance with this deed;
- (d) no breach of this deed or the Hotel Project Agreement which has been notified under this deed by the Authority, Crown or LLMP which remain unrectified after the expiry of any relevant cure period;
- (e) Crown has performed all its obligations under this deed and paid all moneys payable under clauses 6, 7, 8 and 10; and
- (f) the LLMP Works have achieved Practical Completion,

this deed is deemed to have been performed in full and no party shall have any obligation to perform any further obligations under this deed except in respect of those expressed to survive.

## **32. Naming and marketing the Premises and retail strategy**

### **32.1 Naming the Premises**

- (a) The Authority and LLMP acknowledge and agree that Crown has the naming rights in respect of the Integrated Hotel Resort.
- (b) If Crown wishes to use any name for any part of the Crown Site or any Premises (including after the Lease Commencement Date), Crown must obtain the Authority's consent prior to the proposed name being used, such consent not to be unreasonably withheld if the proposed name is consistent with the Naming and Signage Plan.
- (c) Crown acknowledges that the Naming and Signage Policy must be applied so as to be materially consistent with the signage policy comprised in SEPP 64 as varied from time to time.
- (d) The Authority hereby consents to:
  - (i) the Integrated Hotel Resort being named "Crown Sydney"; and
  - (ii) the Naming and Signage Plan.
- (e) The Authority acknowledges that in principle, it will not object to a name of a Building where the name of that Building is the name of a tenant or a major sub-tenant in that Building.
- (f) The Authority and Crown acknowledge that the name of a Building might be different from the signage on the Building.

### **32.2 Crown's obligations**

- (a) Crown is responsible for all aspects of the marketing and promotion of the Crown Site.
- (b) Crown is authorised to make reference to "Barangaroo" in any marketing materials or advertising when referring to the address of the Premises.
- (c) Crown must ensure that all marketing materials are generally in accordance with the highest standards of industry practice.

### **32.3 Signage, advertising and marketing materials**

- (a) Other than the signage approved pursuant to clause 32.3(c), no signs or advertisements are to be placed on any part of the Crown Site unless the Authority's prior consent is obtained to the size, nature, content, colour, and location of those signs or advertisements, such consent not to be unreasonably withheld.
- (b) The Authority and LLMP hereby consent to the signs shown in the Naming and Signage Plan.
- (c) The Authority acknowledges that its consent is not required under this clause 32.3 for the erection of signs and advertising to the extent the details of the proposed signs and advertising were included in the Naming and Signage Plan or an Application approved by the Authority or where such signs and advertising are consistent with Approvals and the Naming and Signage Policy.

## 32.4 Naming rights, signage and use of external parts of Premises

The Authority agrees that in respect of the provisions of each Lease dealing with naming rights, signage and the use of external parts of the Premises all consents granted under this deed will be deemed to have been given under the relevant Lease.

## 32.5 Retail Leasing Strategy

- (a) Crown must comply with the Retail Leasing Strategy ensuring that any Lease granted for retail purposes is consistent with that strategy.
- (b) Crown must ensure that any sub-lease granted which entitles a tenant to use any part of the Premises for retail purposes (and any subleases associated with that Lease) includes provisions requiring that tenant to comply with the Retail Leasing Strategy.

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## 33. Intellectual property

### 33.1 Ownership of intellectual property

- (a) Crown warrants that Crown has or will have a transferable right to use all design, materials, documents and methods of working produced by or on behalf of Crown for the purpose of the Crown Works (**Intellectual Property Rights**), including the right to use such items for the purpose of operating, maintaining, repairing, rectifying, Making Good, adding to and altering the Crown Works.
- (b) For the avoidance of doubt, this clause 33 and the licences and any sublicences granted under it, do not grant Intellectual Property Rights for the purpose of:
  - (i) using any part of the Building as the Restricted Gaming Facility (including its operation), which the parties acknowledge and agree are proprietary to Crown and its Related Entities and further Crown cannot grant any right to use the restricted gaming licence attached to the Restricted Gaming Facility or to use the Restricted Gaming Facility under the restricted gaming licence; or
  - (ii) carrying out any work on any land other than the Crown Site.

### 33.2 Licence to use intellectual property

- (a) Crown hereby grants to the Authority or its nominee an irrevocable royalty free, non-exclusive, transferable sub-licence to use and modify the material the subject of the Intellectual Property Rights on the terms set out in this clause.
- (b) The Authority grants, and Crown consents to the grant, to LLMP subject to clause 33.7, an irrevocable royalty free, and subject to clause 33.2(c), a transferable sub-licence to use and modify the material the subject of the Intellectual Property Rights on the terms set out in this clause 33.
- (c) Notwithstanding clause 33.2(b), LLMP is only entitled to:
  - (i) transfer the IP Licences to an assignee of its rights under this deed and then only in accordance with clause 34.2;
  - (ii) sub-licence the Intellectual Property Rights to a contractor or sub-contractor approved in accordance with the PDA and subject to the requirements of the PDA.



### 33.3 IP Licence for Underground Works

- (a) If this deed is terminated for any reason, the IP Licences may be used for any purpose in respect of any Underground Works approved under the PDA or this deed.
- (b) No fee will be payable to Crown or the Authority for the use of the IP Licences under this clause 33.3.

### 33.4 IP Licence to Make Good

- (a) If:
  - (i) this deed has been terminated under any of clauses 3.10, 3.15, 3.20, 3.23 or 3.24;
  - (ii) the Authority has directed Crown to Make Good or partial Make Good in accordance with clauses 4.10(a)(v) or 4.10(d) (as applicable); and
  - (iii) Crown has failed to comply with its Make Good or partial Make Good obligations (as applicable) when due under this deed,subject to the Authority's rights under clause 23A of the PDA, and in addition to the purposes set out in clause 33.3(a), the IP Licences may be used for the purpose of Making Good the Crown Secured Area.
- (b) No fee will be payable to Crown or the Authority for the use of the licence of the IP Licences under this clause 33.4.

### 33.5 IP Licence to Modify the Crown Works

- (a) If:
  - (i) this deed is terminated;
  - (ii) the Authority has approved an Alternative Development Proposal in accordance with clause 23A of the PDA which contemplates modifying the Crown Works; and
  - (iii) as at the date of termination, Crown has completed or partially completed the Hotel Resort Separable Portion or has commenced but not completed the Works for the Residential Separable Portion,in addition to the purposes for which the IP Licences can be used under clause 33.3, the IP Licences may be used to modify the Crown Works, provided the approved Alternative Development Proposal must provide for a building which looks substantially different from the Residential Separable Portion proposed by the Crown Works.
- (b) Despite clause 33.5(a), the IP Licences will not be able to be used by LLMP to modify the Crown Works:
  - (i) where this deed is terminated due to LLMP terminating this deed under clauses 3.10 or 3.20; or
  - (ii) LLMP's rights and interests under clause 38.5 are terminated.
- (c) No fee will be payable to Crown or the Authority for the use of the IP Licences under this clause 33.5.

### **33.6 IP Licence to complete the Crown Works where externally complete**

- (a) If:
- (i) this deed is terminated;
  - (ii) the Authority has approved an Alternative Development Proposal in accordance with clause 23A which contemplates completing the Crown Works; and
  - (iii) as at the date of termination, the exterior façade works and structure of the Hotel Resort Separable Portion and the Residential Separable Portion have been completed and the crane is no longer required on the Crown Site,

in addition to the purposes for which the IP Licences can be used under clauses 33.3 and 33.5, the IP Licences may be used to complete the Crown Works.

- (b) Despite clause 33.6(a), the IP Licences will not be able to be used by LLMP to modify the Crown Works:
- (i) where this deed is terminated due to LLMP terminating this deed under clause 3.10 or 3.20; or
  - (ii) LLMP's rights and interests under clause 38.5 are terminated.
- (c) No fee will be payable to Crown or the Authority for the use of the IP Licences under this clause 33.6.

### **33.7 IP Licence to complete Crown Works where incomplete**

- (a) If:
- (i) this deed is terminated;
  - (ii) as at the date of termination, Crown has built the Hotel Resort Separable Portion and part of the Residential Separable Portion; and
  - (iii) the Authority has approved an Alternative Development Proposal in accordance with clause 23A of the PDA which contemplates the completion of the Crown Works with the same or substantially similar external appearance,

in addition to the purpose set out in clauses 33.3 and 33.5, the Authority, Crown and LLMP will meet and negotiate, in good faith and acting reasonably, the terms and conditions which will apply to the use of the IP Licences for the purposes of implementing the Alternative Development Proposal, to complete the Crown Works having regard to the fact that Crown may not be required to undertake the Make Good of the Crown Works due to the Alternative Development Proposal being carried out.

- (b) Despite clause 33.7(a), the IP Licences will not be able to be used by LLMP to modify the Crown Works:
- (i) where this deed is terminated due to LLMP terminating this deed under clause 3.10 or 3.20; or
  - (ii) LLMP's rights and interests under clause 38.5 are terminated.

### 33.8 Termination and failure to effect Make Good

- (a) If this deed is terminated (other than under clause 3):
- (i) the Authority has directed Crown to undertake the Make Good in accordance with clause 39.1(a); and
  - (ii) Crown has failed to comply with its Make Good obligations when due under this deed,

subject to the Authority's rights under clause 23A of the PDA, in addition to the purposes set out in clauses 33.3 and 33.4, the IP Licences may be used for the purpose of the Making Good of the Crown Secured Area.

- (b) No fee will be payable to Crown or the Authority for the use of the licence of the IP Licences under this clause 33.8.

### 33.9 Crown acknowledgements

- (a) Crown acknowledges and agrees that the IP Licences, subject to the terms of this clause 33, include sufficient rights:
- (i) in any Approval, and all plans and specifications referred to in any such Approval; and
  - (ii) in any design work relating to the Crown Project which is not incorporated in any Approval,

for the Authority, LLMP, any other party nominated by the Authority or to whom LLMP has granted a sub-licence permitted by clause 33.2(c); to:

- A. demolish and Make Good or where permitted by the preceding provisions of this clause 33, Make Good any part of the Crown Works which are partially built;
  - B. carry out any purpose in respect of any basement or underground works approved under the PDA or this deed;
  - C. commence or complete any part of the Crown Works which are not complete at the date of termination;
  - D. use (and modify) such Approvals, plans and design work to construct, operate, maintain, repair, rectify, make additions to, and alter those works, in the manner contemplated by this deed or the PDA; and
  - E. sub-licence its rights to third parties engaged by the Authority or its nominees or LLMP or its nominees approved as contemplated by clause 33.2(c) in relation to an approved Alternative Development Proposal under clause 23A of the PDA to undertake or to provide goods or services in connection with those works, including any additions, alterations and repairs to, and rectification and maintenance of those works but only for the purpose of undertaking such works.
- (b) Crown must deliver to the Authority (and the Authority must deliver to LLMP) all documentation the subject of the IP Licences under this clause 33 as is reasonably required by the Authority or nominee (as applicable) following termination of this deed, including such documentation as may be required to lodge appeals, or

making Applications, in respect of any Part 3A Approval or any Approval under Part 4 of the EP&A Act where that Approval would have been an Approval under Part 3A but for a change which requires the subject matter of the Approval to be dealt with under Part 4 of the EP&A Act rather than Part 3A of the EP&A Act.

- (c) The Authority may use the IP Licences for the purpose of dealing with the Integrated Public Art:
  - (i) in accordance with clause 8 while this deed remains on foot; and
  - (ii) following termination of this deed.
- (d) Crown acknowledges that clause 33 survives termination of this deed.

### 33.10 Moral Rights warranty

Crown:

- (a) warrants that it has or will obtain an undertaking, from each individual author employed by each party performing any design work in relation to the Crown Works, not to enforce any Moral Rights that author may have, now or in the future, in any such design work in which copyright subsists, so that the Authority and LLMP may freely exercise their respective rights pursuant to the IP Licences granted under this clause 33;
- (b) must, as soon as reasonably practicable after the Commencement Date, procure each individual author employed by each party performing any design work in relation to the Crown Works to sign the Moral Rights Letter of Consent; and
- (c) must provide to the Authority a copy of all Moral Rights Letters of Consent signed by the relevant individual authors pursuant to clause 33.10(b) as soon as those signed letters of consent are received from the individual authors.

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## 34. Restrictions on alienation

### 34.1 Crown must not alienate

- (a) Subject to clauses 34.1(b), 34.1(d) and 34.1(e):
  - (i) Crown must not assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this deed in any way;
  - (ii) a person must not become or cease to be a Parent of Crown; and
  - (iii) a change in Control of Crown must not take place, it being agreed that there will be no change in Control of Crown for so long as Crown Resorts Limited remains a Parent of Crown,

(each being a **Dealing**), without the consent of the Authority (which may be withheld in the sole and unfettered discretion of the Authority), provided that in the case of a **Dealing** under clauses 34.1(a)(ii) or 34.1(a)(iii):

- (iv) if ILGA consents to that Dealing, the Authority must also consent to that dealing; and
- (v) if ILGA refuses consent to that Dealing, the Authority must also refuse consent to that Dealing.

- (b) Clause 34.1 does not apply to:
- (i) the initial listing of shares of Crown or the Crown Guarantor or a Parent of the Crown Guarantor on a recognised stock exchange;
  - (ii) any transaction involving the Crown Guarantor or a Parent of the Crown Guarantor while the Crown Guarantor is listed on a recognised stock exchange;
  - (iii) any change in Control of the Crown Guarantor or a Parent of the Crown Guarantor while the Crown Guarantor is listed on a recognised stock exchange or pursuant to a Court approved scheme of arrangement under Part 5.1 of the Corporations Act;
  - (iv) any Dealing or transaction upon the implementation of which either Mr J D Packer or another person by his testamentary bequest or operation of law, acquires or maintains a relevant interest in at least 50% or more of the issued shares of the Crown Guarantor or a Parent of Crown; or a Dealing where such Dealing is with a Related Entity of Crown or the Crown Guarantor with the consent of the Authority (which may not be unreasonably withheld).
- (c) The Authority and Crown acknowledge and agree that if there is a Crown Change of Control Default Event, ILGA may:
- (i) terminate Crown's licence under the Gaming Legislation in relation to the Restricted Gaming Facility and if so, the Authority must also terminate this deed; or
  - (ii) consent to the Dealing the subject of the Change of Control Event and if so, the Authority must also consent to that Dealing.
- (d)
- (i) Prior to the commencement of the Leases, Crown must not mortgage, charge or otherwise encumber Crown's interest in the Crown Site or this deed without the prior consent of the Authority.
  - (ii) The Authority agrees to act reasonably and promptly in determining whether to provide its consent to Crown for the purposes of this clause 34.1(d) where the provision of such mortgage, charge or other Encumbrance is reasonably required by Crown in order to raise funds for the purposes of carrying out its obligations under this deed.
- (e) Prior to the commencement of the Leases, Crown must not mortgage, charge, lease or otherwise deal with any of Crown's Property which requires the Authority to sign a waiver without first obtaining the consent of the Authority, which consent may not be unreasonably withheld if:
- (i) Crown is entering into a proper and bona fide mortgage, charge or lease as a means of financing the Crown Works and provides sufficient evidence to the Authority (acting reasonably) that it is doing so;
  - (ii) Crown uses the standard form of right of entry waiver document prepared by the Authority; and
  - (iii) Crown pays the Authority's Costs (including legal Costs where applicable).



## 34.2 LLMP must not alienate

- (a) Subject to clauses 34.2(b) and 34.2(c), LLMP must not:
- (i) assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this deed in any way; or
  - (ii) retire, resign, allow or permit itself to be replaced as trustee of the Trust,
- (each being a **Dealing**), without the consent of the Authority (which may be withheld in the sole and unfettered discretion of the Authority).
- (b) Prior to the commencement of the Leases, LLMP must not mortgage, charge or otherwise encumber LLMP's interest in this deed or LLMP's interest in the Crown Site, if any, without the prior consent of the Authority and Crown.
- (c) Prior to the commencement of the Leases, LLMP must not mortgage, charge, lease or otherwise deal with any of LLMP's property which requires the Authority and Crown to sign a waiver without first obtaining the consent of the Authority and Crown, which consent may not be unreasonably withheld if:
- (i) LLMP is entering into a proper and bona fide mortgage, charge or lease as a means of financing the LLMP Works and provides sufficient evidence to the Authority and Crown (acting reasonably) that it is doing so;
  - (ii) LLMP uses the standard form of right of entry waiver document prepared by the Authority and Crown; and
  - (iii) LLMP pays the Authority's and Crown's Costs (including legal Costs where applicable).

## 34.3 Authority may assign

- (a) The Authority may at any time assign its interest in this deed to any person provided that the assignee:
- (i) is a Public Authority and has the necessary powers to enable it to perform the Authority's obligations under this deed; and
  - (ii) has title to the Crown Site following the assignment.
- (b) If the assignee is not a Public Authority but otherwise satisfies the requirements of this clause 34.3, then the Authority may only assign its interest in this deed with the consent of Crown and LLMP.

## 34.4 Change of landlord

- (a) Prior to dealing in any way with its interest in the Crown Site (including transferring title to, or granting a concurrent lease over, any part of the Crown Site), the Authority must provide at least 20 Business Days' notice of such dealing to Crown and the relevant Public Authority administering the restricted gaming licence attached to the Restricted Gaming Facility and must not deal with its interest in the Crown Site until the other person acquiring such interest is approved by the relevant Public Authority.
- (b) Subject to clause 34.4(a), if the Authority transfers title to any part of the Crown Site or grants a concurrent lease over any part of the Crown Site, so that Crown

becomes obliged to perform all or part its obligations under this deed in favour of another person (**New Landlord**), then:

- (i) where the New Landlord is a Public Authority, the Authority is released from those obligations under this deed which relate to that part of the Crown Site transferred or the subject of the concurrent lease, arising after Crown receives notice of that event;
- (ii) Crown must procure that the New Landlord is substituted for the Authority as a named insured under those Insurances which relate to that part of the Crown Site transferred or the subject of the concurrent lease;
- (iii) Crown must enter into those documents and assurances the Authority or the New Landlord reasonably requires to enable the New Landlord to enforce the benefit of all obligations owed under this deed which Crown becomes obliged to perform in favour of the New Landlord, in the New Landlord's name;
- (iv) prior to such transfer or grant, the Authority must procure the New Landlord to enter into such documents as are required to ensure that the New Landlord is bound by all Project Documents executed by the Authority and any consents to the extent they relate to that part of the Crown Site transferred or the subject of the concurrent lease; and
- (v) the Authority must pay the reasonable Costs incurred by Crown in complying with Crown's obligations under this clause 34.4.

## **35. Dispute resolution**

### **35.1 Notice of dispute**

- (a) If a dispute between Crown, the Crown Guarantor, LLMP, the LLMP Guarantor and the Authority (or any two or more of those parties) arises in connection with this deed or its subject matter, then the disputing party must give to the other parties a notice identifying and providing details of the subject of the dispute.
- (b) A dispute under this deed includes:
  - (i) the refusal of a party to give an approval except where that party has the right to refuse that approval in its discretion; and
  - (ii) the failure to approve or refuse approval within the relevant time periods specified in this deed.

### **35.2 Continuing to perform obligations**

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

### **35.3 Parties to consult**

Any dispute between the parties arising in connection with this deed or its subject matter must first be referred to the chief executive officer of the Authority, the managing director of Crown and the managing director of LLMP to meet within 10 Business Days after the date of the notice for resolution of the dispute and undertake genuine and good faith negotiations with a view to resolving the dispute. If these persons cannot agree within 10 Business Days then (except in the case of an application for interlocutory injunction) the remaining provisions of this clause 35 apply.

### **35.4 Pathway for determining disputes**

Following the consultation referred to in clause 35.3, if the parties to that consultation:

- (a) agree that the matter should be determined by an expert (or if this deed expressly specifies that the matter should be determined by an expert), the matter must be referred to expert determination in accordance with clause 35.6; or
- (b) agree that the matter should be the subject of mediation, the mediator must be agreed by the disputing parties and, if the parties cannot agree within 10 Business Days, the matter shall be mediated by a mediator appointed by LEADR; or
- (c) do not agree within 10 Business Days that the matter should be determined by an expert or a mediator, any of them may commence litigation.

### **35.5 Choice of expert**

A dispute to be referred to an expert in accordance with clauses 35.4(a) and 35.6 must be determined by an independent expert of at least 10 years immediate past experience in the relevant field:

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

### **35.6 Expert**

The expert appointed to determine a dispute:

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

### **35.7 Agreement with expert**

The parties must enter into an agreement with the expert appointed under clauses 35.4(a) and 35.6 setting out the terms of the expert's engagement (including the time within which the expert must make the determination) and the expert's fees.

### **35.8 Directions to expert**

In reaching a determination in respect of a dispute under clause 35.6, the expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.

### **35.9 Role of expert**

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft certificate stating the expert's intended determination giving each party 10 Business Days to make further submissions;
- (h) issue a final certificate stating the expert's determination having had regard to any further submissions received under clause 35.9(g); and
- (i) act with expedition with a view to issuing the final certificate as soon as practicable.

### **35.10 Complying with directions of expert**

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

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

### **35.11 Expert may commission reports**

Subject to obtaining the prior consent of both parties the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. Provided that all parties have consented to the Costs, the Authority, Crown and LLMP must indemnify the expert for the Cost of those advisers or consultants in accordance with clause 35.17.

### **35.12 Expert may convene meetings**

- (a) The expert will hold a meeting with all the parties present to discuss the dispute.

- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

### **35.13 Meeting not a hearing**

The parties agree that a meeting under clause 35.12 is not a hearing and is not an arbitration.

### **35.14 Confidentiality of information**

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

- (a) subject to clause 35.14(b), to keep confidential all documents, information and other material disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
  - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 35.14(a); or
  - (ii) if required by Law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

### **35.15 Confidentiality in proceedings**

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

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

### **35.16 Final determination of expert**

The parties agree that the final determination by an expert is final and binding upon them.

### **35.17 Expert's Costs**

If any expert does not award Costs, the disputing parties must each pay an equal share of the expert's Costs incurred from the date of appointment to the date of the final determination.



### **35.18 Expert generally not liable**

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to any of them in any respect in connection with the carrying out of the expert's functions in accordance with this deed.

### **35.19 Survive termination**

The provisions of this clause 35 survive termination of this deed.

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## **36. Crown Default**

### **36.1 Crown Trigger Notice**

- (a) Each of LLMP and the Authority must notify the other:
  - (i) as soon as reasonably practicable after becoming aware of any Crown Trigger Event, notice of that Crown Trigger Event; and
  - (ii) give to each other a copy of each Crown Trigger Notice and each other notice or material correspondence issued to Crown or the Crown Guarantor under this deed, at or about the same time that LLMP or the Authority (as the case requires) gives such notice or correspondence to Crown or the Crown Guarantor.
- (b) Each of Crown, LLMP and the Authority authorises the Authority and LLMP (as the case requires) to make such enquiries (acting reasonably) in relation to the relevant Crown Trigger Event or any other notice or material correspondence issued to Crown in relation to the Crown Works as LLMP or the Authority deems are appropriate.
- (c) Crown must provide such information in relation to the relevant Crown Trigger Event and the proposals to remedy the relevant default as LLMP or the Authority may reasonably require.
- (d) The Authority must notify LLMP if it has formed the view that Crown has abandoned or vacated the Crown Site and the Crown Secured Area.

### **36.2 Crown Default under the Hotel Project Agreement**

- (a) LLMP must give to the Authority:
  - (i) as soon as reasonably practicable following LLMP becoming aware of any Crown HPA Default, notice of that Crown HPA Default; and
  - (ii) a copy of each notice that LLMP issues to Crown or the Crown Guarantor relating to a Crown HPA Default and each other notice or material correspondence relating to the default issued to Crown or the Crown Guarantor under the Hotel Project Agreement or any other Crown Project Document, at or about the same time that LLMP gives each such notice to Crown or the Crown Guarantor under the Hotel Project Agreement or any such Crown Project Document.
- (b) LLMP must provide such information in relation to a Crown HPA Default the subject of a notice referred to in clause 36.2(a) as the Authority may reasonably require.

### 36.3 Crown Trigger Notice

- (a) If a Crown Trigger Event occurs the Authority may issue Crown and the Crown Guarantor a notice specifying the Crown Trigger Event.
- (b) A Crown Trigger Notice must state that Crown (or the Crown Guarantor) must remedy that Crown Trigger Event within:
  - (i) 20 Business Days after service of the Crown Trigger Notice, in the case of a breach of any obligation on Crown to pay money under this deed; and
  - (ii) 30 Business Days after service of the Crown Trigger Notice, in the case of a breach of any obligation of Crown under this deed other than those obligations referred to in clause 36.3(b)(i),which period may be extended by the party issuing the Crown Trigger Notice in accordance with clause 36.3(b) (each a **Crown Cure Period**).
- (c) The Authority agrees to act in good faith in considering any submissions by Crown or the Crown Guarantor may make that the relevant Crown Cure Period should be extended in relation to a particular Crown Trigger Event, but whether any extension is granted shall be at the discretion of the Authority.

### 36.4 Crown Trigger Event not remedied

If a Crown Insolvency Event occurs or if Crown (or the Crown Guarantor) does not remedy a Crown Trigger Event within the relevant Crown Cure Period, the Authority may give LLMP, the LLMP Guarantor, Crown and the Crown Guarantor a notice stating that a Crown Event of Default has occurred.

### 36.5 Authority may rectify

The Authority may, but is not obliged to, remedy (including by entering upon the Crown Site or the Crown Secured Areas for the purpose of doing so) any Crown Event of Default. Crown must pay to the Authority on demand a sum equal to the Costs incurred by the Authority (including legal Costs) in remedying a Crown Event of Default.

### 36.6 Consequences of Authority breach

Should the Authority breach an obligation imposed on it by this deed, Crown must, if it is, or reasonably ought to have been, aware of such breach, provide written notice to the Authority describing the nature of the Authority's breach, when the breach occurred and what action, consistent with the rights and obligations of the parties under this deed, Crown requires the Authority to take to remedy such breach.

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## 37. LLMP Default

### 37.1 LLMP Default under the Hotel Project Agreement

- (a) Crown agrees to give the Authority a copy of each notice that Crown issues to LLMP or the LLMP Guarantor relating to an LLMP HPA Default at or about the same time that Crown gives each such notice to LLMP or the LLMP Guarantor under the Hotel Project Agreement.
- (b) Crown must provide such information in relation to an LLMP HPA Default the subject of a notice referred to in clause 37.1(a) as the Authority may reasonably require.

## 37.2 LLMP Trigger Notice

- (a) If an LLMP Trigger Event occurs the Authority or Crown may issue LLMP and the LLMP Guarantor a notice specifying the LLMP Trigger Event.
- (b) An LLMP Trigger Notice must state that LLMP (or the LLMP Guarantor) must remedy that LLMP Trigger Event within:
  - (i) 20 Business Days after service of the LLMP Trigger Notice, in the case of a breach of any obligation on LLMP to pay money under this deed; and
  - (ii) 30 Business Days after service of the LLMP Trigger Notice, in the case of a breach of any obligation of LLMP under this deed other than those obligations referred to in clause 37.2(b)(i),

which period may be extended by the party issuing the LLMP Trigger Notice in accordance with clause 37.2(c) (each an **LLMP Cure Period**). For the avoidance of doubt there is no LLMP Cure Period in relation to an LLMP Trigger Event which is an Insolvency Event or the termination of the PDA as it applies to a Works Portion.

- (c) The party issuing the LLMP Trigger Notice agrees to act in good faith in considering any submissions LLMP or the LLMP Guarantor may make that the 20 Business Day period or 30 Business Day period (as the case may be) should be extended in relation to a particular LLMP Trigger Event, but whether any extension is granted shall be at the discretion of the party issuing the LLMP Trigger Notice.
- (d) The Authority must notify Crown if it has formed the view that LLMP has abandoned or vacated the Crown Site and the Crown Secured Area.

## 37.3 LLMP Trigger Event not remedied

If a LLMP Insolvency Event occurs or if LLMP (or the LLMP Guarantor) does not remedy an LLMP Trigger Event within the LLMP Cure Period, where a cure period is applicable to that LLMP Trigger Event, the Authority or Crown may give LLMP, the LLMP Guarantor, a notice stating that an LLMP Event of Default has occurred.

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## 38. Termination

### 38.1 Termination of Framework Agreement after the Effective Date

If the Framework Agreement is terminated after the Effective Date,

- (a) due to Crown's default; and/or
- (b) by Crown's agreement,

a Crown Event of Default shall be deemed to have occurred on the date of termination of the Framework Agreement referred to above and the Authority may terminate this deed. For the avoidance of doubt the expiry of, or expiration by complete performance under, the Framework Agreement does not constitute a deemed Crown Event of Default under this clause 38.1.

### 38.2 Termination for Crown Default

- (a) The Authority may terminate this deed if:
  - (i) before or after the Effective Date, a Crown Insolvency Event has occurred and Crown's obligations under this deed are not being

performed (and continuing to be performed) by or on behalf of Crown in accordance with the provisions of this deed; or

- (ii) after both the Effective Date and Substantial Commencement of the Crown Works having occurred, the Authority reasonably believes that Crown has abandoned or vacated the Crown Site and the Crown Secured Area.
- (b) The Authority must terminate this deed if:
- (i) a Dealing occurs under clause 34.1(a)(ii) or 34.1(a)(iii) without the consent of the Authority (which must be given or withheld in accordance with clause 34.1); and
  - (ii) LGA terminates Crown's licence under the Gaming Legislation in relation to the Restricted Gaming Facility.
- (c) Crown and LLMP agree that the Authority is not liable for, and release the Authority from, liability or loss arising from, and Costs incurred in connection with, any termination of this deed or any failure to terminate this deed under clauses 34.1(c)(i) and 38.2(b).

### 38.3 Rights not affected

The entitlement of the Authority and LLMP to recover damages from Crown or any other person is not affected or limited, by:

- (a) the termination of this deed;
- (b) the acceptance of Crown's repudiation; or
- (c) Crown abandoning or vacating the Crown Site or the Crown Secured Area.

### 38.4 No Crown waiver

The Authority and Crown agree that:

- (a) a failure to enforce any breach of covenant on the part of Crown, the Authority or LLMP (as the case requires) is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of Crown, the Authority or LLMP to insist upon the performance by Crown, the Authority or LLMP (as the case requires) of any term, covenant or condition of this deed, or to exercise any rights given on account of any such default;
- (b) a waiver of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default; and
- (c) if a Crown Insolvency Event or a Crown Change of Control Default Event has occurred but LLMP or the Authority as the case may be, has not issued a notice under clause 3.23, 3.24 or 38.2(a) (as applicable), due to Crown's obligations under this deed continuing to be performed, Crown acknowledges and agrees that the Authority and, subject to clause 3.25(a), LLMP remain entitled to issue those notices if Crown's obligations under this deed cease to continue to be performed.

### 38.5 Termination for LLMP Default

The Authority may terminate LLMP's rights and interest under this deed if:

- (a) before or after the Effective Date, an LLMP Insolvency Event has occurred and the LLMP Works are not being performed (and continuing to be performed) by or on behalf of LLMP in accordance with the PDA;
- (b) after the Effective Date, the Authority reasonably believes that LLMP has abandoned or vacated the areas the subject of the LLMP Works after those works have begun; or
- (c) before or after the Effective Date, a Dealing occurs under clause 34.2(a) without the consent of the Authority.

### 38.6 Rights not affected

The Authority's entitlement to recover damages from LLMP or any other person is not affected or limited by:

- (a) the termination of this deed;
- (b) the acceptance of LLMP's repudiation; or
- (c) LLMP abandoning the LLMP Works or vacating the Crown Site or the Crown Secured Area.

### 38.7 No LLMP waiver

The Authority and LLMP agree that:

- (a) a failure to enforce any breach of covenant on the part of Crown, the Authority or LLMP (as the case requires) is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of Crown, the Authority or LLMP to insist upon the performance by Crown, the Authority or LLMP (as the case requires) of any term, covenant or condition of this deed, or to exercise any rights given on account of any such default;
- (b) a waiver of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default; and
- (c) if an LLMP Insolvency Event has occurred but the Authority has not issued a notice under clause 38.5, due to LLMP's obligations under this deed continuing to be performed, LLMP acknowledges and agrees that the Authority remains entitled to issue a notice under clause 38.5, if LLMP's obligations under this deed cease to continue to be performed.

### 38.8 Rights Without Prejudice

- (a) Each of the Authority and LLMP acknowledge and agree that each of its rights to terminate this deed under clauses 3.24 or 38.2 are without prejudice to the rights (if any) of Crown under any statute or under general law including seeking relief against forfeiture, subject always to any defences, counterclaims and other rights available to the Authority or LLMP from time to time.
- (b) The Authority and LLMP cannot exercise its rights under clauses 3.24 or 38.2: if any party has availed itself of the procedures set out in clause 35 until those procedures have been completed in accordance with clause 35; or



- (ii) if the parties have availed themselves of the procedures in clause 35 and it is determined in accordance with those procedures that there is no Crown Change of Control Default Event,

but this clause 38.8(b) does not apply to a Crown Insolvency Event or to a Crown Event of Default referred to in clause 38.1.

### 38.9 Express termination rights only

Except where expressly provided for under this deed, no party shall have any right to terminate this deed (whether under this deed or at law).

## 39. Consequences of termination

### 39.1 Crown's obligations on termination generally

- (a) Subject to clause 4.16, if this deed is terminated after the Effective Date:

- (i) Crown must as soon as practicable following termination, Vacate the Crown Secured Area and any other area occupied or used by Crown;

- (ii) the parties' rights and obligations under this deed will cease except to the extent that they expressly survive termination;

- (iii) as between the Authority and LLMP, the PDA will apply and LLMP may pursue an Alternative Development Proposal in accordance with clause 23A of the PDA, which as at the date of the Fifth Deed of Amendment is as set out below, ("the Developer" being LLMP):

#### **"23A. Consequences of Termination of Crown Development Agreement**

##### **23A.1 Application of clause**

- (a) *This clause 23A applies if the Crown Development Agreement is terminated prior to practical completion (in accordance with the Crown Development Agreement) of the Hotel Resort and not otherwise. It contemplates the Developer submitting to the Authority concept designs for an alternative development of Stage 1 and the utilisation of Developable GFA which may be available as a result of the termination of the Crown Development Agreement on either Stage 1C or the remainder of the Site.*
- (b) *Until the earlier of:*
  - (i) *12 months after the date of termination of the Crown Development Agreement; and*
  - (ii) *the date the negotiations in relation to the Alternative Development Proposal are terminated in accordance with clause 23A.2,*

*the Developer is only entitled to submit Applications for development in respect of Stage 1C or any other part of the Site as it relates*

to an Alternative Development Proposal in accordance with this clause 23A.

- (c) Despite the termination of the Crown Development Agreement, the Developer is permitted to develop the shared basement proposed in Mod 8 if it has been approved by the Authority and the Consent Authority.

#### **23A.2 Alternative Development Proposal**

- (a) The Developer may submit a proposal, or a combination of proposals, to utilise Developable GFA of up to 33,000m<sup>2</sup> to the Authority within 6 months after the date of termination of the Crown Development Agreement (as that period may be extended in accordance with this clause).
- (b) If the Developer submits an Alternative Development Proposal, the Developer and the Authority must negotiate and consider that Alternative Development Proposal in good faith.
- (c) If the Developer is diligently pursuing an Alternative Development Proposal, the time period in which the Developer may submit the Alternative Development Proposal is automatically extended by 3 months on each of the dates which are 6 months and 9 months after the date of termination of the Crown Development Agreement so that the Developer is entitled to pursue an Alternative Development Proposal with the Authority for a maximum period of 12 months from the date of termination of the Crown Development Agreement (subject to any extension agreed by the parties or pending resolution of a dispute in respect of this clause).
- (d) If following:
  - (i) the date which is 6 months after the date of termination of the Crown Development Agreement; or
  - (ii) the date which is 9 months after the date of termination of the Crown Development Agreement,the Authority forms the view, acting reasonably, that:
  - (iii) the Developer is not diligently pursuing the Alternative Development Proposal; or
  - (iv) the Authority is unlikely to approve the Alternative Development Proposal in its then current form,

the Authority may notify the Developer within 10 Business Days of forming that view and the

Developer must diligently pursue or revise the Alternative Development Proposal by the earlier of:

- (v) 45 Business Days from the date of the Authority's notice under this clause 23A.2(d); and
- (vi) the expiry of 12 months from the date of termination of the Crown Development Agreement.

### **23A.3 Alternative Development Proposal Scenarios**

(a) An Alternative Development Proposal may consist of a proposal, or a combination of proposals, to utilise Developable GFA of up to 33,000m<sup>2</sup>:

- (i) for a hotel or other building on Stage 1C, in which case the Authority may approve or refuse the Alternative Development Proposal in its sole and unfettered discretion and, if approved as an Alternative Development Proposal, any Significant Application in respect of that Alternative Development Proposal will be a Significant Project Issue;
- (ii) for a hotel or other building or additional Developable GFA in another building on a part of the Site which is not Stage 1C, in which case the Authority may approve or refuse the Alternative Development Proposal in its reasonable discretion and it will be reasonable for the Authority to refuse an Alternative Development Proposal if it gives rise to a Significant Project Issue, but if approved as an Alternative Development Proposal, any Significant Application in respect of that Alternative Development Proposal will be deemed not to give rise to a Significant Project Issue; and

(b) If an Alternative Development Proposal comprises a combination of the scenarios described in this clause 23A.3(a), the relevant level of Authority discretion to approve the Alternative Development Proposal will apply to the extent of each relevant scenario.

(c) Without prejudice to the Authority's rights under clause 23A.3(a), if the Authority approves an Alternative Development Proposal, in considering the Application or Applications relating to the Alternative Development Proposal, the Authority must act reasonably to the extent to which the Application or relevant element of the Application is consistent with, or is reasonably contemplated by, the Alternative Development Proposal.

**23A.4 Developer no longer wishes to pursue Alternative Development Proposal**

*If the Developer no longer wishes to pursue an Alternative Development Proposal, it must notify the Authority within 21 Business Days of reaching the decision not to pursue that Alternative Development Proposal.*

**23A.5 Approval of Alternative Development Proposal**

*If the Developer has submitted an Alternative Development Proposal to the Authority in accordance with this clause, the Authority must notify the Developer within 40 Business Days of submission of the Alternative Development Proposal whether it approves or refuses its consent to the Alternative Development Proposal.*

**23A.6 Developer to diligently pursue Alternative Development Proposal**

- (a) If:
- (i) *the Developer does not diligently pursue or revise the Alternative Development Proposal following notice from the Authority under clause 23A.2(d);*
  - (ii) *the Developer notifies the Authority under clause 23A.4; or*
  - (iii) *the Alternative Development Proposal is not submitted by the date being 12 months after the termination of the Crown Development Agreement (subject to any extension agreed by the parties or any pending resolution of a dispute in respect of this clause),*

*the Authority may:*

- (i) *notify Crown that the Developer is not carrying out an Alternative Development Proposal and direct Crown to carry out its obligations under clause 39.1(a) of the Crown Development Agreement; or*
- (ii) *require the Developer to temporarily landscape Stage 1C to the standard reasonably applying from time to time to other vacant parts of the Site pending further development of it under this deed;*

*The Developer may notify a dispute in respect of this clause under clause 45:*

- (i) *if the Developer disagrees with the Authority's view that the Developer is not diligently pursuing an Alternative Development Proposal;*

(ii) if the Authority does not notify whether it approves or refuses its consent to any Alternative Development Proposal (within the time period specified in clause 23A.5); or

(iii) as to whether the Authority has exercised reasonable discretion in refusing to approve an Alternative Development Proposal or component of an Alternative Development Approval to which clause 23A.3(a)(ii) applies.

(c) If the Developer has notified a dispute in respect of this clause:

(i) the timeframe for the Developer to submit an Alternative Development Proposal is extended pending resolution of the dispute under clause 45; and

(ii) the Authority is not permitted to give a notice referred to in clause 23A.6(b) pending resolution of the dispute.

#### **23A.7 Further Modifications**

If the Authority has approved an Alternative Development Proposal in accordance with clause 23A.5, the Developer may apply to the Authority, and once approved by it, to the Consent Authority, to modify the Concept Plan Approval, if required, or to obtain an Approval for the development contemplated by that approved Alternative Development Proposal in accordance with the provisions of this deed (as an Alternative Modification Application) and at its sole cost.

#### **23A.8 Significant Project Issue – GFA**

Other than in connection with the Mod 8 Application and the Mod 8 Approval, the parties agree that the Authority is entitled to consider any Application by the Developer which would have the effect of increasing the Developable GFA to an amount of 525,127m<sup>2</sup> or more on the basis that the Application gives rise to a Significant Project Issue.;

(iv) despite the provisions of the PDA (including clause 23A) and any other provision of this deed, the Authority must in considering an Alternative Development Proposal take into account the level of completion of the structure forming part of the Crown Works as at the date of termination of this deed, and endeavour, in considering its approval or any terms of approval, accommodate that level of completion;

(v) the Authority may, in accordance with clause 23A.6(a) of the PDA, direct Crown to effect Make Good of the Crown Site (for clarity, the Authority is not entitled to direct Crown to Make Good the Crown Site before it is entitled to do so under the clause 23A.6(a) of the PDA);

(vi) upon receipt of the direction referred to in clause 39.1(a)(v), Crown must effect Make Good of the Crown Secured Area and the Authority and LLMP will grant to Crown an appropriate licence to occupy the Crown Secured Area for that purpose; and



- (b) this clause 39.1 survives termination of this deed.

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## **40. Crown Step-in**

### **40.1 LLMP Insolvency**

- (a) Each of Crown and the Authority must as soon as reasonably practicable after becoming aware of any LLMP Insolvency Event, notify each other of that LLMP Insolvency Event.
- (b) Each of LLMP, Crown and the Authority authorises the Authority and Crown (as the case requires) to make such enquiries (acting reasonably) in relation to the LLMP Insolvency Event as Crown or the Authority deems are appropriate.
- (c) LLMP must provide such information in relation to the LLMP Insolvency Event and the proposals to remedy the relevant default as Crown or the Authority may reasonably require.

### **40.2 Crown Step-in Notice**

- (a) If:
  - (i) an LLMP Insolvency Event occurs and LLMP's obligations under this deed and its obligations in relation to the LLMP Works are not being performed (and are not continuing to be performed); or
  - (ii) the Authority terminates LLMP's rights and interest under this deed in accordance with clause 38.5,then Crown may, at any time within 30 Business Days after occurrence of the relevant event issue a Crown Step-in Notice to the Authority and LLMP.
- (b) If Crown issues a Crown Step-in Notice to the Authority in accordance with clause 40.2(a), Crown must:
  - (i) notify the Authority of the Step-in Component it is stepping into;
  - (ii) inform the Authority of the person it proposes to nominate as the Independent Expert as soon as reasonably practicable, but by no later than 20 Business Days after the Step-in Date;
  - (iii) with the Authority, jointly appoint and enter into the Independent Expert Deed with the Independent Expert within 40 Business Days after the Step-in Date; and
  - (iv) within 20 Business Days after the Step-in Date, provide to the Authority an Initial Status Report;
  - (v) regularly consult and liaise with the Authority to discuss both the form and content of Crown's draft Practical Completion Plan in relation to the Step-in Component notified under clause 40.2(b)(i);
  - (vi) within 60 Business Days after the Step-in Date, provide to the Authority an Updated Status Report; and
  - (vii) respond in writing, as soon as reasonably practicable, to all reasonable requests received from the Authority in relation to the proposed Practical Completion Plan and any other actions it is taking in relation to the Step-in Component it has stepped into as at the Step-in Date.

### 40.3 Certified Practical Completion Plan

- (a) No later than the date which is the last day of the Crown Step-in Period, Crown must provide to the Authority a Certified Practical Completion Plan in respect of the Step-in Component it has stepped into.
- (b) The Authority cannot terminate the PDA or this deed on or from the date of the LLMP Insolvency Event and prior to the expiry of the Crown Step-in Period unless Crown has given notice to the Authority that it does not intend to issue a Crown Step-in Notice.
- (c) If after the expiry of the Crown Step-in Period, the Authority has not received from Crown:
  - (i) a Crown Step-in Notice; and
  - (ii) a Certified Practical Completion Plan in relation to the Step-in Component notified under clause 40.2(b)(i),the Authority may, with immediate effect (but subject to clause 40.3(b)), terminate this deed and the PDA in so far as it relates to those of the Step-in Components which have not reached Practical Completion as at the expiry of the Crown Step-in Period.

### 40.4 Termination for failure to meet Step-in Sunset Date

- (a) The Authority may terminate the PDA in so far as it relates to the Step-in Component where the Works relating that Step-in Component have not reached Practical Completion by the Step-in Sunset Date.
- (b) LLMP acknowledges and agrees that a Step-in Component constitutes a Works Portion for the purposes of the PDA.

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## 41. Crown Step-in Milestones and Certified Practical Completion Plan Notices

### 41.1 Effect of a Crown Step-in Notice

If Crown gives a Crown Step-in Notice to the Authority, Crown:

- (a) must meet all of its obligations set out under this deed;
  - (b) must meet the obligations of LLMP under this deed; and
  - (c) is entitled to the rights of LLMP under this deed and the PDA,
- in connection with the Step-In Component.

### 41.2 Milestones and Notices

- (a) If Crown does not achieve any Milestone relevant to the Step-in Component by the relevant Milestone Date the Authority may issue to Crown a Certified Practical Completion Cure Notice.

- (b) If the Authority issues a Certified Practical Completion Plan Cure Notice to Crown in accordance with clause 41.2(a), the Certified Practical Completion Plan Cure Notice must:
- (i) state that it is a Certified Practical Completion Plan Cure Notice under this clause; and
  - (ii) specify the Milestone relevant to the Step-In Component in the Certified Practical Completion Plan which was not achieved by its corresponding Milestone Date.
- (c) Subject to clause 41.2(d), where a Crown Step-in Notice has been given, the Authority may terminate the PDA in so far as it relates to the Step-in Component, if the Milestone relevant to the Step-In Component has not been achieved by the end of the Certified Practical Completion Plan Cure Period applicable to that Milestone.
- (d) If:
- (i) Crown has failed to achieve a Construction Milestone in so far as it relates to the Step-In Component (**First Milestone**) by the relevant Milestone Date;
  - (ii) the Authority has not terminated this deed and the PDA as it applies to the Step-in Component, before the next Construction Milestone Date (**Second Milestone**) to occur; and
  - (iii) by the next Construction Milestone Date to occur after the Second Milestone, Crown has achieved the First Milestone and Second Milestone in so far as they relate to the Step-In Component,
- the Authority is not entitled to terminate this deed and the PDA as it applies to the Step-in Component.

### 41.3 Extensions to Milestones

Crown may request to extend the Construction Milestones on the same basis as LIMP is entitled to seek extensions to Milestone Dates under clause 25.2(a) of the PDA where the delays result from any of the matters referred to in clause 25.2(a) of the PDA and clauses 25.5 to 25.11 (both inclusive) of the PDA also apply in relation to any Crown extension of such Construction Milestones.

### 41.4 PDA Certifier Tests

- (a) At any time after the expiry of the Crown Step-in Period, the Authority may request the PDA Certifier to, within 20 Business Days after the request, inspect the relevant Step-in Component and make a preliminary determination (after taking into account the Certified Practical Completion Plan) whether there is No Reasonable Likelihood that the Date of Practical Completion will occur by the Date for Practical Completion set out in the Certified Practical Completion Plan, as applicable, and issue such preliminary determination to the Authority and Crown within 10 Business Days after the inspection.
- (b) If the PDA Certifier issues a preliminary determination under clause 41.4(a), Crown has 60 Business Days from the date of the PDA Certifier's preliminary determination to revise the Certified Practical Completion Plan and submit the revised Practical Completion Plan that has been certified by the Independent Expert, to the Authority. The revised Practical Completion Plan must show that there is a reasonable likelihood that the Date of Practical Completion will occur by the Date for Practical Completion set out in the Certified Practical Completion Plan.

- (c) Crown may propose, as part of the revised Practical Completion Plan, a variation to the Date for Practical Completion set out in the Certified Practical Completion Plan to a date which is no later than the Step-in Sunset Date.
- (d) The Authority may or may not approve that proposal by Crown under clause 41.4(b). The Authority must act reasonably and without undue delay in responding to any such request by Crown.
- (e) If the Authority does not agree to the request by Crown to extend the Date for Practical Completion set out in the Certified Practical Completion Plan within 20 Business Days after Crown's request under clause 41.4(b), either the Authority or Crown can refer that matter to the PDA Certifier for determination. If the PDA Certifier determines that it is reasonable, having regard to then current market conditions and the progress being made by Crown towards achieving Practical Completion of the relevant Step-in Component, to extend the Date for Practical Completion as proposed by Crown, the Date for Practical Completion will be amended accordingly, on and from the date the PDA Certifier makes its determination. The PDA Certifier cannot extend the Date for Practical Completion to a date that falls after the Step-in Sunset Date.
- (f) If, after reviewing the revised Practical Completion Plan (and subject to clauses 41.4(b) to 41.4(d) above) prepared by Crown in accordance with clause 41.4(a) the PDA Certifier forms the view that:
  - (i) there is a reasonable likelihood that the Date of Practical Completion will occur by the Date for Practical Completion set out in the Certified Practical Completion Plan, or as that date may be amended under clause 41.4(c) or clause 41.4(d) then the PDA Certifier will not issue a No Reasonable Likelihood certificate and no rights of termination will arise; or
  - (ii) there is No Reasonable Likelihood, then the PDA Certifier will issue a further No Reasonable Likelihood certificate and the Authority will be entitled to terminate the PDA in so far as it relates to the relevant Step-in Component.

## **42. Crown Step-in generally**

### **42.1 Effect of Crown Step-in Notice on guarantees and Hotel Project Agreement**

- (a) If Crown issues a Crown Step-in Notice:
  - (i) Crown remains liable to the Authority for any breach by Crown of its obligations under this deed and the Crown Agreed Obligations;
  - (ii) the Crown Guarantor remains liable to the Authority in respect of the Crown Guaranteed Obligations;
  - (iii) LLMP remains liable to the Authority in respect of any breach by LLMP under this deed to the extent that any act or omission by or on behalf of Crown results in any obligation of LLMP or the LLMP Guarantor under this deed or the PDA not being fulfilled or satisfied; and
  - (iv) the LLMP Guarantor remains liable to the Authority in respect of the LLMP Guaranteed Obligations to the extent that any act or omission by or on behalf of Crown results in any obligation of LLMP or the LLMP Guarantor under this deed or the PDA not being fulfilled or satisfied.

- (b) Nothing in this clause 42 shall affect:
  - (i) the rights of Crown under the Hotel Project Agreement; or
  - (ii) the obligations and liability of LLMP and the LLMP Guarantor under the Hotel Project Agreement.
- (c) The provisions of this clause 42.1 do not limit any of the rights of the Authority against LLMP and the LLMP Guarantor.
- (d) Without derogating from any other rights LLMP and Crown may have under this deed, the Authority agrees that the issuing of a Crown Step-in Notice:
  - (i) will not of itself constitute a default under this deed as long as Crown performs its obligations under this deed and the Crown Agreed Obligations; and
  - (ii) in accordance with this deed will not by itself entitle the Authority to terminate this deed or the PDA in so far as it relates to the relevant Step-in Component.
- (e) LLMP agrees that the issuing of a Crown Step-in Notice is without prejudice to LLMP's obligations under clause 48.2 of the PDA.

## 42.2 Bank Guarantees on Step-in

- (a) If:
  - (i) the Authority is entitled to claim against a Bank Guarantee provided by LLMP to the Authority in accordance with clause 39.3 of the PDA and the Authority recovers moneys pursuant to that Bank Guarantee; and
  - (ii) Crown has exercised its rights under this deed to step in to a Step-in Component,

the Authority will pay to Crown the amount equal to the lesser of the proceeds recovered from the Bank Guarantee and the Costs reasonably expended by Crown in carrying out the Works relating to the relevant Step-in Component upon those Works achieving practical completion for the purposes of the PDA.
- (b) The Authority is not obliged to make any payment pursuant to clause 42.2(a) until 10 Business Days after it receives from Crown written evidence, including copies of invoices from contractors and sub-contractors, to substantiate the amount which Crown has expended on that Step-in Component.

## 42.3 Authority's dealings with Crown and LLMP

- (a) If Crown issues a Crown Step-in Notice then the Authority must (and LLMP irrevocably directs the Authority to) deal only with Crown in respect of the relevant Step-in Component specified in relation to that Crown Step-in Notice.
- (b) Despite anything in this deed:
  - (i) until Crown gives the Authority a Crown Step-in Notice the Authority must deal with LLMP in respect of the relevant Step-in Component; and
  - (ii) Crown cannot issue a Crown Step-in Notice if Practical Completion of the relevant Step-in Component has been achieved.



#### **42.4 No novation of a Building Contract without consent**

Neither Crown nor LLMP may novate any building contract (including the Building Contract) entered into in relation to the Step-in Component to any person other than one of themselves without the prior written approval of the Authority (which approval must not be unreasonably withheld or delayed).

#### **42.5 LLMP Works Meetings**

The Authority agrees to give Crown reasonable notice of all proposed meetings with LLMP in relation to the relevant Step-in Component and allow Crown to attend those meetings.

#### **42.6 Termination after Step-in**

- (a) If the Authority terminates this deed after receipt of a Crown Step-in Notice in accordance with clauses 40.3(c) or 41.4(f)(ii), termination is effective from the date Crown receives the notice of termination.
- (b) Notwithstanding any other provision of this deed or the PDA, this deed cannot be terminated on and from Practical Completion.
- (c) If this deed is terminated in respect of a Step-in Component after receipt of a Crown Step-in Notice in accordance with clauses 40.3(c) or 41.4(f)(ii), Crown must, if so directed by the Authority within 10 Business Days after that termination:

- (i) Make Good; and
- (ii) following completion of that Make Good, Vacate,

any areas in relation which it has carried out works comprising part of the Step-In Component as directed by the Authority. For the purposes of this clause, all references to the Crown Secured Area in the definitions of Make Good and Vacate will be deemed to refer to the areas in relation to which Crown has carried out works comprising part of the Step-In Component and all references to any works will be deemed to be references to the works comprising the Step-In Component.

#### **42.7 Exercise of Right**

LLMP and the Authority acknowledge and agree that Crown is entitled to exercise its right to Step-in in accordance with this deed in relation to one or more Step-in Components subject to the terms of this deed.

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### **43. Independent Expert**

#### **43.1 Costs of Independent Expert**

The costs of the Independent Expert will be borne by the Step-in Party.

#### **43.2 Independence of Independent Expert**

The terms of appointment of the Independent Expert must provide that:

- (a) the Independent Expert must act as an independent expert to the Authority and the Step-in Party for the purposes of any decision, function or task allocated to, or to be determined by, the Independent Expert under this deed;
- (b) the Authority and the Step-in Party must jointly appoint and brief the Independent Expert and if required by the Authority or LLMP, must meet at regular intervals with the Authority and the Step-in Party to discuss the draft Practical Completion Plan;

- (c) the Independent Expert 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; and
- (d) the Independent Expert must 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.

### 43.3 Copies of notices

Where a notice is required to be given by a party and that notice relates to a decision, function or task allocated to, or to be determined by, the Independent Expert under this deed, the party issuing the notice must also issue a copy of that notice to the Independent Expert. The failure of a party to give a copy of a notice to the Independent Expert in accordance with this clause 43.3 does not invalidate the notice given by that party to the other party.

## 44. Releases and indemnities

### 44.1 Release of the Authority from liability

As between Crown and the Authority, Crown agrees that, except as otherwise specified in this deed, the Crown Works and all property in Crown Secured Area, are at the sole risk of Crown except to the extent of any breach of this deed by the Authority or the Authority's Employees and Agents or the wrongful or reckless act of the Authority or the Authority's Employees and Agents. Except as otherwise specified in this deed, Crown releases and forever discharges the Authority from all actions, suits, claims, demands, causes of actions and Costs, equitable or under statute and otherwise and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which Crown:

- (a) now has;
- (b) at any time had;
- (c) may have now or in the future; or
- (d) but for this deed, could or might have had,

against the Authority in any way relating to or arising out of or in connection with:

- (i) any injury, damage or loss that Crown or Crown's Employees and Agents suffer by reason of:
  - A. the carrying out of the Crown Works;
  - B. any construction within Crown Secured Area;
  - C. any overflow, leakage or condensation from the water supply or from any sprinkler system or device or apparatus from the roof, walls, gutters, downpipes or other parts of Crown Secured Area;
  - D. the condition of or from any defect in the gas, electricity or water supply, connections or fittings within Crown Secured Area; or
  - E. the flooding of any part of Crown Secured Area;
- (ii) loss of or damage to any property or effects of Crown or any other person on or in the vicinity of Crown Secured Area howsoever occurring;

- (iii) injury to or the death of any person on or in the vicinity of Crown Secured Area however occurring;
- (iv) security of or within Crown Secured Area;
- (v) any unauthorised entry to Crown Secured Area; and
- (vi) any loss, injury or damage sustained by Crown or any other person because of the interruption or failure of any of the Services to Crown Secured Area,

except to the extent that such injury, loss or damage is caused or contributed to by the breach of this deed by the Authority or the Authority's Employees and Agents or the wrongful or reckless act of the Authority or the Authority's Employees and Agents.

#### **44.2 General indemnities**

Crown indemnifies the Authority and the Authority's Employees and Agents from and against any claim, action, damage, loss, liability or Cost incurred or suffered by any of the Indemnified Persons or arising from any claim, suit, demand, action or proceeding by any person against any of the Indemnified Persons to the extent such loss was caused or contributed to by:

- (a) loss of or damage to Crown Secured Area or to any property on or in the vicinity of Crown Secured Area, or injury to or the death of any person on or in the vicinity of Crown Secured Area, arising from any acts or omissions of Crown or Crown's Employees and Agents;
- (b) the negligent or careless use, misuse, waste or abuse of any Services by Crown or Crown's Employees and Agents or any other person claiming through or under Crown; and
- (c) overflow or leakage of water emanating from Crown Secured Area, or from any sprinkler system or device in Crown Secured Area or arising from any defect in the Services (or any connections or equipment for the Services),

except to the extent that such loss was caused or contributed to by the breach of this deed by the Authority or the Authority's Employees and Agents or the wrongful or reckless act of the Authority or the Authority's Employees and Agents.

#### **44.3 Environmental Liabilities**

Crown indemnifies the Authority against any liability or loss arising from, and any Costs incurred in connection with, any Environmental Liability (whether arising before or after the expiration or termination of this deed) to the extent the Environmental Liability is caused by:

- (a) any wrongful or reckless act of Crown or Crown's Employees and Agents; or
- (b) the carrying out of the Crown Works.

#### **44.4 Continuation of liability**

The obligations of Crown under this clause 44 in respect of the Crown Works continue after the Lease Commencement Date in respect of the Crown Works or determination of this deed in connection with any act, matter or thing occurring before the later of Practical Completion of the whole of the Crown Works and the Lease Commencement Date in respect of the relevant Crown Works or determination.

## **44.5 Conduct of proceedings**

- (a) In connection with any indemnity provided by Crown under clause 44.2 or clause 44.3, the Authority agrees to act reasonably in considering any request by Crown with respect to the manner in which any claim that may be made against the Authority or any legal proceedings that may be commenced against the Authority are to be conducted, including considering in good faith any request by Crown that Crown should have the carriage and conduct of the manner in which any such claims or proceedings are defended, upon the basis that all Costs and risks (including the risks of adverse judgments) that may arise in connection any such claim or proceeding are accepted by Crown.
- (b) Without limiting the Authority's obligations under this clause 44.5, the Authority agrees that it will not compromise or settle any such claim without Crown's prior approval. Crown must act reasonably and promptly in relation to any request received from the Authority as to the manner in which any such claim ought to be settled or compromised.

## **44.6 Authority's ability to enforce the indemnity**

Crown agrees that the Authority may enforce any indemnity or other covenant in this clause 44 in favour of the person specified in this clause 44 for the benefit of each such person in the name of the Authority or such person.

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## **45. Crown Guarantee and indemnity to the Authority**

### **45.1 Consideration**

The Crown Guarantor acknowledges that the Authority is acting in reliance on the Crown Guarantor incurring obligations and giving rights under this clause 45.

### **45.2 Guarantee**

The Crown Guarantor unconditionally and irrevocably guarantees to the Authority the due and punctual performance and observance by Crown of the Crown Guaranteed Obligations.

### **45.3 Indemnity**

- (a) The Crown Guarantor unconditionally and irrevocably indemnifies the Authority for all losses, Costs, damages and liabilities which it incurs or suffers as a result of Crown failing to duly and punctually perform and observe any of the Crown Guaranteed Obligations.
- (b) The liability of the Crown Guarantor to the Authority for failing to comply for any reason with its obligations under clause 45.2 is limited to the liability of the Crown Guarantor to the Authority under clause 45.3(a).
- (c) The remedies available to the Authority against the Crown Guarantor for failing to comply for any reason with its obligations under clause 45.2 are limited to the right of the Authority to make a claim on the Crown Guarantor under clause 45.3(a).

### **45.4 Additional indemnities**

Whether or not the Authority exercises any rights it may have under clause 38, and without being affected by the exercise of any such rights, the Crown Guarantor unconditionally and irrevocably indemnifies the Authority against any loss the Authority suffers because:

- (a) the liability to guarantee to the Authority the due and punctual performance or observance of the Crown Guaranteed Obligations is unenforceable in whole or in

part as a result of lack of capacity, power or authority or improper exercise of power or authority;

- (b) the Crown Guaranteed Obligations are rescinded or terminated by Crown or the Authority for any reason other than by reason of the wrongful repudiation or default by the Authority;
- (c) Crown disregards an order for specific performance of the Crown Guaranteed Obligations;
- (d) a Crown Insolvency Event occurs but only to the extent of obligations or monies which form part of the Crown Guaranteed Obligations; or
- (e) the Crown Guaranteed Obligations are not or have never been enforceable against the Crown Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Crown Guaranteed Obligations being void, voidable or unenforceable and whether or not the Authority knew or should have known anything about that transaction.

#### **45.5 Crown Guarantor as principal debtor**

- (a) The Crown Guarantor as principal debtor agrees to pay to the Authority within 10 Business Days after a demand being made by the Authority on the Guarantor a sum equal to the amount of any loss described in clauses 45.3 and 45.4. Any such demand must:
  - (i) be in writing;
  - (ii) state that it is made under clause 45.3 or 45.4;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - A. a written demand for payment of the amount has been made on Crown by the Authority;
    - B. at least 10 Business Days has passed since the demand on Crown was made; and
    - C. the demand on Crown remains unsatisfied;
  - (iv) be signed by an Authorised Officer of the Authority; and
  - (v) be served in accordance with clause 56.1.
- (b) The Crown Guarantor unconditionally and irrevocably indemnifies the Authority for all losses, Costs, expenses, damages and liabilities suffered or incurred by the Authority as a result of any of the Crown Guaranteed Obligations, or any of the obligations of the Crown Guarantor under clauses 45.2 to 45.4 (inclusive) being illegal, void or otherwise unenforceable for any reason.
- (c) Any amount which the Crown Guarantor is liable to pay the Authority under clause 45.5(b) must be paid within 10 Business Days after a demand being made by the Authority on the Crown Guarantor. Any such demand must:
  - (i) be in writing and state that it is made under clause 45.5(b);
  - (ii) state and provide details of the amount demanded;



- (iii) be signed by an Authorised Officer of the Authority; and
- (iv) be served in accordance with clause 56.1.

#### **45.6 Guarantor Sunset Date**

Subject to clause 45.16, but notwithstanding any other provision of this clause 45:

- (a) the Authority is not entitled to make a claim on the Crown Guarantor under this clause 45 after the Guarantor Sunset Date; and
- (b) the Guarantor's liability under this clause 45 ceases on the Guarantor Sunset Date for the claim except in relation to a claim made on the Guarantor under and in accordance with this clause 45 on or prior to the Guarantor Sunset Date.

#### **45.7 Limitation of Liability**

Notwithstanding any other provision of this clause 45, the liability of the Crown Guarantor to the Authority under or in connection with this clause 45 (whether that liability arises under a specific provision of this deed, for breach of contract, negligence or otherwise) is no greater than the liability of Crown to the Authority under or in connection with the Project Documents.

#### **45.8 Extent of guarantee and indemnity**

The guarantee provided in clause 45.2 and the indemnities provided in clauses 45.3 and 45.4 are continuing obligations and extend to all of the Crown Guaranteed Obligations and other money payable under this deed.

#### **45.9 Preservation of the Authority's rights**

The liabilities under this deed of the Crown Guarantor as a guarantor or an indemnifier and the rights of the Authority under a Project Document are not affected by anything which might otherwise affect them at Law or in equity including one or more of the following (whether occurring with or without the consent of a person):

- (a) the Authority or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, Crown, any other indemnifier or another person in any way;
- (b) the release (including a release as part of any novation or transfer) or discharge of a party to a Project Document or any other person;
- (c) the cessation of the obligations, in whole or in part, or a party to a Project Document or any other agreement;
- (d) the liquidation of a party to a Project Document or any other person;
- (e) any arrangement, composition or compromise entered into by the Authority or any other person with a party to a Project Document or any other person;
- (f) any Project Document or any other agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (g) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Project Document or any other agreement;
- (h) any Encumbrance being given to the Authority by a party to a Project Document or any other person;

- (i) any moratorium or other suspension of any right of the Authority against a party to a Project Document or any other person under a Project Document or any other agreement;
- (j) the Authority exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right against a party to a Project Document or any other person under a Project Document or any other agreement;
- (k) any transaction, agreement or arrangement that may take place between the Authority and a party to a Project Document or any other person;
- (l) any payment to the Authority by a party to a Project Document or any other person, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (m) any failure to give effective notice to a party to a Project Document or any other person of any default under any Project Document or any other agreement;
- (n) any legal limitation, disability or incapacity of a party to a Project Document or any other person;
- (o) any breach of any Project Document or any other agreement by a party to a Project Document or any other person;
- (p) any disclaimer by a party to a Project Document or any other person of any Project Document or any other agreement;
- (q) the opening of a new account of a party to a Project Document with the Authority or any transaction relating to the new account;
- (r) any prejudice to a party to a Project Document or any other person as a result of any thing done, or omitted by the Authority or other person, or any failure or neglect by the Authority or other person to recover any amount in relation to the Crown Guaranteed Obligations or any other thing;
- (s) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Authority or another person or both the Authority and another person;
- (t) any variation, transfer or novation of a right of the Authority or another person, or material alteration of a Project Document, in respect of Crown, the Crown Guarantor or another person;
- (u) the transaction of business, expressly or impliedly, with, for or at the request of Crown, the Crown Guarantor or another person;
- (v) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the Crown Guarantor or another person was a member;
- (w) a Security Interest being void, voidable or unenforceable;
- (x) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (y) the death of any person or an Insolvency Event occurring in respect of any person;

- (z) a change in the legal capacity, rights or obligations of a person;
- (aa) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (bb) a judgment against Crown or another person;
- (cc) the receipt of a dividend, distribution or other payment after an Insolvency Event of a party to a Project Document or any other person or the payment of a sum or sums into the account of Crown or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (dd) any part of the Crown Guaranteed Obligations being irrecoverable for any reason, or (subject to the Crown Guarantor giving its consent) any increase in the amount of the Crown Guaranteed Obligations);
- (ee) an assignment of rights in connection with the Crown Guaranteed Obligations or any assignment, novation, assumption or transfer of, or other dealings with, any rights or obligations under any Project Documents or any other agreement;
- (ff) the acceptance of repudiation or other termination of any Project Document or any other agreement, or in connection with the Crown Guaranteed Obligations;
- (gg) the invalidity or unenforceability of an obligation or liability of a person other than the Crown Guarantor;
- (hh) invalidity or irregularity in the execution of this deed by any guarantor or any deficiency in or irregularity in the exercise of the powers of any guarantor to enter into or observe its obligations under this deed;
- (ii) any obligation of Crown or the Crown Guarantor being discharged by operation of Law or otherwise;
- (jj) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (kk) any other act, omission, matter or thing whatsoever whether negligent or not.

This clause 45.9 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Authority, a party to a Project Document or any other person of any event described in clause 45.9.

#### **45.10 Liabilities not affected**

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

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

#### 45.11 Suspension of Crown Guarantor's rights

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

- (a) be subrogated to the Authority;
- (b) claim or receive the benefit of this deed or any other agreement of which the Authority has the benefit, any moneys held by the Authority or any other rights of the Authority, in each case in relation to the Crown Guaranteed Obligations;
- (c) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, Crown or a co-surety or co-indemnifier against the Authority or claim a set-off or make a counterclaim against the Authority;
- (d) make a claim or enforce a right (including an Encumbrance) against Crown or the Crown Guarantor or against their estate or property;
- (e) prove in competition with the Authority if a Crown Insolvency Event occurs whether in respect of an amount paid by the Crown Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by the Authority in reduction of the Crown Guarantor's liability under this deed, or otherwise; or
- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Crown Guaranteed Obligations or other money payable under this deed.

#### 45.12 Other securities and obligations of Crown Guarantor

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

- (a) any Security Interest now or subsequently held by the Authority from Crown, the Crown Guarantor or any other person; or
- (b) any other obligation of the Crown Guarantor to the Authority,

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

#### 45.13 Reinstatement of the Authority's rights

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

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

#### 45.14 Application of money

- (a) The Authority may apply money paid by Crown or Crown's estate, or the Crown Guarantor or otherwise towards satisfaction of the Crown Guaranteed Obligations and other money payable under this deed in the manner it sees fit.
- (b) Subject to Crown complying with its obligations under clause 34.1 in connection with an assignment or transfer of its interest in the Crown Site or this deed, the Crown Guarantor is released from its obligations under this deed on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

#### 45.15 Foreign currency indemnity

- (a) If, at any time:
  - (i) the Authority receives or recovers any amount payable by the Crown Guarantor under this deed for any reason including, but not limited to:

- A. any judgment or order of any Government agency;
- B. any breach of any Project Document;
- C. the liquidation of a party to a Project Document or any other person or any proof or claim in that liquidation; or
- D. any other thing into which the obligations of a party to a Project Document or any other person may have become merged; and

- (ii) the Payment Currency is not the Relevant Currency,

the Crown Guarantor indemnifies the Authority against any shortfall between the amount payable in the Relevant Currency and the amount actually received or recovered by the Authority after the Payment Currency is converted into the Relevant Currency in accordance with clause 45.15(b).

- (b) The Authority may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

#### 45.16 Avoidance of payments

If any payment by the Crown Guarantor to the Authority under this deed is at any time avoided for any reason including, but not limited to, any legal limitation, disability, incapacity or insolvency of or affecting the Crown Guarantor or any other thing, and whether or not:

- (a) any transaction relating to the amount owing by the Crown Guarantor was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the Authority, the Crown Guarantor:
  - (i) acknowledges that any liability of the Crown Guarantor and any right of remedy of the Authority under this deed is not discharged or satisfied and is the same as if that payment had not been made; and
  - (ii) as an additional, separate and independent obligation, indemnifies the Authority against loss suffered resulting from that avoided payment.



## **45.17 Continuing obligation**

Subject to clause 45.6, each guarantee and indemnity contained in this clause 45 is a continuing obligation of the Crown Guarantor, despite:

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

and remains in full force and effect until all the Crown Guaranteed Obligations and all moneys owing by the Crown Guarantor under this clause 45, contingently or otherwise, have been paid or satisfied in full.

## **45.18 Principal and independent obligation**

- (a) Each obligation of the Crown Guarantor under this clause 45 is:

- (i) a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
- (ii) independent of and not in substitution for or affected by any other collateral security which the Authority may hold in respect of the Crown Guaranteed Obligations or any other obligation of any part to a Project Document or any other person.

- (b) This deed is enforceable against the Guarantor:

- (i) without first having recourse to any collateral security;
- (ii) whether or not the Authority has:
  - A. made demand upon any party to a Project Document (except as required in order to comply with clause 45.5); or
  - B. given notice to any party to a Project Document or any other person in respect of any thing (except as required in order to comply with clause 45.5); or
  - C. taken any other steps against any party to a Project Document or any other person; and
- (iii) despite the occurrence of any event described in clause 45.9.

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## **46. Crown Guarantee and indemnity to LLMP**

### **46.1 Consideration**

Whether or not the Authority exercises any right it may have under clause 38 and without being affected by the exercise of such rights, the Crown Guarantor acknowledges that LLMP is acting in reliance on the Crown Guarantor incurring obligations and giving rights under this clause 46.

### **46.2 Guarantee**

The Crown Guarantor unconditionally and irrevocably guarantees to LLMP the due and punctual performance and observance by Crown of the Crown Guaranteed Obligations.

### 46.3 Indemnity

- (a) The Crown Guarantor unconditionally and irrevocably indemnifies LLMP for all losses, Costs, damages and liabilities which it incurs or suffers as a result of Crown failing to duly and punctually perform and observe any of the Crown Guaranteed Obligations.
- (b) The liability of the Crown Guarantor to LLMP for failing to comply for any reason with its obligations under clause 46.2 is limited to the liability of the Crown Guarantor to LLMP under clause 46.3(a).
- (c) The remedies available to LLMP against the Crown Guarantor for failing to comply for any reason with its obligations under clause 46.2 are limited to the right of LLMP to make a claim on the Crown Guarantor under clause 46.3(a).

### 46.4 Additional indemnities

Whether or not the Authority exercises any rights it may have under clause 38 and without have being affected by the exercise of such rights, the Crown Guarantor unconditionally and irrevocably indemnifies LLMP against any loss LLMP suffers because:

- (a) the liability to guarantee to LLMP the due and punctual performance or observance of the Crown Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Crown Guaranteed Obligations are rescinded or terminated by Crown or LLMP for any reason other than by reason of the wrongful repudiation or default by LLMP;
- (c) Crown disregards an order for specific performance of the Crown Guaranteed Obligations;
- (d) a Crown Insolvency Event occurs but only to the extent of obligations or monies which form part of the Crown Guaranteed Obligations; or
- (e) the Crown Guaranteed Obligations are not or have never been enforceable against the Crown Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Crown Guaranteed Obligations being void, voidable or unenforceable and whether or not LLMP knew or should have known anything about that transaction.

### 46.5 Crown Guarantor as principal debtor

- (a) The Crown Guarantor as principal debtor agrees to pay to LLMP within 10 Business Days after a demand being made by LLMP on the Guarantor a sum equal to the amount of any loss described in clauses 46.3 and 46.4. Any such demand must:
  - (i) be in writing;
  - (ii) state that it is made under clause 46.3 and 46.4;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - A. a written demand for payment of the amount has been made on Crown by LLMP;
    - B. at least 10 Business Days has passed since the demand on Crown was made; and

- C. the demand on Crown remains unsatisfied;
  - (iv) be signed by an Authorised Officer of LLMP; and
  - (v) be served in accordance with clause 56.1.
- (b) The Crown Guarantor unconditionally and irrevocably indemnifies LLMP for all losses, Costs, expenses, damages and liabilities suffered or incurred by LLMP as a result of any of the Crown Guaranteed Obligations, or any of the obligations of the Crown Guarantor under clauses 46.2 to 46.4 (inclusive) being illegal, void or otherwise unenforceable for any reason.
- (c) Any amount which the Crown Guarantor is liable to pay LLMP under clause 46.5(b) must be paid within 10 Business Days after a demand being made by LLMP on the Crown Guarantor. Any such demand must:
  - (i) be in writing and state that it is made under clause 46.5(b);
  - (ii) state and provide details of the amount demanded;
  - (iii) be signed by an Authorised Officer of LLMP; and
  - (iv) be served in accordance with clause 56.1.

#### 46.6 Guarantor Sunset Date

Subject to clause 46.16, but notwithstanding any other provision of this clause 46:

- (a) LLMP is not entitled to make a claim on the Crown Guarantor under this clause 46 after the Guarantor Sunset Date; and
- (b) the Guarantor's liability under this clause 46 ceases on the Guarantor Sunset Date for the claim except in relation to a claim made on the Guarantor under and in accordance with this clause 46 on or prior to the Guarantor Sunset Date.

#### 46.7 Limitation of Liability

Notwithstanding any other provision of this clause 46, the liability of the Crown Guarantor to LLMP under or in connection with this clause 46 (whether that liability arises under a specific provision of this deed, for breach of contract, negligence or otherwise) is no greater than the liability of Crown to LLMP under or in connection with the Project Documents.

#### 46.8 Extent of guarantee and indemnity

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

#### 46.9 Preservation of LLMP's rights

The liabilities under this deed of the Crown Guarantor as a guarantor or an indemnifier and the rights of LLMP under a Project Document, the Hotel Project Agreement and any other document to which LLMP and the Crown Guarantor are a party (each a **Relevant Document**) are not affected by anything which might otherwise affect them at Law or in equity including one or more of the following (whether occurring with or without the consent of a person):

- (a) LLMP or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, Crown, any other indemnifier or another person in any way.

- (b) the release (including a release as part of any novation or transfer) or discharge of a party to a Relevant Document or any other person;
- (c) the cessation of the obligations, in whole or in part, of a party to a Relevant Document or any other agreement;
- (d) the liquidation of a party to a Relevant Document or any other person;
- (e) any arrangement, composition or compromise entered into by LLMP or any other person with a party to a Relevant Document or any other person;
- (f) any Relevant Document or any other agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (g) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Relevant Document or any other agreement;
- (h) any Encumbrance being given to LLMP by a party to a Relevant Document or any other person;
- (i) any moratorium or other suspension of any right of LLMP against a party to a Project Document or any other person under a Relevant Document or any other agreement;
- (j) LLMP exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right against a party to a Relevant Document or any other person under a Relevant Document or any other agreement;
- (k) any transaction, agreement or arrangement that may take place between LLMP and a party to a Project Document or any other person;
- (l) any payment to LLMP by a party to a Relevant Document or any other person, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (m) any failure to give effective notice to a party to a Relevant Document or any other person of any default under any Relevant Document or any other agreement;
- (n) any legal limitation, disability or incapacity of a party to a Relevant Document or any other person;
- (o) any breach of any Relevant Document or any other agreement by a party to a Relevant Document or any other person;
- (p) any disclaimer by a party to a Relevant Document or any other person of any Relevant Document or any other agreement;
- (q) the opening of a new account of a party to a Relevant Document with LLMP or any transaction relating to the new account;
- (r) any prejudice to a party to a Relevant Document or any other person as a result of any thing done, or omitted by LLMP or other person, or any failure or neglect by LLMP or other person to recover any amount in relation to the Crown Guaranteed Obligations or any other thing;
- (s) laches, acquiescence, delay, acts, omissions or mistakes on the part of LLMP or another person or both LLMP and another person;

- (t) any variation, transfer or novation of a right of LLMP or another person, or material alteration of a Relevant Document, in respect of Crown, the Crown Guarantor or another person;
- (u) the transaction of business, expressly or impliedly, with, for or at the request of Crown, the Crown Guarantor or another person;
- (v) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the Crown Guarantor or another person was a member;
- (w) a Security Interest being void, voidable or unenforceable;
- (x) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (y) the death of any person or an Insolvency Event occurring in respect of any person;
- (z) a change in the legal capacity, rights or obligations of a person;
- (aa) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (bb) a judgment against Crown or another person;
- (cc) the receipt of a dividend, distribution or other payment after an Insolvency Event of a party to a Relevant Document or any other person or the payment of a sum or sums into the account of Crown or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (dd) any part of the Crown Guaranteed Obligations being irrecoverable for any reason, or (subject to the Crown Guarantor giving its consent) any increase in the amount of the Crown Guaranteed Obligations);
- (ee) an assignment of rights in connection with the Crown Guaranteed Obligations or any assignment, novation, assumption or transfer of, or other dealings with, any rights or obligations under any Relevant Documents or any other agreement;
- (ff) the acceptance of repudiation or other termination of any Relevant Document or any other agreement, or in connection with the Crown Guaranteed Obligations;
- (gg) the invalidity or unenforceability of an obligation or liability of a person other than the Crown Guarantor;
- (hh) invalidity or irregularity in the execution of this deed by any guarantor or any deficiency in or irregularity in the exercise of the powers of any guarantor to enter into or observe its obligations under this deed;
- (ii) any obligation of Crown or the Crown Guarantor being discharged by operation of Law or otherwise;
- (jj) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (kk) any other act, omission, matter or thing whatsoever whether negligent or not.



This clause 46.9 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of LLMP, a party to a Relevant Document or any other person of any event described in clause 46.9.

#### **46.10 Liabilities not affected**

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

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

#### **46.11 Suspension of Crown Guarantor's rights**

As long as the Crown Guaranteed Obligations are outstanding or other money payable under this deed remains unpaid, the Crown Guarantor cannot without the consent of LLMP:

- (a) be subrogated to LLMP;
- (b) claim or receive the benefit of this deed or any other agreement of which LLMP has the benefit, any moneys held by LLMP or any other rights of LLMP, in each case in relation to the Crown Guaranteed Obligations;
- (c) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, Crown or a co-surety or co-indemnifier against LLMP or claim a set-off or make a counterclaim against LLMP;
- (d) make a claim or enforce a right (including an Encumbrance) against Crown or the Crown Guarantor or against their estate or property;
- (e) prove in competition with LLMP if a Crown Insolvency Event occurs whether in respect of an amount paid by the Crown Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by LLMP in reduction of the Crown Guarantor's liability under this deed, or otherwise; or
- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Crown Guaranteed Obligations or other money payable under this deed.

#### **46.12 Other securities and obligations of Crown Guarantor**

LLMP's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by LLMP from Crown, the Crown Guarantor or any other person; or
- (b) any other obligation of the Crown Guarantor to LLMP,

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

#### 46.13 Reinstatement of LLMP's rights

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

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

#### 46.14 Application of money

- (a) LLMP may apply money paid by Crown or Crown's estate, or the Crown Guarantor or otherwise towards satisfaction of the Crown Guaranteed Obligations and other money payable under this deed in the manner it sees fit.
- (b) Subject to Crown complying with its obligations under clause 34.1 in connection with an assignment or transfer of its interest in the Crown Site or this deed, the Crown Guarantor is released from its obligations under this deed on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

#### 46.15 Foreign currency indemnity

- (a) If, at any time:
  - (i) LLMP receives or recovers any amount payable by the Crown Guarantor under this deed for any reason including, but not limited to:
    - A. any judgment or order of any Government agency;
    - B. any breach of any Project Document;
    - C. the liquidation of a party to a Project Document or any other person or any proof or claim in that liquidation; or
    - D. any other thing into which the obligations of a party to a Project Document or any other person may have become merged; and
  - (ii) the Payment Currency is not the Relevant Currency,

the Crown Guarantor indemnifies LLMP against any shortfall between the amount payable in the Relevant Currency and the amount actually received or recovered by LLMP after the Payment Currency is converted into the Relevant Currency in accordance with clause 46.15(b).
- (b) LLMP may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

#### 46.16 Avoidance of payments

If any payment by the Crown Guarantor to LLMP under this deed is at any time avoided for any reason including, but not limited to, any legal limitation, disability, incapacity or insolvency of or affecting the Crown Guarantor or any other thing, and whether or not:

- (a) any transaction relating to the amount owing by the Crown Guarantor was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of LLMP, the Crown Guarantor:
  - (i) acknowledges that any liability of the Crown Guarantor and any right of remedy of LLMP under this deed is not discharged or satisfied and is the same as if that payment had not been made; and
  - (ii) as an additional, separate and independent obligation, indemnifies LLMP against loss suffered resulting from that avoided payment.

#### 46.17 Continuing obligation

Subject to clause 46.6, each guarantee and indemnity contained in this clause 46 is a continuing obligation of the Crown Guarantor, despite:

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

and remains in full force and effect until all the Crown Guaranteed Obligations and all moneys owing by the Crown Guarantor under this clause 46, contingently or otherwise, have been paid or satisfied in full.

#### 46.18 Principal and independent obligation

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

- (iii) despite the occurrence of any event described in clause 46.9.

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## **47. LLMP Guarantee and indemnity to the Authority**

### **47.1 Consideration**

The LLMP Guarantor acknowledges that the Authority is acting in reliance on the LLMP Guarantor incurring obligations and giving rights under this clause 47.

### **47.2 Guarantee**

The LLMP Guarantor unconditionally and irrevocably guarantees to the Authority the due and punctual performance and observance by LLMP of the LLMP Guaranteed Obligations.

### **47.3 Indemnity**

- (a) The LLMP Guarantor unconditionally and irrevocably indemnifies the Authority for all losses, Costs, damages and liabilities which it incurs or suffers as a result of LLMP failing to duly and punctually perform and observe any of the LLMP Guaranteed Obligations.
- (b) The liability of the LLMP Guarantor to the Authority for failing to comply for any reason with its obligations under clause 47.2 is limited to the liability of the LLMP Guarantor to the Authority under clause 47.3(a).
- (c) The remedies available to the Authority against the LLMP Guarantor for failing to comply for any reason with its obligations under clause 47.2 are limited to the right of the Authority to make a claim on the LLMP Guarantor under clause 47.3(a).

### **47.4 Additional indemnities**

Whether or not the Authority exercises any rights it may have under clause 38, and without being affected by the exercise of any such rights, the LLMP Guarantor unconditionally and irrevocably indemnifies the Authority against any loss the Authority suffers because

- (a) the liability to guarantee to the Authority the due and punctual performance or observance of the LLMP Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) the LLMP Guaranteed Obligations are rescinded or terminated by LLMP or the Authority for any reason other than by reason of the wrongful repudiation or default by the Authority;
- (c) Crown disregards an order for specific performance of the LLMP Guaranteed Obligations;
- (d) an LLMP Insolvency Event occurs but only to the extent of obligations or monies which form part of the LLMP Guaranteed Obligations; or
- (e) the LLMP Guaranteed Obligations are not or have never been enforceable against the LLMP Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the LLMP Guaranteed Obligations being void, voidable or unenforceable and whether or not the Authority knew or should have known anything about that transaction.

#### 47.5 LLMP Guarantor as principal debtor

- (a) The LLMP Guarantor as principal debtor agrees to pay to the Authority within 10 Business Days after a demand being made by the Authority on the Guarantor a sum equal to the amount of any loss described in clauses 47.3 and 47.4. Any such demand must:
- (i) be in writing;
  - (ii) state that it is made under clause 47.3 or 47.4;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - A. a written demand for payment of the amount has been made on LLMP by the Authority;
    - B. at least 10 Business Days has passed since the demand on LLMP was made; and
    - C. the demand on LLMP remains unsatisfied;
  - (iv) be signed by an Authorised Officer of the Authority; and
  - (v) be served in accordance with clause 56.1.
- (b) The LLMP Guarantor unconditionally and irrevocably indemnifies the Authority for all losses, Costs, expenses, damages and liabilities suffered or incurred by the Authority as a result of any of the LLMP Guaranteed Obligations, or any of the obligations of the LLMP Guarantor under clauses 47.2 to 47.4 (inclusive) being illegal, void or otherwise unenforceable for any reason.
- (c) Any amount which the LLMP Guarantor is liable to pay the Authority under clause 47.5(b) must be paid within 10 Business Days after a demand being made by the Authority on the LLMP Guarantor. Any such demand must:
- (i) be in writing and state that it is made under clause 47.5(b);
  - (ii) state and provide details of the amount demanded;
  - (iii) be signed by an Authorised Officer of the Authority; and
  - (iv) be served in accordance with clause 56.1.

#### 47.6 Guarantor Sunset Date

Subject to clause 47.16, but notwithstanding any other provision of this clause 47:

- (a) the Authority is not entitled to make a claim on the LLMP Guarantor under this clause 47 after the Guarantor Sunset Date; and
- (b) the Guarantor's liability under this clause 47 ceases on the Guarantor Sunset Date for the claim except in relation to a claim made on the Guarantor under and in accordance with this clause 47 on or prior to the Guarantor Sunset Date.

#### 47.7 Limitation of Liability

Notwithstanding any other provision of this clause 47, the liability of the LLMP Guarantor to the Authority under or in connection with this clause 47 (whether that liability arises under a specific provision of this deed, for breach of contract, negligence or otherwise) is no greater



than the liability of LLMP to the Authority under this deed ignoring the provisions of clause 50.5.

#### **47.8 Extent of guarantee and indemnity**

The guarantee provided in clause 47.2 and the indemnities provided in clauses 47.3 and 47.4 are continuing obligations and extend to all of the LLMP Guaranteed Obligations and other money payable under this deed.

#### **47.9 Preservation of the Authority's rights**

The liabilities under this deed of the LLMP Guarantor as a guarantor or an indemnifier and the rights of the Authority under a Project Document are not affected by anything which might otherwise affect them at Law or in equity including one or more of the following (whether occurring with or without the consent of a person):

- (a) the Authority or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, LLMP, any other indemnifier or another person in any way;
- (b) the release (including a release as part of any novation or transfer) or discharge of a party to a Project Document or any other person;
- (c) the cessation of the obligations, in whole or in part, or a party to a Project Document or any other agreement;
- (d) the liquidation of a party to a Project Document or any other person;
- (e) any arrangement, composition or compromise entered into by the Authority or any other person with a party to a Project Document or any other person;
- (f) any Project Document or any other agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (g) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Project Document or any other agreement;
- (h) any Encumbrance being given to the Authority by a party to a Project Document or any other person;
- (i) any moratorium or other suspension of any right of the Authority against a party to a Project Document or any other person under a Project Document or any other agreement;
- (j) the Authority exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right against a party to a Project Document or any other person under a Project Document or any other agreement;
- (k) any transaction, agreement or arrangement that may take place between the Authority and a party to a Project Document or any other person;
- (l) any payment to the Authority by a party to a Project Document or any other person, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (m) any failure to give effective notice to a party to a Project Document or any other person of any default under any Project Document or any other agreement;

- (n) any legal limitation, disability or incapacity of a party to a Project Document or any other person;
- (o) any breach of any Project Document or any other agreement by a party to a Project Document or any other person;
- (p) any disclaimer by a party to a Project Document or any other person of any Project Document or any other agreement;
- (q) the opening of a new account of a party to a Project Document with the Authority or any transaction relating to the new account;
- (r) any prejudice to a party to a Project Document or any other person as a result of any thing done, or omitted by the Authority or other person, or any failure or neglect by the Authority or other person to recover any amount in relation to the LLMP Guaranteed Obligations or any other thing;
- (s) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Authority or another person or both the Authority and another person;
- (t) any variation, transfer or novation of a right of the Authority or another person, or material alteration of a Project Document, in respect of LLMP, the LLMP Guarantor or another person;
- (u) the transaction of business, expressly or impliedly, with, for or at the request of LLMP, the LLMP Guarantor or another person;
- (v) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the LLMP Guarantor or another person was a member;
- (w) a Security Interest being void, voidable or unenforceable;
- (x) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (y) the death of any person or an Insolvency Event occurring in respect of any person;
- (z) a change in the legal capacity, rights or obligations of a person;
- (aa) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (bb) a judgment against LLMP or another person;
- (cc) the receipt of a dividend, distribution or other payment after an Insolvency Event of a party to a Project Document or any other person or the payment of a sum or sums into the account of LLMP or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (dd) any part of the LLMP Guaranteed Obligations being irrecoverable for any reason, or (subject to the LLMP Guarantor giving its consent) any increase in the amount of the LLMP Guaranteed Obligations);
- (ee) an assignment of rights in connection with the LLMP Guaranteed Obligations or any assignment, novation, assumption or transfer of, or other dealings with, any rights or obligations under any Project Documents or any other agreement;

- (ff) the acceptance of repudiation or other termination of any Project Document or any other agreement, or in connection with the LLMP Guaranteed Obligations;
- (gg) the invalidity or unenforceability of an obligation or liability of a person other than the LLMP Guarantor;
- (hh) invalidity or irregularity in the execution of this deed by any guarantor or any deficiency in or irregularity in the exercise of the powers of any guarantor to enter into or observe its obligations under this deed;
- (ii) any obligation of LLMP or the LLMP Guarantor being discharged by operation of Law or otherwise;
- (jj) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (kk) any other act, omission, matter or thing whatsoever whether negligent or not.

This clause 47.9 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Authority, a party to a Project Document or any other person of any event described in clause 47.9.

#### **47.10 Liabilities not affected**

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

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

#### **47.11 Suspension of LLMP Guarantor's rights**

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

- (a) be subrogated to the Authority;
- (b) claim or receive the benefit of this deed or any other agreement of which the Authority has the benefit, any moneys held by the Authority or any other rights of the Authority, in each case in relation to the LLMP Guaranteed Obligations;
- (c) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, LLMP or a co-surety or co-indemnifier against the Authority or claim a set-off or make a counterclaim against the Authority;
- (d) make a claim or enforce a right (including an Encumbrance) against LLMP or the LLMP Guarantor or against their estate or property;
- (e) prove in competition with the Authority if an LLMP Insolvency Event occurs whether in respect of an amount paid by the LLMP Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by the Authority in reduction of the LLMP Guarantor's liability under this deed, or otherwise; or

- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the LLMP Guaranteed Obligations or other money payable under this deed.

#### **47.12 Other securities and obligations of LLMP Guarantor**

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

- (a) any Security Interest now or subsequently held by the Authority from LLMP, the LLMP Guarantor or any other person; or
- (b) any other obligation of the LLMP Guarantor to the Authority,

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

#### **47.13 Reinstatement of the Authority's rights**

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

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

#### **47.14 Application of money**

- (a) The Authority may apply money paid by LLMP or LLMP's estate, or the LLMP Guarantor or otherwise towards satisfaction of the LLMP Guaranteed Obligations and other money payable under this deed in the manner it sees fit.
- (b) Subject to LLMP complying with its obligations under clause 34.2 in connection with an assignment or transfer of its interest in the Crown Site or this deed, the LLMP Guarantor is released from its obligations under this deed on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

#### **47.15 Foreign currency indemnity**

- (a) If, at any time:
- (i) the Authority receives or recovers any amount payable by the LLMP Guarantor under this deed for any reason including, but not limited to:
- A. any judgment or order of any Government agency;
- B. any breach of any Project Document;
- C. the liquidation of a party to a Project Document or any other person or any proof or claim in that liquidation; or

- D. any other thing into which the obligations of a party to a Project Document or any other person may have become merged; and

- (ii) the Payment Currency is not the Relevant Currency,

the LLMP Guarantor indemnifies the Authority against any shortfall between the amount payable in the Relevant Currency and the amount actually received or recovered by the Authority after the Payment Currency is converted into the Relevant Currency in accordance with clause 47.15(b).

- (b) The Authority may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

#### **47.16 Avoidance of payments**

If any payment by the LLMP Guarantor to the Authority under this deed is at any time avoided for any reason including, but not limited to, any legal limitation, disability, incapacity or insolvency of or affecting the LLMP Guarantor or any other thing, and whether or not:

- (a) any transaction relating to the amount owing by the LLMP Guarantor was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the Authority, the LLMP Guarantor:
- (i) acknowledges that any liability of the LLMP Guarantor and any right of remedy of the Authority under this deed is not discharged or satisfied and is the same as if that payment had not been made; and
- (ii) as an additional, separate and independent obligation, indemnifies the Authority against loss suffered resulting from that avoided payment.

#### **47.17 Continuing obligation**

Subject to clause 47.6, each guarantee and indemnity contained in this clause 47 is a continuing obligation of the LLMP Guarantor, despite:

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

and remains in full force and effect until all the LLMP Guaranteed Obligations and all moneys owing by the LLMP Guarantor under this clause 47, contingently or otherwise, have been paid or satisfied in full.

#### **47.18 Principal and independent obligation**

- (a) Each obligation of the LLMP Guarantor under this clause 47 is:
- (i) a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
- (ii) independent of and not in substitution for or affected by any other collateral security which the Authority may hold in respect of the LLMP Guaranteed Obligations or any other obligation of any part to a Project Document or any other person.



- (b) This deed is enforceable against the LLMP Guarantor:
- (i) without first having recourse to any collateral security;
  - (ii) whether or not the Authority has:
    - A. made demand upon any party to a Project Document (except as required in order to comply with clause 47.5); or
    - B. given notice to any party to a Project Document or any other person in respect of any thing (except as required in order to comply with clause 47.5); or
    - C. taken any other steps against any party to a Project Document or any other person; and
  - (iii) despite the occurrence of any event described in clause 47.9.

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## **48. LLMP Guarantee and indemnity to Crown**

### **48.1 Consideration**

The LLMP Guarantor acknowledges that Crown is acting in reliance on the LLMP Guarantor incurring obligations and giving rights under this clause 48.

### **48.2 Guarantee**

The LLMP Guarantor unconditionally and irrevocably guarantees to Crown the due and punctual performance and observance by LLMP of the LLMP Guaranteed Obligations.

### **48.3 Indemnity**

- (a) The LLMP Guarantor unconditionally and irrevocably indemnifies Crown for all losses, Costs, damages and liabilities which it incurs or suffers as a result of LLMP failing to duly and punctually perform and observe any of the LLMP Guaranteed Obligations.
- (b) The liability of the LLMP Guarantor to Crown for failing to comply for any reason with its obligations under clause 48.2 is limited to the liability of the LLMP Guarantor to Crown under clause 48.3.
- (c) The remedies available to Crown against the LLMP Guarantor for failing to comply for any reason with its obligations under clause 48.2 are limited to the right of Crown to make a claim on the LLMP Guarantor under clause 48.3.

### **48.4 Additional indemnities**

Whether or not the Authority exercises any rights it may have under clause 38 and without being affected by the exercise of such rights, the LLMP Guarantor unconditionally and irrevocably indemnifies Crown against any loss Crown suffers because:

- (a) the liability to guarantee to Crown the due and punctual performance or observance of the LLMP Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or Crown or improper exercise of power or authority;
- (b) the LLMP Guaranteed Obligations are rescinded or terminated by LLMP or Crown for any reason other than by reason of the wrongful repudiation or default by Crown;

- (c) Crown disregards an order for specific performance of the LLMP Guaranteed Obligations;
- (d) an LLMP Insolvency Event occurs but only to the extent of obligations or monies which form part of the LLMP Guaranteed Obligations; or
- (e) the LLMP Guaranteed Obligations are not or have never been enforceable against the LLMP Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the LLMP Guaranteed Obligations being void, voidable or unenforceable and whether or not Crown knew or should have known anything about that transaction.

#### 48.5 LLMP Guarantor as principal debtor

- (a) The LLMP Guarantor as principal debtor agrees to pay to Crown within 10 Business Days after a demand being made by Crown on the Guarantor a sum equal to the amount of any loss described in clauses 48.3 and 48.4. Any such demand must:
  - (i) be in writing;
  - (ii) state that it is made under clause 48.3 or 48.4;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - A. a written demand for payment of the amount has been made on LLMP by Crown;
    - B. at least 10 Business Days has passed since the demand on LLMP was made; and
    - C. the demand on LLMP remains unsatisfied;
  - (iv) be signed by an Authorised Officer of Crown; and
  - (v) be served in accordance with clause 56.1.
- (b) The LLMP Guarantor unconditionally and irrevocably indemnifies Crown for all losses, Costs, expenses, damages and liabilities suffered or incurred by Crown as a result of any of the LLMP Guaranteed Obligations, or any of the obligations of the LLMP Guarantor under clauses 48.2 to 48.4 (inclusive) being illegal, void or otherwise unenforceable for any reason.
- (c) Any amount which the LLMP Guarantor is liable to pay Crown under clause 48.5(b) must be paid within 10 Business Days after a demand being made by Crown on the LLMP Guarantor. Any such demand must:
  - (i) be in writing and state that it is made under clause 48.5(b);
  - (ii) state and provide details of the amount demanded;
  - (iii) be signed by an Authorised Officer of Crown; and
  - (iv) be served in accordance with clause 56.1.

## 48.6 Guarantor Sunset Date

Subject to clause 48.16, but notwithstanding any other provision of this clause 48:

- (a) Crown is not entitled to make a claim on the LLMP Guarantor under this clause 48 after the Guarantor Sunset Date; and
- (b) the Guarantor's liability under this clause 48 ceases on the Guarantor Sunset Date for the claim except in relation to a claim made on the Guarantor under and in accordance with this clause 48 on or prior to the Guarantor Sunset Date.

## 48.7 Limitation of Liability

Notwithstanding any other provision of this clause 48, the liability of the LLMP Guarantor to Crown under or in connection with this clause 48 (whether that liability arises under a specific provision of this deed, for breach of contract, negligence or otherwise) is no greater than the liability of LLMP to Crown under this deed ignoring the provisions of clause 50.5.

## 48.8 Extent of guarantee and indemnity

The guarantee provided in clause 48.2 and the indemnities provided in clauses 48.3 and 48.4 are continuing obligations and extend to all of the LLMP Guaranteed Obligations and other money payable under this deed.

## 48.9 Preservation of Crown's rights

The liabilities under this deed of the LLMP Guarantor as a guarantor or an indemnifier and the rights of Crown under a Project Document, the Hotel Project Agreement and any other document to which Crown and the Crown Guarantor are a party (each a **Relevant Document**) are not affected by anything which might otherwise affect them at Law or in equity including one or more of the following (whether occurring with or without the consent of a person):

- (a) Crown or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, LLMP, any other indemnifier or another person in any way;
- (b) the release (including a release as part of any novation or transfer) or discharge of a party to a Relevant Document or any other person;
- (c) the cessation of the obligations, in whole or in part, of a party to a Relevant Document or any other agreement;
- (d) the liquidation of a party to a Relevant Document or any other person;
- (e) any arrangement, composition or compromise entered into by Crown or any other person with a party to a Relevant Document or any other person;
- (f) any Relevant Document or any other agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (g) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Relevant Document or any other agreement;
- (h) any Encumbrance being given to Crown by a party to a Relevant Document or any other person;

- (i) any moratorium or other suspension of any right of Crown against a party to a Relevant Document or any other person under a Relevant Document or any other agreement;
- (j) Crown exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right against a party to a Relevant Document or any other person under a Relevant Document or any other agreement;
- (k) any transaction, agreement or arrangement that may take place between Crown and a party to a Relevant Document or any other person;
- (l) any payment to Crown by a party to a Relevant Document or any other person, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (m) any failure to give effective notice to a party to a Relevant Document or any other person of any default under any Relevant Document or any other agreement;
- (n) any legal limitation, disability or incapacity of a party to a Relevant Document or any other person;
- (o) any breach of any Relevant Document or any other agreement by a party to a Relevant Document or any other person;
- (p) any disclaimer by a party to a Relevant Document or any other person of any Relevant Document or any other agreement;
- (q) the opening of a new account of a party to a Relevant Document with Crown or any transaction relating to the new account;
- (r) any prejudice to a party to a Relevant Document or any other person as a result of any thing done, or omitted by Crown or other person, or any failure or neglect by Crown or other person to recover any amount in relation to the LLMP Guaranteed Obligations or any other thing;
- (s) laches, acquiescence, delay, acts, omissions or mistakes on the part of Crown or another person or both Crown and another person;
- (t) any variation, transfer or novation of a right of Crown or another person, or material alteration of a Relevant Document, in respect of LLMP, the LLMP Guarantor or another person;
- (u) the transaction of business, expressly or impliedly, with, for or at the request of LLMP, the LLMP Guarantor or another person;
- (v) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the LLMP Guarantor or another person was a member;
- (w) a Security Interest being void, voidable or unenforceable;
- (x) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (y) the death of any person or an Insolvency Event occurring in respect of any person;

- (z) a change in the legal capacity, rights or obligations of a person;
- (aa) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (bb) a judgment against LLMP or another person;
- (cc) the receipt of a dividend, distribution or other payment after an Insolvency Event of a party to a Relevant Document or any other person or the payment of a sum or sums into the account of LLMP or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (dd) any part of the LLMP Guaranteed Obligations being irrecoverable for any reason, or (subject to the LLMP Guarantor giving its consent) any increase in the amount of the LLMP Guaranteed Obligations;
- (ee) an assignment of rights in connection with the LLMP Guaranteed Obligations or any assignment, novation, assumption or transfer of, or other dealings with, any rights or obligations under any Relevant Documents or any other agreement;
- (ff) the acceptance of repudiation or other termination of any Relevant Document or any other agreement, or in connection with the LLMP Guaranteed Obligations;
- (gg) the invalidity or unenforceability of an obligation or liability of a person other than the LLMP Guarantor;
- (hh) invalidity or irregularity in the execution of this deed by any guarantor or any deficiency in or irregularity in the exercise of the powers of any guarantor to enter into or observe its obligations under this deed;
- (ii) any obligation of LLMP or the LLMP Guarantor being discharged by operation of Law or otherwise;
- (jj) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (kk) any other act, omission, matter or thing whatsoever whether negligent or not.

This clause 48.9 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of Crown, a party to a Relevant Document or any other person of any event described in clause 48.9.

#### **48.10 Liabilities not affected**

The liability of the LLMP Guarantor under a Relevant Document is not affected:

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



#### 48.11 Suspension of LLMP Guarantor's rights

As long as the LLMP Guaranteed Obligations are outstanding or other money payable under this deed remains unpaid, the LLMP Guarantor cannot without the consent of Crown:

- (a) be subrogated to Crown;
- (b) claim or receive the benefit of this deed or any other agreement of which Crown has the benefit, any moneys held by Crown or any other rights of Crown, in each case in relation to the LLMP Guaranteed Obligations;
- (c) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, LLMP or a co-surety or co-indemnifier against Crown or claim a set-off or make a counterclaim against Crown;
- (d) make a claim or enforce a right (including an Encumbrance) against LLMP or the LLMP Guarantor or against their estate or property;
- (e) prove in competition with Crown if an LLMP Insolvency Event occurs whether in respect of an amount paid by the LLMP Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by Crown in reduction of the LLMP Guarantor's liability under this deed, or otherwise; or
- (f) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the LLMP Guaranteed Obligations or other money payable under this deed.

#### 48.12 Other securities and obligations of LLMP Guarantor

Crown's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by Crown from LLMP, the LLMP Guarantor or any other person; or
- (b) any other obligation of the LLMP Guarantor to Crown,

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

#### 48.13 Reinstatement of Crown's rights

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

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

#### 48.14 Application of money

- (a) Crown may apply money paid by LLMP or LLMP's estate, or the LLMP Guarantor or otherwise towards satisfaction of the LLMP Guaranteed Obligations and other money payable under this deed in the manner it sees fit.
- (b) Subject to LLMP complying with its obligations under clause 34.2 in connection with an assignment or transfer of its interest in Crown Site or this deed, the LLMP Guarantor is released from its obligations under this deed on completion of the assignment or transfer except in relation to matters arising prior to the completion of the assignment or transfer.

#### 48.15 Foreign currency indemnity

- (a) If, at any time:
  - (i) Crown receives or recovers any amount payable by the LLMP Guarantor under this deed for any reason including, but not limited to:
    - A. any judgment or order of any Government agency;
    - B. any breach of any Project Document;
    - C. the liquidation of a party to a Project Document or any other person or any proof or claim in that liquidation; or
    - D. any other thing into which the obligations of a party to a Project Document or any other person may have become merged; and
  - (ii) the Payment Currency is not the Relevant Currency,the LLMP Guarantor indemnifies Crown against any shortfall between the amount payable in the Relevant Currency and the amount actually received or recovered by Crown after the Payment Currency is converted into the Relevant Currency in accordance with clause 48.15(b).
- (b) Crown may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

#### 48.16 Avoidance of payments

If any payment by the LLMP Guarantor to Crown under this deed is at any time avoided for any reason including, but not limited to, any legal limitation, disability, incapacity or insolvency of or affecting the LLMP Guarantor or any other thing, and whether or not:

- (a) any transaction relating to the amount owing by the LLMP Guarantor was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of Crown, the LLMP Guarantor:
  - (i) acknowledges that any liability of the LLMP Guarantor and any right of remedy of Crown under this deed is not discharged or satisfied and is the same as if that payment had not been made; and
  - (ii) as an additional, separate and independent obligation, indemnifies Crown against loss suffered resulting from that avoided payment.

## 48.17 Continuing obligation

Subject to clause 48.6, each guarantee and indemnity contained in this clause 48 is a continuing obligation of the LLMP Guarantor, despite:

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

and remains in full force and effect until all the LLMP Guaranteed Obligations and all moneys owing by the LLMP Guarantor under this clause 48, contingently or otherwise, have been paid or satisfied in full.

## 48.18 Principal and independent obligation

- (a) Each obligation of the LLMP Guarantor under this clause 48 is:

- (i) a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
- (ii) independent of and not in substitution for or affected by any other collateral security which Crown may hold in respect of the LLMP Guaranteed Obligations or any other obligation of any part to a Project Document or any other person.

- (b) This deed is enforceable against the LLMP Guarantor:

- (i) without first having recourse to any collateral security;
- (ii) whether or not Crown has:
  - A. made demand upon any party to a Project Document (except as required in order to comply with clause 48.5); or
  - B. given notice to any party to a Project Document or any other person in respect of any thing (except as required in order to comply with clause 48.5); or
  - C. taken any other steps against any party to a Project Document or any other person; and
- (iii) despite the occurrence of any event described in clause 48.9.

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## 49. Representations and warranties

### 49.1 Head lease and other interests

Crown must permit persons having an estate or interest in the Crown Site concurrent with the Authority's to exercise the Authority's or that other person's rights, and otherwise perform their obligations, in connection with the Crown Site.

### 49.2 Warranties by LLMP

LLMP represents and warrants that at all times during the Crown Project in relation to itself 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, or will have (in respect of those Project Documents still to be executed as at the Commencement Date), power to enter into the Project Documents to which it is a party and comply with its obligations under them;
- (c) it has, or will have (in respect of those Project Documents still to be executed as at the Commencement Date) in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (d) its obligations under the Project Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (e) the Project Documents and the transactions under them which involve it do not contravene its constituent documents 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 the powers of its directors to be exceeded;
- (f) it benefits by entering into the Project Documents to which it is a party;
- (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) it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a Material Adverse Effect. For the purposes of this clause 49.2(h) only, **Material Adverse Effect** means a material adverse effect on:
  - (i) LLMP's or the LLMP Guarantor's ability to comply with its obligations under any Project Document;
  - (ii) the Authority's rights under any Project Document; or
  - (iii) the business or financial condition of LLMP;
- (i) it does not have immunity from the jurisdiction of a court or from legal process;
- (j) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into any Project Document or participating in any transaction in connection with a Project Document;
- (k) that the Encumbrances which are registered in the folio of the register for the Site will not prejudice LLMP's ability to complete the Works;
- (l) the Treasurer cannot prohibit and has not prohibited the grant of this deed under the FIRB Act;
- (m) it is the only trustee of the Trust;
- (n) no action has been taken to remove it as trustee of the Trust;
- (o) the copies of the Trust Deed and other documents relating to the Trust which have been delivered to the Authority and Crown are true copies of those documents and disclose all the terms of the Trust;
- (p) it has power under the Trust Deed to enter into and observe its obligations under this deed and it has entered into this deed in its capacity as trustee of the Trust;
- (q) it is to the commercial benefit of the Trust that LLMP enters into this deed in its capacity as trustee of the Trust;

- (r) it has in full force and effect the authorisations necessary to enter into this deed, to perform obligations under it and to allow it to be enforced (including under the Trust Deed, and its constitution);
- (s) it has a right to be fully indemnified out of the Trust Fund in respect of obligations incurred by it under this deed;
- (t) the funds of the Trust are sufficient to satisfy its right of indemnity under the Trust Deed;
- (u) it has not breached any of its obligations as trustee of the Trust under the Trust Deed;
- (v) no vesting date (as defined in the Trust Deed) for the Trust has been determined by it or any prior trustee of the Trust;
- (w) it and its directors and other officers have complied with their respective obligations in connection with the Trust; and
- (x) the rights of the Authority and Crown under this deed rank in priority to the interests of the beneficiaries of the Trust.

### 49.3 Warranties by Crown

Crown represents and warrants that at all times during the Crown Project in relation to itself 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, or will have (in respect of those Project Documents still to be executed as at the Commencement Date), power to enter into the Project Documents to which it is a party and comply with its obligations under them;
- (c) it has, or will have (in respect of those Project Documents still to be executed as at the Commencement Date) in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (d) its obligations under the Project Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (e) the Project Documents and the transactions under them which involve it do not contravene its constituent documents 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 the powers of its directors to be exceeded;
- (f) it benefits by entering into the Project Documents to which it is a party;
- (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) it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a Material Adverse Effect. For the purposes of this clause 49.3(h) only, **Material Adverse Effect** means a material adverse effect on:

- (i) Crown's or the Crown Guarantor's ability to comply with its obligations under any Project Document;



- (ii) the Authority's rights under any Project Document; or
- (iii) the business or financial condition of Crown;
- (i) it does not have immunity from the jurisdiction of a court or from legal process;
- (j) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into any Project Document or participating in any transaction in connection with a Project Document;
- (k) that the Encumbrances which are registered in the folio of the register for the Site will not prejudice Crown's ability to complete the Works; and
- (l) the Treasurer cannot prohibit and has not prohibited the grant of this deed under the FIRB Act.

#### 49.4 Warranties by the Crown Guarantor

The Crown Guarantor represents and warrants for the benefit of the Authority that:

- (a) **incorporation:** it is a corporation having limited liability, incorporated (or taken to be incorporated) and validly existing under the Corporations Act;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to Laws generally affecting creditors' rights and to principles of equity;
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed does not and will not violate, breach, or result in a contravention of:
  - (i) any Law, regulation or authorisation;
  - (ii) its constitution; or
  - (iii) any Encumbrance or agreement which is binding upon it or any of its assets,

and do not and will not result in:

- (iv) the creation or imposition of any Encumbrance or restriction of any nature on it or any asset of it other than under a Project Document;
- (v) the acceleration of the date of payment of any obligation existing under any Encumbrance or agreement which is binding upon it or any of its assets;
- (g) **no immunity:** it does not and its assets do not enjoy immunity from any suit or execution.

- (h) **equal ranking:** its obligations under this deed rank at least equally and rateably with all other unsecured obligations of the Crown Guarantor except for obligations mandatorily preferred by Law or arising in equity; and
- (i) **commercial benefit:** the entry into and performance by it of its obligations under this deed is for its commercial benefit and is in its commercial interests.

#### 49.5 Warranties by LLMP Guarantor

The LLMP Guarantor represents and warrants for the benefit of the Authority that:

- (a) **incorporation:** it is a corporation having limited liability, incorporated (or taken to be incorporated) and validly existing under the Corporations Act;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to Laws generally affecting creditors' rights and to principles of equity;
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed does not and will not violate, breach, or result in a contravention of:
  - (i) any Law, regulation or authorisation;
  - (ii) its constitution; or
  - (iii) any Encumbrance or agreement which is binding upon it or any of its assets,

and do not and will not result in:

- (iv) the creation or imposition of any Encumbrance or restriction of any nature on it or any asset of it other than under a Project Document;
- (v) the acceleration of the date of payment of any obligation existing under any Encumbrance or agreement which is binding upon it or any of its assets;
- (g) **no immunity:** it does not and its assets do not enjoy immunity from any suit or execution;
- (h) **equal ranking:** its obligations under this deed rank at least equally and rateably with all other unsecured obligations of the LLMP Guarantor except for obligations mandatorily preferred by Law or arising in equity; and
- (i) **commercial benefit:** the entry into and performance by it of its obligations under this deed is for its commercial benefit and is in its commercial interests.

## 49.6 Warranties by the Authority

The Authority represents and warrants that at all times during the Crown Project in relation to itself that:

- (a) it has power to enter into the Project Documents to which it is a party and comply with its obligations under them;
- (b) it has in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (c) its obligations under the Project Documents are valid and binding and are enforceable against it in accordance with their terms;
- (d) the Project Documents and the transactions under them which involve it do not contravene its constituent documents 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 the powers of its directors to be exceeded;
- (e) it benefits by entering into the Project Documents to which it is a party;
- (f) it does not enter into any Project Document in the capacity of a trustee of any trust or settlement;
- (g) it is a statutory body validly existing under the BDA Act;
- (h) it is legally entitled and has all statutory power to enter into and perform its obligations under each Project Document to which it is a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of its power; and
- (i) it has unencumbered, good and sufficient title to the Site to enter into and perform its obligations under each Project Document to which it is a party and to carry out the transactions contemplated by those documents.

## 49.7 Privacy warranties

- (a) Crown represents and warrants that disclosures of Personal Information which it makes to the Authority (and which it has consented to the Authority using and disclosing) are consistent with any Privacy Statement or policy which it has issued and all Privacy Laws by which it is bound.
- (b) LLMP represents and warrants that disclosures of Personal Information which it makes to the Authority (and which it has consented to the Authority using and disclosing) are consistent with any Privacy Statement or policy which it has issued and all Privacy Laws by which it is bound.

## 49.8 Obligations not affected

Crown, LLMP, the Crown Guarantor and the LLMP Guarantor each acknowledge that the warranties in clauses 49.2, 49.3, 49.4 and 49.5 respectively and Crown's, LLMP's, the Crown Guarantor's and the LLMP Guarantor's obligations under the Project Documents to which they are a party remain unaffected notwithstanding:

- (a) the design carried out by or on behalf of the Authority in connection with the Crown Project; and
- (b) any receipt or review of, or comment or direction on, documentation prepared by Crown.

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## **50. Undertakings by LLMP**

### **50.1 Undertakings by LLMP**

LLMP undertakes to notify the Authority promptly if any representation or warranty made or taken to be made by or on behalf of LLMP or the LLMP Guarantor in connection with an LLMP Project Document other than this deed is found, having regard to the Authority's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

### **50.2 LLMP's privacy obligations**

LLMP agrees to:

- (a) comply with all Privacy Laws in connection with the use or disclosure of Personal Information disclosed by it to the Authority in connection with the Crown Project;
- (b) if requested by the Authority, give the Authority after the Commencement Date, copies of any updates of Personal Information which LLMP has disclosed to the Authority except where to do so would put LLMP in breach of any Privacy Laws;
- (c) notify the Authority if LLMP does something of which it is, or ought reasonably to be, aware and which may cause the Authority to be in breach of any Privacy Law.

### **50.3 Consent to use and disclose Personal Information**

LLMP consents to the Personal Information of third persons it gives to the Authority being

- (a) used by the Authority in connection with the Authority's functions or business, including in connection with:
  - (i) internal reporting;
  - (ii) reporting to any adviser of the Authority or to any Public Authority;
  - (iii) the management of the Crown Project;
  - (iv) any use specified in any Privacy Statement; and
- (b) disclosed by the Authority:
  - (i) if required or authorised by Law;
  - (ii) to any adviser of the Authority or any Public Authority; or
  - (iii) if the third person consents.

### **50.4 Anti-terrorism**

LLMP:

- (a) represents and warrants that it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (b) undertakes to ensure that it complies with all anti-terrorism legislation in Australia including Part 4 of the Charter of the United Nations Act 1945 and Part 5.3 of the Criminal Code Act 1995 (Cth).

## 50.5 Trustee Limitation of Liability

- (a) LLMP enters into this deed only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against LLMP only to the extent to which it can be satisfied out of the assets of the Trust out of which LLMP is actually indemnified for the liability. Subject to clause 50.5(c), this limitation of LLMP's liability applies despite any other provision of this deed and extends to all liabilities and obligations of LLMP in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) No party shall:
- (i) sue LLMP personally or in any capacity other than as trustee of the Trust;
  - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver (except in relation to the assets of the Trust), a liquidator, an administrator or any similar person to LLMP or prove in any liquidation, administration or arrangement of or affecting LLMP (except in relation to assets of the Trust); or
  - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this deed against any property of LLMP other than property held by LLMP as trustee of the Trust.
- (c) The provisions of this clause 50.5 do not apply to any obligation or liability of LLMP to the extent that it is not satisfied because under the Trust Deed or by operation of law there is a reduction in the extent of LLMP's indemnification out of the assets of the Trust, as a result of LLMP's failure to properly perform its duties as trustee of the Trust or as a result of LLMP's fraud, negligence or breach of trust.
- (d) LLMP is not obliged to enter into any commitment or obligation under this deed unless LLMP liability is limited in accordance with this clause 50.5.
- (e) For the avoidance of doubt, the limitation of liability under this clause does not apply to the liability of the LLMP Guarantor under clauses 47 and 48.

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## 51. Undertakings by Crown

### 51.1 Undertakings by Crown

Crown undertakes to notify the Authority promptly if any representation or warranty made or taken to be made by or on behalf of Crown or the Crown Guarantor in connection with a Project Document other than this deed is found, having regard to the Authority's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

### 51.2 Crown's privacy obligations

Crown agrees to:

- (a) comply with all Privacy Laws in connection with the use or disclosure of Personal Information disclosed by it to the Authority in connection with the Crown Project;
- (b) if requested by the Authority, give the Authority after the Commencement Date, copies of any updates of Personal Information which Crown has disclosed to the Authority except where to do so would put Crown in breach of any Privacy Laws;



- (c) notify the Authority if Crown does something of which it is, or ought reasonably to be, aware and which may cause the Authority to be in breach of any Privacy Law.

### **51.3 Consent to use and disclose Personal Information**

Crown consents to the Personal Information of third persons it gives to the Authority being:

- (a) used by the Authority in connection with the Authority's functions or business, including in connection with:
  - (i) internal reporting;
  - (ii) reporting to any adviser of the Authority or to any Public Authority;
  - (iii) the management of the Crown Project;
  - (iv) any use specified in any Privacy Statement; and
- (b) disclosed by the Authority:
  - (i) if required or authorised by Law;
  - (ii) to any adviser of the Authority or any Public Authority; or
  - (iii) if the third person consents.

### **51.4 Anti-terrorism**

Crown:

- (a) represents and warrants that it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (b) undertakes to ensure that it complies with all anti-terrorism legislation in Australia including Part 4 of the Charter of the United Nations Act 1945 (Cth) and Part 5.3 of the Criminal Code Act 1995 (Cth).

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## **52. Representatives**

### **52.1 Authority's representative**

The Authority may from time to time appoint an individual or individuals to exercise any functions of the Authority under this deed. The appointment of a representative does not prevent the Authority from exercising any function.

### **52.2 Notification by the Authority and knowledge of representative attributed to Authority**

- (a) The Authority must as soon as practicable notify Crown and LLMP of:
  - (i) the appointment and the name of the Authority's representative and the functions delegated to that representative; and
  - (ii) the termination of the appointment of a representative.
- (b) A direction of Crown given to a representative of the Authority prior to Crown's receipt of a notification that that person is no longer the Authority's representative shall be taken to have been given to the Authority.

- (c) A direction of LLMP given to a representative of the Authority prior to LLMP's receipt of a notification that that person is no longer the Authority's representative shall be taken to have been given to the Authority.
- (d) Matters within the knowledge of a representative of the Authority are taken to be within the knowledge of the Authority.

### **52.3 Representatives**

- (a) Crown must appoint a competent representative in respect of the Crown Project.
- (b) LLMP must appoint a competent representative in respect of the Crown Project.

### **52.4 Notification of Representatives**

- (a) Crown must as soon as practicable notify the Authority and LLMP of the name of its representative and of any subsequent changes. A direction of the Authority and LLMP given to the representative of Crown prior to the Authority's and LLMP's receipt of a notification that that person is no longer Crown's representative shall be taken to have been given to Crown.
- (b) LLMP must as soon as practicable notify the Authority and Crown of the name of its representative and of any subsequent changes. A direction of the Authority and Crown given to the representative of LLMP prior to the Authority's and Crown's receipt of a notification that that person is no longer LLMP's representative shall be taken to have been given to LLMP.

### **52.5 Knowledge of representative attributed to Crown and LLMP**

- (a) Matters within the knowledge of the representative of Crown are taken to be within the knowledge of Crown.
- (b) Matters within the knowledge of the representative of LLMP are taken to be within the knowledge of LLMP.

### **52.6 Objection by the Authority**

- (a) If the Authority makes a reasonable objection to the appointment of a Crown representative, Crown must terminate the appointment and appoint another representative.
- (b) If the Authority makes a reasonable objection to the appointment of an LLMP representative, LLMP must terminate the appointment and appoint another representative.

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## **53. Costs**

### **53.1 Obligations of Crown**

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

- (a) the Costs of the Authority in connection with:
  - (i) any consent or approval sought by Crown under this deed, or anyone claiming through Crown, which is not related to any Application (whether or not that consent or approval is given);

- (ii) the exercise or non-exercise of rights arising from a breach by Crown of its obligations under this deed;
- (iii) the actual or (in circumstances where a default by Crown has occurred or is suspected by the Authority, on reasonable grounds, to have occurred) contemplated enforcement by the Authority of its rights under this deed or any Project Document; and
- (iv) a waiver, variation, release, surrender or discharge of or in connection with any Project Document,

but excluding in all cases the Authority's internal administrative Costs;

- (b) without limiting clause 53.1(a), Costs incurred by the Authority in connection with anything the Authority does at the request of Crown, including considering plans (which do not relate to an Application), varying documents, negotiating anything in connection with the Crown Project not specifically dealt with in this deed and negotiating with financiers; and
- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with any Project Document or a payment or receipt or any other transaction excluding any fine or penalty incurred due to the default of the Authority,

including legal costs.

### 53.2 Limitations of legal costs

For the purposes of clause 53.1, Costs shall only include legal costs incurred by the Authority in connection with:

- (a) any default by Crown or the Crown Guarantor of any of their obligations under this deed;
- (b) anything expressly referred to in this deed for which Crown is to reimburse the Authority for its costs (which shall exclude the matters referred to in clause 53.1(a)(i) or 53.1(a)(iv) (where that waiver, variation, release, surrender or discharge is not requested by Crown)); and
- (c) any variation requested by Crown or LLMP, the Crown Guarantor or the LLMP Guarantor of this deed, a Lease or the Independent Certifier's Deed.

### 53.3 Limitations

For the purposes of clause 53.1, the Authority agrees that (except in the circumstances referred to in clause 53.2(a)):

- (a) it will act reasonably in using its internal resources without charge to Crown having regard to the skills and capacities of the Authority and the Authority's Employees and Agents;
- (b) before going out to an external person for services where charges incurred by the Authority will be charged to, and paid by, Crown, the Authority must inform Crown that it has formed the view that it requires the services of an external person and provide Crown with a scope of the work that it is seeking that external person to undertake and an estimate of costs in that regard; and
- (c) if Crown responds saying an independent expert that Crown has retained is prepared to offer an opinion or an advice in writing for the benefit of the Authority as

well as for Crown, the Authority (acting reasonably) will agree to use such independent expert.

#### **53.4 Costs of negotiating this deed**

- (a) Subject to clause 53.4(b), each party agrees to pay its own Costs of and incidental to the negotiation and execution of this deed.
- (b)
  - (i) Each of LLMP and Crown must pay 50% of the Authority's legal costs, being the fees and disbursements of the Authority's legal advisors, in connection with negotiation and execution of the Project Documents (including schedules and annexures) and any other ancillary documents associated with the Project Documents but excluding the Fifth Deed of Amendment and the escrow deed signed before the Fifth Deed of Amendment.
  - (ii) LLMP's performance of its obligations under this clause satisfies LLMP's obligation to pay legal costs in connection with negotiation and execution of the Project Documents (including schedules and annexures) and any other ancillary documents associated with the Project Documents, under clause 54 of the PDA.

(iii) For the purposes of this clause 53.4(b), "Project Documents" means the Project Documents as defined under this deed and not the Project Documents as defined under the PDA.

#### **53.5 Crown to pay its Costs**

Unless otherwise provided:

- (a) anything which Crown does in connection with a Project Document must be done at Crown's Cost; and
- (b) anything which LLMP does in connection with a Project Document must be done at LLMP's Cost.

#### **53.6 Third party consents**

If the Authority has agreed to obtain a person's consent before the Authority gives its consent under this deed or to pay Costs incurred by that person in giving consent, then the consent from that person is a consent in connection with this deed.

#### **53.7 Stamp duty indemnity**

- (a) The Authority agrees to pay to Crown an amount equal to any stamp duty payable by Crown in respect of each of the following:
  - (i) the execution of this deed;
  - (ii) the payment of consideration, in cash or in kind, by Crown to the Authority under this deed;
  - (iii) the nomination by LLMP of Crown as a Nominee under the PDA pursuant to clause 2.1 and the payment of a nomination fee (however described) in cash or in kind payable by Crown to the Authority or LLMP for being nominated as Nominee;
  - (iv) the grant of a Construction Zone Sub-Licence or a Staging Sub-Licence;
  - (v) the grant of the Leases to Crown in accordance with this deed; and

- (vi) the application of Chapter 11A of the Duties Act 1997 to or in connection with any or all of the above.
- (b) For the avoidance of doubt, the Authority's obligations under this clause do not extend to any stamp duty which is payable with respect to or which is attributable to:
  - (i) any mortgages, charges or other Security Interests granted by:
    - A. Crown with respect to its rights under this deed; or
    - B. Crown with respect to its rights under a Lease; or
  - (ii) the transfer of a Lease or Long Term Licence by Crown; or
  - (iii) the Framework Agreement.
- (c) Any payments required to be made by the Authority under this clause, must be made within 30 days of a written demand being made by Crown, such demand to include reasonable substantiation of the amount being claimed by Crown. If the Authority is late making a payment, then in addition to that payment, the Authority must pay interest to Crown at the Interest Rate, calculated monthly in arrears.
- (d) At the request of the Authority, Crown must provide to the Authority, as soon as reasonably practicable, Crown's reasonable estimate of the amount for which it reasonably anticipates it will make a claim under clause 53.7 for the ensuing 12 month period.
- (e) The Authority agrees that any estimate provided by Crown is an estimate only and the provision of this estimate by Crown does not limit Crown's right to make a claim under clause 53.7.

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## **54. General requirements for payments**

### **54.1 Method of payment**

A party must make payments under this deed to the Authority (or a person nominated by the Authority in a notice to that party) by the method the Authority reasonably requires without set off or counterclaim and without deduction, unless prohibited by Law or pursuant to this deed.

### **54.2 No demand necessary**

The Authority need not make demand for any amount required to be paid by a party under this deed unless this deed expressly specifies that demand must be made.

### **54.3 Incorrect amount paid**

If a party pays an amount and it is found later that the amount payable should have been:

- (a) higher, then the Authority may demand payment of the difference; or
- (b) lower, then the Authority must repay the difference,

even though the Authority has given a party a receipt for payment of the incorrect amount.

### **54.4 Ongoing obligation**

Subject to any provision in this deed to the contrary, expiry or termination of this deed does not affect a party's obligations to make payments under this deed for periods before then.



## **54.5 When to make payments**

A party must make payments to the Authority under this deed on the due date in immediately available funds.

## **54.6 If due date not a Business Day**

If a payment becomes due for payment on a day which is not a Business Day, then the date for payment is the preceding Business Day.

## **54.7 Currency of payment**

Each party other than the Authority waives any right which it has in any jurisdiction to pay an amount in a currency other than the currency payable under this deed.

## **54.8 Interest on overdue money**

Any party under this deed which is required to make a payment (**Paying Party**) agrees to pay interest at the Interest Rate on any amount under this deed which is not paid on the due date for payment. That interest:

- (a) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days; and
- (b) is payable on demand from the other party (**Recipient Party**) or, if no such demand is made, on the last day of each calendar month.

## **54.9 Compounding**

Interest payable under clause 54.8 which is not paid when due for payment may (at any time before payment) be added to the overdue amount by the Recipient Party monthly or the last day of each calendar month. Interest is payable on the increased overdue amount at the Interest Rate in the manner set out in clause 54.8 compounding daily.

## **54.10 Interest on liability merged in judgment or order**

If a liability under this deed becomes merged in a judgment or order, then the Paying Party agrees to pay interest to the Recipient Party on the amount of that liability as an independent obligation. The interest accrues both before and after that judgment or order from the date the liability was due for payment until it is paid, at a rate that is the higher of the Interest Rate and the rate payable under the judgment or order.

## **54.11 Tender after termination**

Money tendered by a party after the termination of this deed and accepted by the Authority may be applied in the manner the Authority decides.

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# **55. GST**

## **55.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 55 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 55.

- (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.

## 55.2 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.

## 55.3 Additional amount of GST payable

Subject to clause 55.5, 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 55), 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 55.3(b).

## 55.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 55.3 and clause 55.5), varies from the additional amount paid by the Recipient under clause 55.3, 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 55.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 55.3.
- (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.

## 55.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 55.3 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 55.3 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 55.3 (or the time at which such GST Amount would have been payable in accordance with clause 55.3 but for the operation of clause 55.5(a)).

## 55.6 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.

## 55.7 No merger

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

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## 56. Notices

### 56.1 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: Level 21  
201 Kent Street  
Sydney NSW 2000  
For the attention of: The Chief Executive Officer

#### Crown

Name: Crown Sydney Property Pty Limited  
Address: Level 3, Crown Towers  
8 Whiteman Street  
Southbank VIC 3006  
For the attention of: The Company Secretary

#### Crown Guarantor

Name: Crown Resorts Limited  
Address: Level 3, Crown Towers  
8 Whiteman Street  
Southbank VIC 3006  
For the attention of: The Company Secretary

#### LLMP

Name: Lend Lease (Millers Point) Pty Limited  
Address: Level 4, The Bond  
30 Hickson Road  
Millers Point NSW 2000  
For the attention of: The Company Secretary

#### LLMP Guarantor

Name: Lend Lease Corporation Limited  
Address: Level 4, The Bond  
30 Hickson Road  
Millers Point NSW 2000  
For the attention of: The Company Secretary

## **56.2 Delivery**

They must be:

- (a) left at the address referred to in clause 56.1; or
- (b) sent by prepaid post (airmail, if appropriate) to the address referred to in clause 56.1.

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

## **56.3 When effective**

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

## **56.4 Receipt - postal**

If sent by post, they are taken to be received:

- (c) in the case of all parties (other the Crown Guarantor or the LLMP Guarantor), 3 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia); and
- (d) in the case of the Crown Guarantor and the LLMP Guarantor, on receipt by the Crown Guarantor or the LLMP Guarantor, as the case may be.

## **56.5 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.

## **56.6 Waiver of notice period**

The Authority may waive a period of notice required to be given by LLMP or Crown under this deed.

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## **57. General**

### **57.1 Certificate**

A certificate signed by the Authority or the Authority's Solicitor about a matter or about a sum payable to the Authority in connection with this deed is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

### **57.2 Exercise of rights**

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

### **57.3 Partial exercise of rights**

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

### **57.4 Delay in exercising rights**

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

## **57.5 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.

## **57.6 Supervening legislation**

Any present or future legislation which operates to vary the obligations of Crown, the Crown Guarantor, LLMP or the LLMP Guarantor in connection with this deed with the result that the Authority's, Crown, the Crown Guarantor's LLMP's or the LLMP Guarantor's respective rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

## **57.7 Approvals and consent**

The Authority must:

- (a) give conditionally or unconditionally; or
- (b) refuse,

its approval or consent in its reasonable discretion, unless this deed expressly provides otherwise.

## **57.8 Remedies cumulative**

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this deed.

## **57.9 Set-off**

Any party may set off any amount owing by it to the other party under this deed against any amount owing by that other party to it under this deed.

## **57.10 Release and indemnities**

Each release and indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Authority, LLMP, the LLMP Guarantor, Crown or the Crown Guarantor and survives expiry or termination of this deed. Except as otherwise provided for in this deed, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

## **57.11 Further assurances**

If asked by the another party (acting reasonably), then a party must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind it and its successors under this deed; and
- (b) use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

## **57.12 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.



### 57.13 Antecedent obligations

The expiry or termination 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 any other party to enable it to calculate those payments.

### 57.14 Confidentiality

All information provided under or in relation to the Project Documents:

- (a) by Crown or LLMP or the Crown Guarantor or the LLMP Guarantor to the Authority; or
- (b) by the Authority to Crown or LLMP or the Crown Guarantor or the LLMP Guarantor,

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:

- (c) with the consent of the disclosing party;
- (d) if allowed or required by Law or required by any stock exchange or any gaming regulator to which Crown or the Crown Guarantor (or any Related Entity of the Crown Guarantor) is subject;
- (e) in connection with legal proceedings relating to the Project Documents or the Premises;
- (f) if the information is generally and publicly available; or
- (g) 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 disclose it to any person

### 57.15 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:

- (a) it is severed for that jurisdiction; and
- (b) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

This clause 57.15 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

### 57.16 Entire agreement

The Project Documents and the PDA represent the entire agreement between the parties in relation to the Crown Site.

## **57.17 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.

## **57.18 Effect of moratorium**

To the extent permitted by Law the application to this deed of any moratorium or other Act whether State or Federal affecting the operation of the terms of this deed is expressly excluded and negated.

## **57.19 Governing Law, jurisdiction and service of process**

This deed is governed by the Law in force in New South Wales.

## **57.20 Jurisdiction**

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

## **57.21 Waiver**

Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

## **57.22 Counterparts**

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

## **57.23 Caveat**

- (a) Crown will not register a caveat against the title for the Land unless the application of the caveat is expressly limited to the Crown Site on the face of the caveat.
- (b) If Crown registers a caveat in breach of clause 57.23(a), Crown will be responsible for all costs and disbursements incurred by the Authority in connection with the caveat, including the cost of removing the caveat.
- (c) Crown will remove the caveat in breach of clause 57.23(a) immediately on being requested to do so by the Authority.
- (d) If Crown fails to remove the caveat lodged in breach of clause 57.23(a) within 10 Business Days after being requested to do so by the Authority, Crown, for valuable consideration received by Crown (acknowledged by execution of this deed), irrevocably appoints the Authority as its attorney for the purposes of executing a withdrawal of caveat and/or any other document as may be required in connection with the removal of the caveat.
- (e) Where requested by the Authority or LLMP to enable the registration of a plan of subdivision or other document contemplated by this deed, Crown must provide a letter of consent to the registration of that plan or document within 5 Business Days after being requested to do so.
- (f) If:
  - (i) LLMP has exercised its rights to step-in to the Crown Works in accordance with this deed; and

- (ii) LLMP requests the Authority to assist in the withdrawal or removal of a caveat lodged by Crown,

the Authority will act reasonably to procure the withdrawal or removal of that caveat.

## 57.24 Survival

Clauses 1, 2.1, 3.21, 4.6, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 5.4, 5.13(i), 5.14(h), 6.3, 7.6, 8.12, 10.21, 13.6, 14.1(d), 14.3(d), 17.2, 28.7, 28.11(c), 28.12, 28.13, 28.14, 28.16, 28.17, 28.18, 28.19, 28.20, 33, 35, 39.1, 42.1, 42.2, 44, 45, 46, 47, 48, 50.5, 53.7, 54, 55, 56 and 57 will survive the termination or expiration of this deed (whether or not other clauses also survive termination or expiration).

## 57.25 No consequential loss

- (a) Notwithstanding any other provision of this deed, no party shall be liable under this deed to any other party for any Consequential Loss and each party waives, surrenders and abandons any and all rights and remedies that it has or may have in the future against the other parties in respect of a Consequential Loss suffered or incurred by it.

- (b) In this clause, **Consequential Loss** means loss which is indirect and which flows from a loss arising due to or to the extent contributed by or in any way connected with:

- (i) the Crown Works; or
- (ii) an act or omission; or
- (iii) a breach of this deed,

which gives rise to liability under this deed including:

- (iv) any claim, damage, liability, cost, loss, expense or outgoing arising out of or in connection with the Framework Agreement or any termination of the Framework Agreement; and
- (v) any loss of profit (including profit from gaming), loss of opportunity, loss of business or loss of reputation or goodwill caused or to the extent contributed to, by a breach of a term of this deed;

but excluding any:

- (vi) expenditure incurred to rectify the act or omission and any expenditure wasted as a result of the act or omission (including in the form of rent, wages or holding costs);
- (vii) loss arising from death or personal injury;
- (viii) loss arising from any criminal act or fraud by a party or its employees, contractors or agents;
- (ix) loss arising from willful misconduct by a party or its employees, contractors or agents;
- (x) loss which is the subject of the indemnities under this deed;
- (xi) liability to the extent to which by law, the parties cannot limit or contract out of; and

- (xii) amount expressly payable under this deed or the Hotel Project Agreement.
- (c) For the avoidance of doubt, the costs and losses referred to in clauses 57.25(b)(vi) to 57.25(b)(xii) (both inclusive) are, without limiting the generality of that concept, costs and losses directly caused by the relevant act, omission or breach.

## Execution page

Executed as a deed.

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



R. A. Smiley  
Signature of witness

RONALD A. SMILEY  
Name of witness

[Signature]  
Signature of authorised person

CARIE VAN DER LAAN  
Name of authorised person

CEO  
Office held

**NOTE: The original Crown Development Agreement was executed in counterpart copies. Execution blocks have been consolidated in this reference copy for ease of use.**

Executed by Crown Sydney Property Pty Limited ACN 166 326 861 in accordance with section 127 of the Corporations Act by or in the presence of:

[Signature]  
Signature of Director / Secretary

Michael James Neilson  
Name of Director / Secretary in full

[Signature]  
Signature of Director

ROWEN BRUCE CRAIGIE  
Name of Director in full

Executed by Crown Resorts Limited ACN 125 709 953 in accordance with section 127 of the Corporations Act by or in the presence of:

[Signature]  
Signature of Director / Secretary

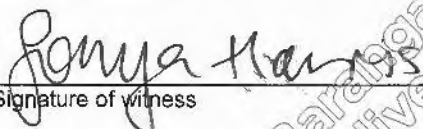
Michael James Neilson  
Name of Director / Secretary in full

[Signature]  
Signature of Director

ROWEN BRUCE CRAIGIE  
Name of Director in full

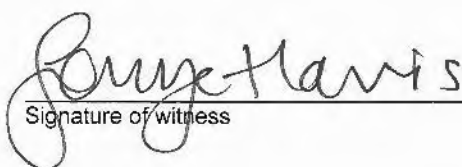


Signed, sealed and delivered for and on behalf  
of **Lend Lease (Millers Point) Pty Limited**  
**ABN 15 127 727 502** by its attorney under a  
power of attorney dated 4 March 2015 registered  
in New South Wales with book 4683 no. 85  
in the presence of:

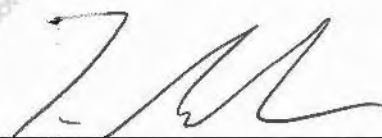
  
Signature of witness

**SONYA LOUISE HARRIS**  
Full name of witness

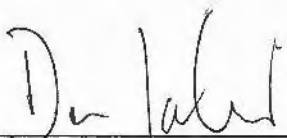
Signed, sealed and delivered for and on behalf  
of **Lend Lease Corporation Limited**  
**ABN 32 000 226 228** by its attorneys under a  
power of attorney dated 3 March 2015 registered  
in New South Wales with book 4683 no. 86  
in the presence of:

  
Signature of witness

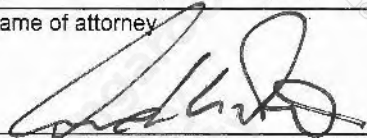
**SONYA LOUISE HARRIS**  
Full name of witness

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

**Thomas Lachlan Mackellar**  
Full name of attorney

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

**Daniel habbad**  
Full name of attorney

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

**David Andrew Wilson**  
Full name of attorney